Man Taking Generic Drug Can Sue Branded Maker

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The Alabama Supreme Court ruled on Friday that a patient could sue a brand-name company for failing to warn about a drug's risks even though he had taken a generic version of the product that the company did not make.

Although the decision applies only to Alabama, it is likely to be closely read by lawyers with similar cases pending around the country whose clients have been barred from suing generic companies because of a recent United States Supreme Court ruling.

"It has national implications," said Bill Curtis, a Dallas lawyer who has filed hundreds of similar cases in several states. "I suspect that now, like most folks, if a client comes into my office, I'd be suing both the generic they took and the brand who's responsible for the label."

In the Alabama case, the plaintiff, Danny Weeks, claimed that he had developed a movement disorder known as tardive dyskinesia after taking generic versions of Reglan to treat his acid reflux. Mr. Weeks sued Actavis and Teva, the generic companies that made the drugs he took, as well as Wyeth, which developed the drug, for failing to adequately warn about Reglan's risks.

In 2009, the Food and Drug Administration required all manufacturers of metoclopramide, the generic name for Reglan, to place stronger warnings on their labels detailing a link between long-term use of the drug and tardive dyskinesia. Hundreds of lawsuits have been filed by patients who claim that Wyeth failed to properly warn about Reglan's risks.

The chances of those claims against the generic companies succeeding are unclear after a 2011 Supreme Court decision, Pliva v. Mensing, which ruled that generic drug companies had no control over what their labels said and so could not be sued for failing to alert patients about the risks of taking their drugs. With few exceptions, generic manufacturers are required to use the same labels as the brand names.

The suit was filed in a federal court in Alabama because Mr. Weeks lives in Alabama and the drug companies are based elsewhere. The federal court asked the Alabama Supreme Court whether a branded company could be sued in such a case.

In its decision on Friday, the Alabama Supreme Court ruled that "an omission or defect

in the labeling for the brand-name drug would necessarily be repeated in the generic labeling, foreseeably causing harm to a patient who ingested the generic product."

Kevin Newsom, a lawyer for Pfizer, which acquired Wyeth in 2009, described the decision as an outlier. He said more than 70 court decisions, including four from federal appeals courts, had taken the opposite view. Representatives for brand-name companies have argued that they cannot be held liable for injuries caused by products they did not manufacture. "It comes as something of a surprise because it is contrary to the overwhelming weight of authority on this issue nationwide," he said. He said two other decisions have held similar views as the Alabama court.

The court ruled that Mr. Weeks could go ahead with his lawsuit based on what Mr. Newsom described as a "unique wrinkle" in Alabama state law: that third parties like Wyeth can be held liable for a person's injury if that third party provided false or misleading information that led to the injury. Mr. Weeks is arguing that Wyeth misinformed his doctor, not Mr. Weeks himself.

Sheldon Gilbert, a lawyer with the National Chamber Litigation Center, which advocates for the Chamber of Commerce and filed a brief in the case, said plaintiffs' lawyers were likely to see the Alabama decision as a lucrative opening. "What we've seen again and again and again is that the trial lawyers get a decision that they think is good and they all flock to that jurisdiction," he said.

Chris Hood, a lawyer for Mr. Weeks, said, "When someone's hurt by a generic tablet and that injury can be laid at the feet of misinformation about the drug, then there's only one party who can be held responsible," he said, "the branded company."

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