

Upjohn Co. v. Freeman

In a products liability suit, the plaintiff requested discovery from a pharmaceutical manufacturer, who requested an order that would limit the disclosure of the information. Plaintiffs opposed the sealing motion. Following a hearing, the judge determined that the manufacturer's evidence, though uncontroverted, did not clearly and convincingly establish harm and denied the motion. The manufacturer appealed. Generally, in civil cases the burden of proof to be applied is "preponderance of the evidence," meaning that the movant must demonstrate their claims by greater weight of proof. The court found that in this case, the judge had required clear and convincing evidence, a higher level of proof. Noting that the advisory committee which had drafted the sealing rules had expressly rejected the clear and convincing standard, the court held that the judge had applied the wrong standard of review and after reversing, ordered a new hearing to be conducted.