

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2069-10T1

JANE BESSEMER and ALLEN A.
BESSEMER, SR.,

Plaintiffs-Appellants,

v.

NOVARTIS PHARMACEUTICALS
CORPORATION,

Defendant-Respondent.

Argued April 18, 2012 - Decided June 13, 2012

Before Judges Fuentes, Graves and Koblitiz.

On appeal from Superior Court of New Jersey,
Law Division, Middlesex County, Docket No.
L-1835-08.

John J. Vecchione (Valad & Vecchione,
P.L.L.C.) of the District of Columbia,
Virginia and New York bars, admitted pro hac
vice, argued the cause for appellants
(Seeger Weiss, L.L.P., Law Offices of
Terence J. Sweeney, and Mr. Vecchione,
attorneys; Mr. Sweeney and Mr. Vecchione, of
counsel; Michael L. Rosenberg, of counsel
and on the briefs).

Rebecca A. Womeldorf (Hollingsworth L.L.P.)
of the District of Columbia, Georgia and
Mississippi bars, admitted pro hac vice,
argued the cause for respondent (Sills
Cummis & Gross, P.C. and Ms. Womeldorf,
attorneys; Joe G. Hollingsworth
(Hollingsworth L.L.P.) of the District of
Columbia bar, admitted pro hac vice,

Katherine R. Latimer (Hollingsworth L.L.P.) of the District of Columbia bar, admitted pro hac vice, Neil S. Bromberg (Hollingsworth L.L.P.) of the District of Columbia bar, admitted pro hac vice, and Ms. Womeldorf, of counsel; Beth S. Rose and Charles J. Falletta, on the brief).

PER CURIAM

Plaintiff Jane Bessemer¹, a breast cancer patient with bone metastases, received a multitude of intravenous treatments of bisphosphonates Aredia and Zometa manufactured by defendant Novartis Pharmaceuticals Corporation (Novartis) to reduce the risk of skeletal-related events such as fractures and spinal degeneration, as well as to alleviate bone pain. During the time period when she received treatments, between May 1999 and April 2004, plaintiff also underwent invasive dental procedures. She discovered that she developed osteonecrosis of the jaw (ONJ) as a result of a June 2000 tooth extraction, which "triggered" the disease.² She claimed that the dentists and oral/maxillofacial surgeons' treatment of the disease only worsened the condition because they were unaware of the peculiar nature or cause of this type of jaw bone disease. Plaintiff and

¹ We refer to Jane Bessemer as plaintiff. Her husband sued claiming a loss of consortium.

² Counsel agreed at oral argument that the incidence of ONJ among patients treated with Aredia or Zometa is approximately five percent.

her husband filed suit under the New Jersey Products Liability Act (PLA), N.J.S.A. 2A:58C-1 to -11, and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -20, alleging that defendant knew or should have known that Aredia and Zometa could cause ONJ and should have issued warnings to plaintiff and her treating dentists and oral surgeons, as well as to her prescribing oncologist.³

Plaintiff appeals from the October 22, 2010 judgment after a jury verdict in defendant's favor, claiming that the pre-trial grant of partial summary judgment to defendant constituted reversible error. The trial judge decided in an April 30, 2010 opinion and order that Novartis had no duty to warn non-prescribing dentists or oral surgeons under the PLA. In an August 20, 2010 opinion and order, the trial judge applied the learned intermediary doctrine, see Niemiera v. Schneider, 114 N.J. 550, 559 (1989)(citing Bacardi v. Holzman, 182 N.J. Super. 422 (App. Div. 1981)), rejecting plaintiff's allegation that Novartis advertised directly to the consumer, see Perez v. Wyeth Laboratories Inc., 161 N.J. 1, 14-15 (1999), and also dismissed plaintiff's express warranty claim under the Uniform Commercial Code, N.J.S.A. 12A:2-313.

³ Plaintiff also alleged a design defect, breach of an implied warranty under the PLA and breach of an express warranty by Novartis.

After reviewing the extensive record in light of the arguments advanced on appeal, we affirm substantially on the basis of the well-considered and thorough opinions of Judge Mayer, which are well supported by the evidence and legal precedent.⁴ Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998); Manalapan Realty v. Manalapan Twp. Comm., 140 N.J. 366, 378 (1995).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

⁴ Further, after Judge Mayer issued her opinions, we reaffirmed that a drug company's compliance with United States Food and Drug Administration requirements presents a rebuttable presumption of adequacy of warnings. Bailey v. Wyeth, Inc., 424 N.J. Super. 278, 310-11 (Law Div. 2008), aff'd, 422 N.J. Super. 360 (App. Div. 2011).