

[Utah Preemption Split Deepens](#)

Wednesday, June 08, 2011

We've blogged before about the split among Utah courts about whether Buckman Co. v. Plaintiffs' Legal Committee, 531 U.S. 341 (2001), preempts the fraud on the FDA exception to Utah's statutory bar (Utah Code Ann. §78B-8-203) against punitive damages where the product complies with FDA standards.

The first case, Grange v. Mylan Laboratories, 2008 WL 4813311 (D. Utah Oct. 31, 2008), [got it right](#). Buckman's rationale extends to any state-law assertion of fraud on the FDA that could bring about submission to the FDA of unnecessary and unwanted information due to fear of later tort liability.

Indeed, since punitive damages can (and often do) exceed compensatory damages in their amounts, allowing punitive damages based on fraud on the FDA is even more likely to bring about the prophylactic conduct that Buckman decried than the claim in Buckman itself - particularly since punitive damages are frankly intended to "deter" the conduct they punish - and thus create precisely what Buckman held was unacceptable.

The next case, Lake-Allen v. Johnson & Johnson, 2009 WL 2252189 (D. Utah July 27, 2009), botched the issue, for some reason asserting that Buckman involved express preemption. We criticized this patently wrong result [here](#).

The third case blew it as well, for many of the same reasons - although not so blatantly as in Lake-Allen. Stanley v. Mylan, Inc., 2010 WL 3718589 (D. Utah Sept. 17, 2010). That court got it in its head that Wyeth v. Levine, 555 U.S. 555 (2009), somehow superseded Buckman, although the Court in Buckman took great pains (we'd say too great pains) to distinguish fraud on the FDA allegations. We commented on Stanley [here](#).

Could this be an adverse trend?

We don't think so. We're pleased to let everybody know that the judge who originally decided Grange took a second look at the whole question recently - and decided that, yes, Grange was right and the two other decisions, well, were not:

“Mylan's Motion to Dismiss Plaintiff's claim for punitive damages is granted. The Court has reviewed its decision in Grange v. Mylan Laboratories, Inc., 2008 WL 4813311 (D. Utah). This Court finds that its decision in Grange is not changed by the subsequent decision in Wyeth v. Levine, 129 S. Ct. 1187 (2009), or the holdings in Lake-Allen v. Johnson & Johnson, 2009 WL 2252198 (D. Utah 2009) or Stanley v. Mylan, Inc., 2010 WL 3718589 (D. Utah 2010). This Court finds that Plaintiff's claim for punitive damages is tantamount to a showing that Defendant committed fraud-on-the-FDA. Fraud-on-the-FDA claims are preempted by the United States Supreme Court decision Buckman Co. v. Plaintiff's Legal Comm'n., 531 U.S. 341, 348 (2000).”

Pierce v. Mylan Laboratories, Inc., No. 1:10-cv-00104-TC, [slip op.](#) at 2 (D. Utah May 17, 2011).