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# STATE COURT RULES PLAINTIFF'S ILLEGAL ACTS BAR TORT SUIT

by  
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In a favorite party game, guests are asked which historical figure they would like to invite to a dinner party, and what the conversation might be about. If your historical guest were one of the founding fathers – Thomas Jefferson, say, or James Madison – and you wanted to talk to him about your twenty-first century law practice, would you have trouble explaining your cases to him? Not if the case you are working on happens to be like *Price v. Purdue Pharma*, 920 So. 2d 479 (Miss. 2006). *Price* turns on the application of a Latin legal maxim, *ex dolo malo non oritur actio*, which your hypothetical dinner guest would have found perfectly familiar – even if you don't. In fact, your guest might be comforted to learn it is still a valid principle today.

In *Price*, the Supreme Court of Mississippi relied on that legal maxim – loosely translated, a bad act cannot give rise to a cause of action – in a suit against the manufacturers of OxyContin<sup>®</sup>, as well as physicians and pharmacies that had prescribed and supplied the drug. The rule, as applied, means that a court will not grant relief to a party where his or her claim is necessarily based on the party's own illegal or immoral action. The Court used this so-called “wrongful conduct rule”, 920 So. 2d at 484, to affirm the summary judgment for defendants, because the plaintiff had obtained the drug through fraud.

The facts of *Price* would be great conversation for your hypothetical dinner party. Ernest Price sued several manufacturers, three physicians, and two pharmacy companies,<sup>1</sup> all of which, he alleged, were involved in the production, manufacture, distribution, prescription, and sale of OxyContin<sup>®</sup>.<sup>2</sup> *Id.* at 481-82. Price claimed, *inter alia*, that the drug was addictive, and that the defendants' actions in making, prescribing, or dispensing it without appropriate warnings had caused or contributed to his addiction to the drug and his resulting injury. *Id.*

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<sup>1</sup>The Purdue Pharma Company, Purdue Pharma, L.P., Purdue Pharma, Inc., Purdue Frederick Company, The P.F. Laboratories, Inc., Abbott Laboratories, Abbott Laboratories, Inc., Gerry Ann Houston, M.D., Ronald B. Williams, M.D., Roger Collins, M.D., Eckerd Corporation, and Walgreen Company.

<sup>2</sup>OxyContin<sup>®</sup> (one of several brand names for the pain medication oxycodone) is a federally-regulated Schedule II narcotic pain medicine. See 21 CFR § 1308.12(b)(1)(15) (1985). In Mississippi, it is classified as a controlled substance under Mississippi Code § 41-29-115(A)(a)(1)(xiv) (2000). Obtaining it or attempting to obtain it by fraud, deception, forgery, or misrepresentation is a criminal offense. MISS. CODE ANN. § 41-29-144(1) (1980).

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Price was first prescribed OxyContin® in 1997 to treat sickle-cell anemia. Over the next several years, he sought treatment in several cities from as many as ten doctors; he used seven pharmacies to obtain the drug. Price did not disclose his multiple concurrent prescriptions to the individual physicians from whom he sought treatment. *See id.* at 482-83. After the State Department of Medicaid notified several of the physician-defendants of Price’s double-dipping, they refused to prescribe OxyContin® for him. When one of them, Dr. Collins, refused Price’s request for a prescription in September 2002, Price threatened legal action. He filed suit the next day against Collins and the other defendants. *Id.* at 482.

Dr. Collins moved for summary judgment on the basis that Price’s own wrongdoing – his failure to disclose his multiple concurrent prescriptions, which he thus procured through misrepresentation – barred his claim. The trial court granted the motion, *see id.* at 483, and later granted the other defendants’ similar motions.<sup>3</sup> Price appealed, and the Mississippi Supreme Court affirmed.<sup>4</sup>

Noting that the injury complained of must have been proximately caused by the plaintiff’s wrongful action, the Court found that “Price’s entire claim is wholly rooted in his own transgressions taking place at the time his alleged injury occurred. . . . Price absolutely requires the essential aid from his own misdeeds to establish his claim. His violation of the law is not merely a condition, but instead an integral and essential part of his case and *the* contributing cause of his alleged injury.”<sup>5</sup> *Id.* at 485 (emphasis in original); *see also Gragg v. Auburn Counseling Assocs.*, 2002 WL 1375746, at 2 (Mich. App. 2002) (wrongful-conduct rule bars plaintiff’s claims only where conduct is “prohibited or almost entirely prohibited under a penal or criminal statute”, and “there exists a sufficient causal nexus between the plaintiff’s illegal conduct and the asserted damages”).

In concluding its opinion, the Court found that Price “obtained a controlled substance through his own fraud, deception, and subterfuge by misrepresenting his medical history and ongoing treatment to those from whom he sought care. This offense is the central point to every claim on which he rested his already tenuous case, which therefore now completely collapses.” *Price*, 920 So. 2d at 486. With this decision, the Court noted that Mississippi joins other jurisdictions in holding that the “wrongful conduct rule” bars drug addiction claims against caregivers, pharmacies, and pharmaceutical manufacturers, where the claims are based on the plaintiff’s own misdeeds in obtaining the drug. *Id.* (citing *Foister v. Purdue Pharma L.P.*, 295 F. Supp. 693 (E.D. Ky. 2003); *Orzel v. Scott Drug Co.*, 537 N.W.2d 208 (1995); *Pappas v. Clark*, 494 N.W. 2d 245 (Iowa Ct. App. 1992)).

While the wrongful conduct rule is not likely available as a defense to many products claims, its continued application will be useful to defend claims brought by those plaintiffs who, like Mr. Price, seek relief for injuries that they themselves have caused through their illegal acts.

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<sup>3</sup>Another basis for granting some of the defendants’ later-filed summary judgment motions was Price’s failure to respond to them. 920 So. 2d at 483.

<sup>4</sup>In affirming the summary judgments, the Court cited a case that might have been familiar to our hypothetical historical dinner guest. *Holman v. Johnson*, 1 Cowp. 341, 343, 98 Eng. Rep. 1120, 1121 (K.B. 1775) is frequently quoted for its application of the maxim *ex dolo malo non oritur actio* – that “[n]o Court will lend its aid to a man who finds his cause of action upon an immoral or an illegal act.” 920 So. 2d at 484. The Court also recognized that this maxim has been a rule of decision in Mississippi at least since 1914. *Id.* (citing *Western Union Tel. Co. v. McLaurin*, 66 So. 739, 740 (1914), and other cases).

<sup>5</sup>The Court noted that Price “never responded at trial, nor does he now, to the assertions that he was concurrently utilizing ten doctors and ten clinics in two cities and seven pharmacies in three cities to obtain OxyContin.” *Price*, 920 So. 2d at 485.