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COURT DISMISSES LUTPA CLAIM BECAUSE LPLA PROVIDES PLAINTIFFS' EXCLUSIVE REMEDY

Bladen v. C.B. Fleet Holding Company, 2007 WL 1237799 (W.D.La. 4/25/07)

Francis Bladen was given a 1.5 ounce unflavored package of C.B. Fleet Phosphosoda at the Veteran's Administration Medical Center in Alexandria, Louisiana, where he was scheduled to undergo a sigmoidoscopy procedure. At some point after the procedure, Bladen's laboratory results revealed elevated creatine levels, and he was referred by his treating physician to a nephrologist, who diagnosed Bladen with acute renal failure. Bladen and his wife sued alleging he had sustained permanent damage, including renal impairment as a result of his ingestion of the product.

The Bladens sued C.B. Fleet Holding Company ("Fleet") arguing that the product was unreasonably dangerous in construction and composition, unreasonably dangerous in design, unreasonably dangerous because an adequate warning about the product was not provided, and unreasonably dangerous because it did not conform to Fleet's implied and express warranties about the product when Fleet knew of the product's intended use. Finally, Plaintiffs alleged that Fleet was liable to them under the Louisiana Unfair Trade Practices Act (LUTPA). Plaintiffs alleged that Fleet violated LUTPA by failing to disclose to the public information concerning the product, which was known to Fleet at the time of the sale of the product.

The LPLA, which was enacted in 1988, contains the express declaration that a "claimant may not recover from a manufacturer for damage caused by a product on the basis of any theory of liability that is not set forth in this Chapter." In 1972, approximately sixteen years prior to the enactment of the LPLA, the Louisiana legislature passed Act 759 – the Unfair Trade Practices and Consumer Protection Law – in response to widespread consumer dissatisfaction with their treatment in the marketplace. The act provides a private cause of action for actual damages to any person who suffers ascertainable loss from a deceptive or unfair practice.

The sole issue before the court was whether the LPLA precluded the Bladens' LUTPA claims. The Bladens contended that Fleet's conduct and actions in selling the product violated both LPLA and LUTPA. However, the Bladens failed to provide any statutory authority supporting their claim that LUTPA provided a theory of liability in addition to the liability authorized under the LPLA and in view of the exclusivity provision found within the LPLA.

The court held that since the LPLA was passed long after the passage of the LUTPA, the Louisiana legislature was aware of the LUTPA when the declaration was made limiting claims against manufacturers for damage caused by their products to the LPLA. The court noted that no exception was created for the LUTPA as to claims against manufacturers for damage caused by their products, albeit through alleged unfair trade practices. The plain language and the unique legislative history of the LPLA demonstrated the legislature's intent to make the LPLA the sole vehicle for a suit against a manufacturer.

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This ruling may be beneficial to defendants in products liability cases because it makes clear that LUTPA claims, based on the same facts as those of a plaintiff's LPLA claim, will be dismissed because the LPLA provides the plaintiff's exclusive remedy.

– [Don A. Rouzan](#)

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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