

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

JAMES CLAYWORTH, et al.,
Plaintiffs and Appellants,
v.
PFIZER, INC., et al.,
Defendants and Respondents.

A116798

(Alameda County Super. Ct.
No. RG04172428

ORDER MODIFYING OPINION AND
DENYING PETITION FOR REHEARING

BY THE COURT:

The opinion filed herein on July 25, 2008, is modified as follows:

(1) On page 2, fn. 3, line 3, the words “Johnson & Johnson” are deleted so that line 3 should read:

Janssen Pharmaceutical, Inc.; Ortho McNeil Pharmaceutical, Inc.;

(2) On page 10, the first line of the fourth paragraph is modified so that it reads:

In an seven-to-one opinion written by Justice White, the Supreme Court reversed the

(3) On page 22, following the second full paragraph, a new paragraph is added as follows:

The proof problems present in *Hanover Shoe* are not apparent in the record here. To the contrary, while plaintiffs resisted discovery on various grounds, Judge Sabraw specifically found that plaintiffs

had not shown it was unduly burdensome or oppressive for them to produce data regarding purchases and sales of drugs, since the information was maintained electronically and could apparently be extracted and compiled with relative ease. Indeed, as early as 1978, commentators were noting the significance and utility of the computer in antitrust litigation. (See, for example, Board of Editors of the Federal Judicial Center, *Manual for Complex Litigation* (1978) § 2.717, p. 80.) And the technological developments in the ensuing 30 years can hardly be exaggerated.

(4) On page 24, line 15, the third line of the third full paragraph, the words “again a unanimous” are deleted, and the word “another” substituted, so that the line should read:

Corp. (1989) 490 U.S. 93, 102-103 (*ARC America*), another opinion by

(5) On page 25, line 8, the third line of the first full paragraph, the word “*Shoe*” is deleted, and the word “*Brick*” substituted, so that the line should read:

Darnell-Taenzer Co. (1918) 245 U.S. 531, 533-534.) In enacting the *Illinois Brick*

(6) On page 35, the second sentence in the second full paragraph, at lines 13-14, is deleted.

(7) On pages 35 through 37, the heading “**5. Even Assuming *Hanover Shoe* Were the Law in California, the Pass-On Defense is Available in the Setting Here**” and the following discussion are deleted.

(8) On page 37 the heading “**6. The UCL Claim Has No Merit**” is renumbered to read “**5. The UCL Claim Has No Merit**”.

These modifications do not effect a change in the judgment.

The petition for rehearing is denied.

Trial Court: Alameda County Superior Court

Trial Judge: Hon. Ronald M. Sabraw
Hon. Harry R. Sheppard

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