No. 25-____

IN THE

Supreme Court of the United States

RISIE HOWARD, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MRS. GEORGE HOWARD, JR.,
Petitioner,

v.

HORMEL FOODS, CORPORATION, JIM SNEE, CHAIRMAN OF THE BOARD,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Risie Howard, Esq.
Counsel of Record for Petitioner
GEORGE HOWARD, JR.
LEGAL CENTER, L.L.C.
329 ½ S. Main Street
Suite 1
Pine Bluff, AR 71601
(870) 341-2148
Howard7557@yahoo.com

Counsel for Petitioner

LEGAL PRINTERS LLC ● Washington, DC ● 202-747-2400 ● legalprinters.com

QUESTIONS PRESENTED

I. Whether the Court Violated Long-Standing U.S. Supreme Court Precedent in Granting the Defendant's Motion for Summary Judgment.

II. Whether a Non-Retained, Expert Witness' Impeachment Evidence Must Be Disclosed. (There is a Split in the Courts).

III. Whether Issues About Consumer Food Products and Labeling is Outside the Conventional Wisdom of Judges and Juries. (There is a Split in the Courts).

PARTIES TO THE PROCEEDINGS

Petitioner Risie Howard, Personal Representative of the Estate of Mrs. George Howard, Jr., was the sole plaintiff and appellant below. The Responding party is, Hormel Foods Corporation, Jim Snee, Chairman of the Board, who was the sole defendant, and appellee below.

STATEMENT OF RELATED CASES

There are no proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

Page

TABLE OF APPENDICES

TABLE OF AUTHORITIES

Page

Cases:

Statutes and Rules:

PETITION FOR A WRIT OF CERTIORARI

Petitioner, Risie Howard, Personal Representative for the Estate of Mrs. George Howard, Jr., respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The order of the Eighth Circuit denying the petition for rehearing en banc and denying the petition for re-hearing are dated September 11, 2025 and are unpublished. The opinion of the Eighth Circuit, is dated August 8, 2025 and is reported at 148 F.4th 621.

The order of the district court denying the Estate's motion for summary judgment, and motion for reconsideration and granting Hormel Foods' motion for summary judgment are dated February 2, 2024, listed as Howard v. Hormel Foods Corporation, 4:22-CV-00995-JM And are unpublished.

JURISDICTION

The Eighth Circuit issued its decision on August 8, 2025, and denied timely rehearing petitions on September 10, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

APLA §16-116-102
(Arkansas Products Liability Act)

INTRODUCTION

Mrs. George Howard, Jr. (Vivian) was an active senior, and judicial survivor. She attended the 2018 Judicial Conference in Des Moines, IA and had recently returned home from Miramar Beach, Florida in May, 2019.

She never had any heart conditions and her daily medications included 1 mg of Amaryl (a.k.a. Glimeripride) daily for diabetes, and one 10 mg Claritin (a.k.a. loratadine) tablet daily for allergies. She was diagnosed with muscle weakness, from lack of exercise, and for this reason a travel chair was used for covering long distances. She was working with personal trainers to strengthen her leg muscles to overcome the muscle weakness. (Appellant's App. 126).

On July 18, 2019 she began coughing on watery scrambled eggs prepared by a new in-home staffer and was taken to Baptist Hospital where she was diagnosed and treated for aspiration pneumonia. On July 19th speech therapists tested her for dysphagia. She failed the first test administered by speech therapists. Therapists said they needed to complete another more extensive test on Monday and they wanted to place Vivian on a feeding tube until then because they "didn't work on weekends." Both, Vivian and her daughter objected to the feeding tube. Her daughter spoke to the doctor and he agreed them. So, speech therapists said Vivian would have to go without any food for three days, until Monday when they returned.

On Monday July 22, 2019 Vivian took the second swallowing test and passed it. Nevertheless, the speech therapists implemented a change in her hospital diet (Appellant's App. 104) to the Hormel Thickened meals (Appellant's App. 103) from **July 22** (Appellant's App.139) until she was discharged on **July 27**, 2019.

Up until this time, Vivian had been placed on a catheter and could not use the toilet. When the nurses removed the catheter on July 25th, to allow Vivian to begin to use the bedside commode, her daughter assisted her. When she stood up, there were water filled blisters, whelps, red streaks, and black burned skin all over her sacral area. Her daughter called for a nurse and the nurse said she had to contact the wound team. The wound team was contacted, but did not arrive until a day later. Her daughter over heard the wound team lead nurse say, " I thought I came in here yesterday…..do you think she had an allergic reaction…." the wound team covered the entire area up with a thick white pad, and taped it down.

At Vivian's discharge, therapists "suggested" that Vivian continue using the Hormel meals and beverages at home. But, the physicians discharged Vivian as "Stable" with the instructions, "Patient may resume their usual diet and activity." Vivian tried one of the Hormel meals at home. She did not like it, so she resumed her standard, meat and potatoes diet. (Appellant's App. 127). Ointment was prescribed for the sacral wound.

Vivian was scheduled for her second biannual physical exam at Little Rock Diagnostic Clinic on

August 1, 2019, just four days after her discharge from Baptist and for the first time in her medical history; her lab sodium blood level was one point over the normal range. Previously, it had always been below normal or at the low end of normal.[1] Now, it was outside of the normal range.[2] In previous biannual physical exams going back six years, Mrs. Howard's medical records prove that her sodium level was elevated for the first time after her first consumption of the Hormel meals for six days during her hospital stay in July, 2019. (Appellant's App. 106-124).

The sacral wound Baptist caused in July began to smell. Her daughter took her to a local hospital clinic that prescribed additional treatment and scheduled a two week return visit. Instead, on September 18, 2019, her daughter returned her to Baptist for treatment of the wounds.

While being treated for the sacral wounds, speech therapists showed up at her hospital room, they asked if Mrs. Howard had used the Hormel meals since July. Her daughter said, that Mrs. Howard tried one meal and didn't like, so she had not continued them. (Appellant's App. 140).

Then, speech therapists took Vivian to the x-ray room for further analysis. They made her

---

[1] *See* biannual physical exam record for January 31, 2019. Vivian's sodium blood level was 135 mmol/L (Appellant's App. 101).

[2] The normal range is 137-145 mmol/L.

daughter wait in the hallway, when she had always been allowed to accompany her mother and translate because Vivian was hearing impaired. Her daughter heard commotion, and when Vivian was rolled out of x-ray in a wheelchair, her bottom lip was bleeding and she had a disheveled appearance, with her hair standing all over her head. The therapists arrogantly announced, "She failed the test."

They diagnosed Mrs. Howard with dysphagia, a swallowing disorder (Appellant's App. 165). At this time, speech therapists told Mrs. Howard and her daughter, "Now you have to use them!" (the Hormel products). Mrs. Howard's hospital meals changed to the Hormel meals and beverages. (Appellant's App.165).

Speech therapists gave Vivian and her daughter detailed instructions on the use of the Hormel products and a can of the additive for any drinking water she consumed between meals during her hospital stay (Appellant's App.3) and she continued the meals (Appellant's App. 1-2) and use of the additive in water at home after her discharge.

She always had a hearty appetite, so she consumed two small 7 oz. containers per meal for breakfast along with the Hormel milk, two for lunch and two for dinner. She drank water containing the Hormel thickener added, four times a day to stay hydrated.

Twenty-six (26) days later, Mrs. Howard experienced four heart attacks, one at home, two with the EMT's and one at Jefferson Regional Medical

Center. Doctors discovered her blood sodium level was 182 and she was diagnosed with "Hypernatremia." Hypernatremia, according to the Emergency Medical Expert (Appellant's App. 6-9, 150) that evaluated her records, is known to cause: hypertension, chronic kidney disease, congestive heart failure, seizures, coma and **death**. All the symptoms listed on her medical record the date of her death.

Doctors at Jefferson Regional Medical Center ("JRMC") inquired of her daughter, why Mrs. Howard's blood sodium was so high. Her daughter did not know. The doctors inquired about Mrs. Howard's meals and her daughter told them she was using Hormel products prescribed at Baptist Hospital. Physicians asked her to find out the amount of sodium in the products. She contacted the Hormel Food Company and was told that the additive contains 10 mg of sodium per tablespoon. Two tablespoons are used to thicken 8 oz. of water; each meal ranges from 450-500 mg of sodium per container. Mrs. Howard consumed two 7 oz. meals per meal, or six meals per day. She drank a minimum of four glasses of water per day to stay well hydrated. (Appellant's App. 147-149).

Although, the product is high in sodium, because it is considered a "texture modified", "generic", "adulterated" product, it is not regulated by the Nutritional Labeling Education Act ("NLEA") rather the Food Safety Inspection Service ("FSIS"). Sodium is a nutrient. NLEA regulates nutritional sodium standards not FSIS. FSIS' role primarily consists of regulating the labels on the package, such things as the color of the label and size of the print.

(Appellant's App. 46, 159-164). The products are neither USDA nor FDA regulated or approved.

STATEMENT OF THE CASE

I. The Courts Below Ignored Decades of Established Supreme Court Precedent.

"In a summary judgment motion, the movant has the burden of showing that there is no genuine issue of fact, but the plaintiff is not thereby relieved of his own burden of producing in turn evidence that would support a jury verdict. *Anderson v. Liberty Lobby, Inc*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986), 243. The defendant movant never met its burden, but the plaintiff Estate met theirs.

In Hormel's Response Brief to the Eighth Circuit Court of Appeals, Hormel alleged entitlement to summary judgment based on the following reasons, none of which were proven on the district court level or shown as proof on the appellate level:

1. **No Admissible Expert Testimony on Causation**. False.

The Estate provided affidavits, depositions, and medical records from physicians and three medical experts all of whom disagreed that Mrs. Howard, a judicial survivor, died from pneumonia. They provided contradicting evidence supporting "**hypernatremia**" (high blood sodium) from consuming the Hormel products as her cause of death.

Six years of biannual physical exam records from Little Rock Diagnostic Clinic were provided showing Howard's blood sodium level was always below or at the low end of the normal blood sodium range 137-145 mmol/L until the Hormel meals were initiated.

Upon arrival to Jefferson Regional Medical Center (JRMC) where she died, her sodium level was **182** after having been on the Hormel meals exclusively for 26 days. The meals contain on average 450-500 mg of salt per container and the beverage additive 20 mg. of salt per 8 oz. glass, the products lack HIGH SODIUM warnings and Mrs. Howard consumed six 7oz. meals and four glasses of water containing additive, daily.

Hormel moved to disqualify all our medical experts. The district court disqualified World-Renowned, Board Certified Forensic & Anatomical Pathologist Adel Shaker, M.D., LLB, FCAP, FNAME, who disputed the findings of the estate's initial autopsy doctor Frank Perretti, because Peretti did not test Mrs. Howard's blood sodium in his autopsy. This left two remaining medical experts to testify on causation. Dr. Martha Flowers, a 46 yr. veteran Family and Internal Medicine practitioner and Dr. G. Edward Mallory, M.D., Florida Teacher/Practitioner in Emergency Medicine.

2. Plaintiff's Failure to Warn Claim Fails Under the Learned Intermediary Doctrine. False.

The Learned Intermediary Doctrine doesn't apply. The Supreme Court of Arkansas has said,

> As a general rule a manufacturer of a *drug* or, *a medical product or device,* has a duty to warn the ultimate user of the risks of its products. This duty exists under either a negligence or strict liability theory. An almost universally applied exception to this general rule exists known as the learned intermediary doctrine. . . [t]his doctrine provides that a drug manufacturer may rely on the prescribing physician to warn the ultimate consumer of the risks of a prescription drug. The physician acts as the "learned intermediary" between the manufacturer and the ultimate consumer.

West v. Searle & Co., 806 S.W. 2d 08, 305 Ark. 33, 45 (Ark. 1991).

Here, speech therapists at Baptist Hospital initiated the Hormel products after diagnosing Howard with dysphagia, "swallowing difficulty", gave Howard a can of the additive to be used in her drinking water and told Howard and her daughter to continue the Hormel meals and additive after discharge. Her daughter ordered the products online from Amazon the same day, as they are *sold over the-*

counter. There was no physician acting as a "learned intermediary" between the manufacturer and the ultimate consumer. Therefore, the exception to the general rule, does not apply and Hormel had a duty to warn Mrs. Howard under APLA, the Arkansas Products Liability Act.

3. **Failure to Warn Claims are Preempted by the Federal Meat Inspection Act.** False.

The Hormel Thick and Easy Puree Products are not "real" food. These meals are classified as "**texture modified**", and "**generic**." This makes the product, "**adulterated**" violating APLA. Adulterated products have been mixed with other substances and non-food materials-such as chalk, stone or sand. Examples are mixing brick powder into chili powder, and using saw dust in ground spices, it increases bulk and reduces the cost. The meals resemble canned dog food spread out into a 7-oz., microwavable container. Being a "generic" product, allows regulation by FSIS, the Food Safety Inspection Service, but inspection is neither regulation nor approval. Requirements for nutritional value and sodium content fall under NLEA, the Nutritional Labeling Education Act. FSIS is not covered by NLEA.

Most importantly, "Preemption is an affirmative defense, so the defendant bears the burden of pleading and supporting its preemption argument." *Cohen v. Conagra Brands, Inc.,* 16 F.4th 1283 (9th Cir. 2021). Hormel has produced no evidence that their product is preempted or preapproved.

II. The Courts Are Split on Expert Witness Impeachment Evidence

Board Certified Anatomic & Forensic Pathologist, Adel Shaker was disqualified as an expert witness by the district court. The Estate had timely provided Dr. Shaker's name as a witness and his email address in its initial 26(a)(1) *Disclosures* on May 7, 2023 and again in its *Supplement to the Disclosures* signed and served on counsel November 13, 2023 along with Shaker's report which was included in the Estate's motion for summary judgment. It was the defendant, not the Estate, as the appellate court misstated in its opinion, that failed to timely produce their *Disclosures* by the November 13, 2023 Discovery deadline, rather filing them on November 22, 2023.

In its *Sur Reply to the Defendant's Motion to Exclude the Opinions of Dr. Adel Shaker*, the Estate said Shaker was a non-retained expert whose purpose was for impeachment only and cited FRCP 26(a)(2)(D)(ii). The appellate court said, on page 3 of its opinion, "[t]he district court concluded the report did not contain an opinion . . ." and thus did not abuse its discretion.

Courts are divided on whether expert impeachment evidence must even be disclosed. *U.S. v. 231,930.00 in U.S. Currency*, 614 F.3d 837, 841(8th Cir. 2010) (Impeachment evidence need not be disclosed). W*egener v. Johnson,* 527 F.3d 687, 690-91 (8th Cir. 2008) (Impeachment evidence must be disclosed). *Goodman v. Staples the Office Superstore*

LLC, 644 F.3d 817, 79 (9th Cir. 2011) (FRCP (26)(a)(2) requires written report of a witness, "if the witness is retained or specially employed to provide expert testimony in the case . . .")

III. The Courts are Split Concerning the Capabilities of Judges and Juries to Make Determinations Regarding Consumer Deception Involving Food

Although we had two remaining expert witnesses, the 8th Cir. citied to *Mitchell v. Lincoln*, 23 S.W. 3d 455, 460 (Ark. 2006) saying, "alleged medical negligence is not within the comprehension of a [lay] jury."

This is not a medical negligence case rather a products liability one. Several other circuits would disagree that too much salt in food would be too complex for a jury to determine. The Second Circuit was reluctant to declare that issues of alleged consumer deception are necessarily outside the conventional wisdom of judges and juries, saying, "[t]riers of fact regularly address complex scientific issues absent regulatory guidance." *In re KIND LLC "Healthy & All Natural" Litig*., 209 F.Supp.3d 689 (S.D. N.Y. 2016), 695. *Ault v. J.M. Smucker Co.*, No. 13–cv–3409 (PAC), 2014 WL 1998235, at *5 (S.D.N.Y. May 15, 2014) ("[w]hether the use of the phrase 'All Natural' was likely to mislead a reasonable consumer acting reasonably under the circumstances. A trier of fact can make that determination.").

But, the 8th Cir. said, in *George v. Blue Diamond Growers*, No. 4:15–cv–962 (CEJ), 2016 WL

1464644, at *3 (E.D.Mo. Apr. 14, 2016), "In light of the FDA's ongoing examination of the appropriate regulation of the terms ['all natural' and 'evaporated cane juice'] it is appropriate to defer to the agency's expert and specialized knowledge."

REASONS FOR GRANTING

1.

Currently, there is split between the 3rd, 5th, 7th and 8th Circuits, and within the 8th Circuit alone; concerning whether or not expert witness rebuttal and impeachment evidence must be disclosed. We need this Court to resolve and settle the issue.

2.

The usurpation of the plaintiff's entitlement to a jury trial is a serious one, preventing a litigant from all possibility for pursuing justice before a competent jury; which is at the heart of not only the Constitution, but of democracy. In the instant case summary judgment was granted in spite of the fact that the Estate produced evidence from three medical doctors, medical records, depositions and affidavits supporting Mrs. Howard's cause of death, not from pneumonia as stated by the first autopsy report, but rather **hypernatremia** (high blood sodium) from consuming Hormel Foods' products exclusively for 26 days. The evidence is sufficient to cause reasonable minds to differ and there is an obvious dispute concerning her cause of death.

3.

This court should reverse the decision of the court granting summary judgment to the defendant and disqualifying the Estate's expert witness, Forensic Pathologist, Dr. Adel Shaker. Grant the Estate's motion to disqualify the defendant's expert witness, autopsy doctor Frank Peretti, who was listed as a "non-retained", "treating physician" because he was **not a treating physician** and **did not supply a report** as required under FRCP 26(a)(2)(B). Then, remand the case back to the district court for trial.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

Risie Howard, Esq.
George Howard, Jr. Legal Cntr.
329 ½ S. Main, Suite 1,
Pine Bluff, AR71601
(870)341-2148
Howard7557@yahoo.com

Counsel for Petitioner

February 3, 2026