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## Supreme Court Favors Right to Sue Drug Companies

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A major U.S. Supreme Court decision has been handed down that affirms the rights of states and individuals to sue when the products of the pharmaceutical industry are the cause of personal injury. In what many consider to be a surprise action, the court voted 6-3 in favor of the right to sue. This action ended the bid by Big Pharma to forbid states to bring injury suits against them when a product that had previously received U.S. Food and Drug Administration (FDA) approval was considered to be the cause of the damage.

The case before the Supreme Court stemmed from a \$6.7 million injury award received by a Vermont musician in 2000. Diana Levine was forced to have her arm amputated following treatment with the Wyeth anti-nausea drug Phenergan®. The injection of the drug caused gangrene to set in and her arm had to be amputated. The suit against Wyeth alleged that the company knew full well that the method of administering the drug carried the risk of causing gangrene, but that the company failed to adequately warn doctors about this risk in its product labeling.

Wyeth built its case around the fact that a drug approved by the FDA should not be the subject of a suit at the state level. The decision they sought would have pre-empted a person's right to seek retribution against the company by opening a lawsuit at the state level. A victory by Wyeth would have eliminated a person's right to sue the company in a lower court and eliminated any further financial responsibility by Big Pharma for injuries following FDA drug approval.

This principal of pre-emption had already been approved by the Supreme Court for medical devices in the past year. That decision provided immunity to device manufacturers even in the event that a product failed. A person who had a malfunctioning stint installed, for instance, would have no recourse for collecting damages from the manufacturer as the product had been previously approved by the FDA. Following this victory for the manufacturers, the Bush administration had pushed forward the plan for pre-emption for all drug products.

Positive reactions to the decision came from state officials and associations around the country, including this comment from Richard Blumenthal, the attorney general for the state of Connecticut: "This ruling is a huge, potentially life-saving victory for consumers, affirming their right to hold pharmaceutical companies responsible for failing to adequately warn patients and doctors about the dangers of their drugs. The court preserved the ability of consumers and states to sue drug companies that cause serious injury or death by failing to disclose dangerous and deadly side effects."

The California Medical Association also hailed the court's decision: "Because pre-empting failure-to-warn claims would make the FDA approval the final word on a drug's safety, it would significantly weaken manufacturers' incentives to conduct new safety studies, to monitor their drugs in the marketplace, to improve them post-approval and to supply FDA and doctors with new or revised safety information."

In an age where drug companies are running rampant, where they are known to have pushed fraudulent tests through the FDA approval process and are known to have paid large sums of money to testing organizations and university officials to skew drug test results in their favor, it is vital that the checks and balances provided in the court system remain in place. This is a huge victory for the consumer and serves to renew a person's faith in the Supreme Court process.

Source: The California Medical Association. "Supreme Court Decision on Wyeth V. Levine a Victory for Patients and Doctors." March 2009. <http://www.cmanet.org/publicdoc.cfm/2/1/pressesection2/448>. Office of the Attorney General of Connecticut. "Attorney General Applauds U.S. Supreme Court Decision Upholding Right of States, Individuals to Sue for Injuries Caused by Drugs." March 2009. [http://media-newswire.com/release\\_1087253.html](http://media-newswire.com/release_1087253.html)