

FALL 2013 NEWSLETTER

PRODUCTS LIABILITY UPDATE

By Rocky Little

***Snodgrass v. Hillcrest Baptist Med. Ctr.*, No. 07-11-00401-CV (Tex. App. – [7th Dist.] Amarillo, October 31, 2013).**

This wrongful death claim was brought against Hill-Rom alleging that a hospital bed it manufactured was a defective product. Summary Judgment was granted in favor of Hill-Rom and upheld on appeal because the plaintiffs offered no evidence that any conduct by Hill-Rom was a producing cause of any injury to the decedent. The Court noted that, in a products liability case, the causation standard is producing cause, not proximate cause. Producing cause and proximate cause differ in that foreseeability is an element of proximate cause, but not of producing cause.

***Randol Mill Pharm. v Miller*, No. 02-12-00519CV (Tex. App. – [2nd Dist.] Fort Worth, September 19, 2013).**

Plaintiff filed suit against a pharmacy alleging that it sold a defective product, injectable lipoic acid. The pharmacy filed a Motion to Dismiss based on the plaintiff's failure to file a Chapter 74 expert report as required by the Texas Medical Liability Act (TMLA). The Court had to determine whether a pharmacist's act of filling a bulk phone order placed by a doctor for more than 20 vials of lipoic acid constitutes dispensing a prescription medicine as required for the pharmacist to qualify as a health care provider under the TMLA.

In this case, the doctor did not call in a prescription, nor did the pharmacy fill a prescription for a specific person. Because the pharmacist was not "dispensing" as that term is defined in the Texas Pharmacy Act, the pharmacist did not meet the limited definition of "pharmacist" under the TMLA. Therefore, the pharmacist was excluded from the TMLA's list of healthcare providers. Because the pharmacy/pharmacist was not a healthcare provider under the TMLA, the plaintiff was not required to file a Chapter 74 expert report. In other words, the suit was a products liability claim, not a healthcare liability claim under the TMLA, and the pharmacy's Motion to Dismiss was denied.

***Bldg. Prods. Plus v. Tamko Bldg. Prods.* No. 01-12-00073-CV (Tex. App. – [1st Dist.] Houston, October 10, 2013).**

One of the issues in this case is whether a particular building material, decking boards, deteriorated prematurely as a direct result of a manufacturing defect. The Court held that because the existence of a manufacturing defect that caused the specific problems complained of is a matter not within the common knowledge of jurors, expert testimony was required. The plaintiff failed to provide any evidence identifying the specific deviation from design that caused the product's failure. Rather the evidence is essentially that the product failed, which is insufficient to support a jury verdict as a matter of law.