



And The Defense Wins

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DRI member [Katie L. Dearing](#) of **The Dearing Law Firm, P.A.** in Jacksonville, Florida, led the defense team that secured an important victory for Genzyme Corporation in a product liability lawsuit in the District Court for the Middle District of Florida and on appeal to the U.S. Court of Appeals for the Eleventh Circuit and the Supreme Court of the United States.

In the case, *Denise Rounds, et al. v. Genzyme Corporation*, the plaintiffs claimed that Genzyme negligently trained a non-party physician in the use of its biologic product, such that the physician could not appropriately assess whether the plaintiff was a suitable candidate for treatment using the product. Genzyme argued that the plaintiffs' claims were barred by the learned intermediary doctrine, as Genzyme had clearly and unambiguously advised the non-party physician of the risk of the exact injury the plaintiffs claimed. Genzyme argued for the extension of the learned intermediary doctrine to biologic products because patients do not have access to such products without the intervention of a learned intermediary physician.

The district court granted Genzyme's motion to dismiss the complaint, holding as a matter of law that Genzyme's clear and unambiguous warning to the physician satisfied its duty to advise of the risks related to product use. In so holding, the district court rejected plaintiffs' attempts to circumvent the learned intermediary doctrine by characterizing the claim as a failure to train claim, rather than a failure to warn claim. The district court's opinion is the first in Florida to apply the learned intermediary doctrine to biologic products, previously applied only to cases involving drugs or medical devices.

The Eleventh Circuit Court of Appeals affirmed the district court's decision dismissing plaintiffs' complaint and extending application of the learned intermediary doctrine to prescription products. See *Denise Rounds, et al. v. Genzyme Corporation*, 2011 WL 3925353 (11th Cir. 2011), *cert. denied*, --- S.Ct. ----, 2012 WL 396529 (U.S. April 16, 2012). The plaintiffs petitioned the Supreme Court of the United States for certiorari review. The Supreme Court denied the petition on April 16, 2012.

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