

there is no genuine issue of material fact for each applicable element set forth in paragraphs (1) and (2) of section 1604(d) of this title.

**(B) Issues of material fact**

With respect to a finding made under subparagraph (A), the court shall consider a genuine issue of material fact to exist only if the evidence submitted by the claimant would be sufficient to allow a reasonable jury to reach a verdict for the claimant if the jury found the evidence to be credible.

**(2) Discovery made prior to a ruling on a motion for summary judgment**

If, under applicable rules, the court permits discovery prior to a ruling on a motion for summary judgment governed by section 1604(d) of this title, such discovery shall be limited solely to establishing whether a genuine issue of material fact exists as to the applicable elements set forth in paragraphs (1) and (2) of section 1604(d) of this title.

**(3) Discovery with respect to a biomaterials supplier**

A biomaterials supplier shall be subject to discovery in connection with a motion seeking dismissal or summary judgment on the basis of the inapplicability of section 1604(d) of this title or the failure to establish the applicable elements of section 1604(d) of this title solely to the extent permitted by the applicable Federal or State rules for discovery against non-parties.

**(e) Dismissal with prejudice**

An order granting a motion to dismiss or for summary judgment pursuant to this section shall be entered with prejudice, except insofar as the moving defendant may be rejoined to the action as provided in section 1606 of this title.

**(f) Manufacturer conduct of litigation**

The manufacturer of an implant that is the subject of an action covered under this chapter shall be permitted to conduct litigation on any motion for summary judgment or dismissal filed by a biomaterials supplier who is a defendant under this section on behalf of such supplier if the manufacturer and any other defendant in such action enter into a valid and applicable contractual agreement under which the manufacturer agrees to bear the cost of such litigation or to conduct such litigation.

(Pub. L. 105-230, §6, Aug. 13, 1998, 112 Stat. 1526.)

**§ 1606. Subsequent impleader of dismissed biomaterials supplier**

**(a) Impleading of dismissed defendant**

A court, upon motion by a manufacturer or a claimant within 90 days after entry of a final judgment in an action by the claimant against a manufacturer, and notwithstanding any otherwise applicable statute of limitations, may implead a biomaterials supplier who has been dismissed from the action pursuant to this chapter if—

- (1) the manufacturer has made an assertion, either in a motion or other pleading filed with the court or in an opening or closing state-

ment at trial, or as part of a claim for contribution or indemnification, and the court finds based on the court's independent review of the evidence contained in the record of the action, that under applicable law—

(A) the negligence or intentionally tortious conduct of the dismissed supplier was an actual and proximate cause of the harm to the claimant; and

(B) the manufacturer's liability for damages should be reduced in whole or in part because of such negligence or intentionally tortious conduct; or

(2) the claimant has moved to implead the supplier and the court finds, based on the court's independent review of the evidence contained in the record of the action, that under applicable law—

(A) the negligence or intentionally tortious conduct of the dismissed supplier was an actual and proximate cause of the harm to the claimant; and

(B) the claimant is unlikely to be able to recover the full amount of its damages from the remaining defendants.

**(b) Standard of liability**

Notwithstanding any preliminary finding under subsection (a) of this section, a biomaterials supplier who has been impleaded into an action covered by this chapter, as provided for in this section—

(1) may, prior to entry of judgment on the claim against it, supplement the record of the proceeding that was developed prior to the grant of the motion for impleader under subsection (a) of this section; and

(2) may be found liable to a manufacturer or a claimant only to the extent required and permitted by any applicable State or Federal law other than this chapter.

**(c) Discovery**

Nothing in this section shall give a claimant or any other party the right to obtain discovery from a biomaterials supplier at any time prior to grant of a motion for impleader beyond that allowed under section 1605 of this title.

(Pub. L. 105-230, §7, Aug. 13, 1998, 112 Stat. 1528.)

**CHAPTER 22—NATIONAL DRUG CONTROL POLICY**

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