Alabama High Court Okays Suit Against Pfizer for Failure to Warn of Generic's Risks

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The Litigation Daily January 14, 2013

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Patients who claim that they've been harmed by generic drugs have been in a bind ever since 2011. That's when the U.S. Supreme Court ruled in ***Pliva v. Mensing*** that manufacturers of generics were shielded from liability in failure-to-warn cases because of a federal law forcing them to use warning labels identical to those of their brand-name counterparts. But plaintiffs haven't had much success trying to sue the makers of the branded counterparts, for the simple fact that those companies didn't the generics in question.

But the Alabama Supreme Court has now allowed the user of one generic drug to pursue a claim against the manufacturer of the branded version. In a Friday ruling, the court allowed Danny Weeks, who took the generic version of Pfizer's gastrointestinal drug Reglan, to continue a suit against the drug giant. Weeks claims that he developed involuntary and repetitive body movements after taking Reglan. He and his wife originally sued Reglan manufacturer Wyeth Inc. (which was acquired by Pfizer in 2009), and two companies that make generic versions of Reglan, Teva Pharmaceuticals and Actavis Elizabeth, in U.S. district court in Dothan, Alabama in July 2010. However, at Pfizer's request, the district court judge asked the Alabama Supreme Court to rule on the question of whether or not a branded company could be sued based on injuries sustained from a generic drug.

In an 8-1 decision, the Alabama Supreme Court ruled that the suit could proceed. The court agreed with the Weekses, who are represented by Heninger Garrison Davis, that they could sue Pfizer under the Alabama common tort known as third-party fraud, because Danny Weeks was allegedly defrauded by his doctor, who in turn allegedly relied on fraudulent information from Pfizer. Pfizer was represented by Mayer Brown; Bradley Arant Boult Cummings; Hare, Wynn, Newell & Newton; and Clark, Thomas & Winters.

"In the present case, the Weekses have alleged that Danny's physician reasonably relied on the representations made by the Wyeth defendants regarding the long-term use of Reglan in prescribing Reglan to Danny," Justice Michael Bolin wrote in the majority's opinion. "In other words, the Weekses are arguing that if a defendant's misrepresentation to a third party causes the third party to take actions resulting in the plaintiff's injuries, then the factual causation link is satisfied and that, here, a misrepresentation to Danny's physician would directly impact the medical care received by Danny."

Additionally, the majority held that under the learned intermediary doctrine, Pfizer owed a duty to warn Weeks's physician, and not to Weeks directly. However, because Weeks alleged that Pfizer had misled his physician, the majority held that Pfizer "remains liable for the injuries sustained by the patient."

William L. (Lew) Garrison, Jr., of Heninger Garrison Davis told the Litigation Daily that he was pleased with the decision. "Regardless of what ultimately happens with generics in the wake of Pliva and [Mutual Pharmaceutical Co. v. Bartlett, an upcoming Supreme Court case that will decide whether or not design defect claims against generics are pre-empted by federal law in light of Pliva], my client has someone that might be on the hook for the horrible injuries he suffered because Wyeth never informed his physician of the risks they knew this drug had," Garrison told us.

Garrison added that he believes that other states could follow Alabama's lead. "I think most states have a cause of action for third-party fraud, and virtually every state has a learned intermediary doctrine," he said.

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At least one other court has refused to let Pfizer and Wyeth off for injuries allegedly sustained by patients who took generic Reglan. In November 2011, Philadelphia Common Pleas Court Judge Sandra Mazer Moss **refused to dismiss a failure-to-warn suit** against both Wyeth and several generic companies over generic Reglan. The decision is currently on appeal.

In a statement, Pfizer emphasized that the Alabama decision is limited to that state. The company also pointed out that in 76 decisions applying the law of 25 different states, no court has held that brand-name drug manufacturers can be held liable, on any theory, for injuries caused by products they did not manufacture. Additionally, Pfizer stated that all four appellate courts that have ruled on the issue have held that branded companies are not responsible for injuries caused by generic Reglan.

"The company will look at further appellate options," spokesperson Christopher Loder added in Pfizer's statement. Mayer Brown partner Henninger "Hank" Bullock did not respond to a request for comment.

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