

Case Name (Full)				
Cottrell v. Alcon Labs., Inc.				
Case Name (Short)	Case Number	Date Case Opened	Include On Website?	
Cottrell	618	5 /20/2016	<input checked="" type="checkbox"/>	
Lead Attorney (Staff)	Co-Counsel (Staff)	Public Justice Role		<input checked="" type="checkbox"/>
Leah Nicholls	Brueckner, Leslie	Lead		
Recent News			Date of Recent News	
Leah Nicholls argued the case before the Third Circuit on January 24, 2017.			2/17/2017	
Short Description	<p>We are lead counsel in a Third Circuit appeal to argue that the plaintiffs in a multistate consumer class action have proper standing (in other words, they have been sufficiently injured) to bring a case. The plaintiffs alleged that the defendant pharmaceutical companies violated various state consumer protection statutes by deliberately packaging their prescription eye drops in droppers that emitted a far larger drop than is therapeutically necessary, citing scientific studies to show that packaging producing a smaller drop would be both medically preferable and less expensive for consumers. The lower court held that the plaintiffs lacked standing because their claimed injuries-in-fact were too speculative, and dismissed the scientific studies as unpersuasive. We argue that the lower court decision improperly requires the plaintiffs to prove their case on the merits to establish the threshold issue of standing. We view the case as part of a larger trend of attempts by corporations to seek dismissal of consumer class actions on standing grounds, and seek to build precedent to reject this tactic.</p> <p>We are lead counsel in this appeal of a dismissal of a multistate class action alleging that the defendant pharmaceutical companies violated various state consumer protection statutes by purposely packaging their prescription eye drops in droppers that emitted a far larger drop than is therapeutically necessary. The plaintiffs cited studies concluding that packaging producing a smaller drop would be both medically preferable and less expensive for consumers. The district court dismissed the case on the ground that the plaintiffs' claimed injury—that they would have paid less for the drugs had they been packaged differently—was too speculative to confer the injury-in-fact requirement for standing. On appeal, the defendants also argue that the dismissal should be affirmed on the alternative ground that the plaintiffs' claims are preempted. We argue, among other things, that the district court's view of standing unfairly requires the plaintiffs to prove their claims before they are allowed any discovery, and effectively shuts the courthouse doors on vast numbers of injury victims.</p>			
Long Description	<p>The underlying multistate class action alleges that the defendant pharmaceutical companies violated various state consumer protection statutes by packaging their prescription eye drops in droppers that emitted a far larger drop than is therapeutically necessary, causing costly waste and increased health risk. The district court found a lack of standing at the motion to dismiss stage even though the named plaintiffs cited scientific studies concluding that packaging producing a smaller drop would be both medically preferable and less expensive for consumers and alleged, on the basis of statements from defendants' own scientists, that defendants deliberately chose droppers emitting larger drops in order to maximize profits at consumers' expense.</p>			
Primary Practice Area	Practice Areas	KeyWords		
Class Action Preservation	Access to Justice Consumers' Rights Federal Preemption			
Federal Jurisdiction	State Jurisdiction	Status	Result	Date Closed
3rd Circuit		Active		

Cooperating Attorney, Firm and Role Information

Attorney Name	Firm Name	Case Role
Cornfeld, Richard S.	Law Office of Richard S. Cornfeld	Co-Counsel

Fee Arrangement

If the Plaintiffs are ultimately successful in their claims, either through judgment or settlement, Public Justice will receive its proportionate lodestar of the total attorney fees awarded or approved. If Defendants and Plaintiffs enter into a settlement with plaintiffs in other, similar cases pending in other jurisdictions, the proportionate fee would take into consideration the proportionate 65-and-over population covered by this case. The relevant statutes contain fee-shifting provisions.

Fees Recovered**Cost Sharing**

Each of the firms will advance its in-house costs, with the Law Office of Richard S. Cornfeld having primary responsibility for case costs.

Costs Recovered

CEC Memo	Retainer Agreement	Cooperating Counsel Agreement	Complaint	Settlement Agreement
504998		504980	504999	

Important Briefs	Important Opinions
505350, 509245	

Responsible Attorney	Last Updated	Updated By
Nicholls, Leah	3/6/2017	

Notes