

(The supplemental information submitted by Senator Nelson follows:)¹

[From Federal Supplement, vol. 257—cases argued and determined in the U.S. District Courts—U.S. Customs Court—pp. 991-998]

SHANE STROMSODT, a minor, by Robert M. Stromsodt, his guardian ad litem,
Plaintiff,

v.

PARKE-DAVIS AND COMPANY, a corporation, Defendant.
Civ. No. 3992

United States District Court, D. North Dakota, Northeastern Division—
September 28, 1966,

Product liability case involving defendant's ethical drug which allegedly caused injuries to infant plaintiff. The District Court, Ronald N. Davies, J., held that evidence established that defect in defendant's drug caused damage to brain and central nervous system of infant, that such defect constituted breach of implied warranty of merchantability, that defendant was chargeable with negligence in failing adequately to test product and adequately to warn of dangers inherent in its use and that infant was entitled to award of \$500,000.00.
Judgement for plaintiff.

1. Druggists ⚡10

Evidence established that competent, producing cause of damage to brain and central nervous system of infant was defect in defendant's ethical drug, a quadruple antigen with a prophylaxis against diphtheria, pertussis, tetanus and poliomyelitis, and that chronologically and etiologically, infant's condition was traceable directly to the drug administered to him.

2. Sales ⚡284(1)

Defect in drug resulting in damage to brain and central nervous system of infant to whom drug was administered constituted breach of implied warranty of merchantability.

3. Sales ⚡255

Asserted lack of privity is not defense in North Dakota in an action by ultimate consumer against manufacturer of drug for breach of implied warranties, where, through advertising or other media of education and information, defendant manufacturer has persuaded medical profession to prescribe defendant's drug.

4. Druggists ⚡9

Finding that defendant drug manufacturer breached implied warranty of merchantability and that infant plaintiff's injuries were caused thereby did not preclude finding that manufacturer was also chargeable with negligence in failing adequately to test product and adequately to warn of dangers inherent in its use.

5. Druggists ⚡10

Evidence established that adequate test performed prior to marketing of defendant's ethical drug would have disclosed product's potency instability as well as cause of greater incidence of reaction and that defendant was negligent in failing to adequately test product, in suit for damage to brain and central nervous system of infant resulting from defect in defendant's drug which was administered to infant.

6. Druggists ⚡9

Even though drug manufacturer met all of government regulations and requirements in production and marketing of drug, manufacturer still owed duty to warn of dangers which were inherent in use of drug and of which it knew or should have known in exercise of reasonable care.

7. Druggists ⚡9

For drug manufacturer to be liable for injuries caused by use of its drug on basis of its failure to warn of dangers which are inherent in use of drug and

¹ See p. 4537, supra.