

Anchin Alert

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Summary Judgement Denied on Warranty Breach Claim Where Expert Opinion Raised Factual Dispute

Members of Anchin, Block & Anchin's Litigation, Forensic and Valuation Services Group are often called upon to serve as expert witnesses. As demonstrated in a case recently reported in the *New York Law Journal*¹, a testifying expert's qualifications are extremely important as they go to the credibility of the witness' testimony and can sometimes have far reaching effects even before a trial begins.

In a warranty breach claim, a Plaintiff alleged that use of Risperdal, an anti-psychotic medication manufactured by the defendant, caused him to develop gynecomastia. The Plaintiff's medical expert proposed to testify that Risperdal was a substantial contributing factor to the plaintiff's gynecomastia and that other potential causes, including puberty, obesity, or marijuana use, were not the cause or the only cause of the plaintiff's gynecomastia.

The defendant moved to preclude the testimony of the plaintiff's expert and moved for summary judgment.

The court denied the defendant's motion to preclude the testimony of the plaintiff's expert finding that the plaintiff's expert's qualifications provided circumstantial evidence of reliability. The court further found that the causation opinion of the plaintiff's expert was reliable as it was derived from differential diagnosis and was supported by multiple studies addressing the relationship between the medication's use and gynecomastia. Because the opinion of the plaintiff's expert raised a factual dispute, the court denied summary judgment to defendant on plaintiff's warranty breach claim.

For more information, please contact Anthony Bracco, David Beckman, Margaret Kolb, Dennis Neier, or Raymond Dragon of Anchin's Litigation, Forensic and Valuation Services Group at 212.840.3456.

¹Adeghe v. Janssen Pharm., Inc., 16 CIV 2235 (Aug. 30)



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