



Hormone therapy drug litigation sees positive developments

The Supreme Court of Pennsylvania recently denied Wyeth Pharmaceuticals' appeal in 14 consolidated cases alleging that the defendant's hormone therapy drugs had caused breast cancer. The state high court determined that the discovery rule is an issue of fact for the jury. Trial lawyers say the decision will affect many other cases, as there are 15,000 hormone therapy cases pending in the lower courts.

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On the heels of the Supreme Court's **denial of certiorari** in a hormone therapy drug case, which let an \$81 million verdict stand, the Pennsylvania Supreme Court recently denied an appeal from Wyeth Pharmaceuticals, Inc. The 14 consolidated cases alleged that the drugs caused breast cancer. (*Coleman v. Wyeth Pharms., Inc.*, No. 676 EAL 2010 (July 7, 2011).)



The trial court had granted the defendants' summary judgment on statute of limitations grounds. The appellate court reversed, holding that the statute of limitations was tolled until the plaintiffs should have discovered that their injuries were caused by the negligent conduct of a third party.

Each plaintiff filed suit more than two years after being diagnosed with breast cancer, but within two years of the Women's Health Initiative (WHI) study's publication date in 2002. The plaintiffs argued that the WHI study was the first time a causal connection was established between the drugs and breast cancer, and that even doctors were unaware of the connection until then.

The *Coleman* plaintiffs argued in their brief to the state supreme court that "defendants' pre-WHI labels did not tell plaintiffs, their doctors, or anyone else that using these medications at typical dosages for typical durations increased the risk of breast cancer. Rather, defendants suggested just the opposite. Given those facts, reasonable jurors applying the discovery rule could find that plaintiffs used reasonable diligence to discover that defendants caused plaintiffs' cancer and file suit."

The applicability of the discovery rule and the plaintiffs' reasonable investigation requirement were fact issues for a jury to decide, the plaintiffs said.

In other cases, juries have generally held that the statute of limitations was tolled until the WHI study. "Once the factual issue is presented to the jury, plaintiffs have been winning it," said **Fredric Eisenberg** of Philadelphia, who represents Elizabeth and Joe Coleman.

The state supreme court's denial of appeal will affect many other cases, said Tobias Millrood of Conshohocken, Pennsylvania, who represents plaintiffs in one of the *Coleman* cases. He noted that 15,000 cases were pending in the lower courts. Now that the state high court has signaled that the discovery rule is an issue of fact for the jury, "all those cases are in play," he said.

Eisenberg added, "It's another factor that Wyeth will consider in their overall settlement of cases."

Hundreds of cases concerning these drugs have been settled in recent months. Eisenberg said his firm recently settled dozens of cases confidentially "after prolonged, intense settlement discussions."

In another Pennsylvania case, a judge upheld a verdict against Wyeth, including a \$6 million punitive damages award. (*Singleton v. Wyeth*, No. 2885 (Pa., Philadelphia Co. Com. Pleas June 30, 2011).)

The jury had awarded \$3.45 million in compensatory damages, which the court raised to \$4.4 million for delay, and \$6 million in punitive damages. Judge Mark Bernstein held that the verdict was supported by the evidence and that the punitive award "is supported by the defendants' public relations campaign within the medical community to 'dismiss and distract' physicians from the awareness and the alarm which some medical practitioners were attempting to raise as to risk of breast cancer posed by [hormone] therapy."

In his 29-page opinion, Bernstein noted that Wyeth had trained its sales representatives to downplay any risk of breast cancer, funded continuing medical education programs intended to convince physicians that there was no increased risk, and used training materials implying that the drugs would protect women from developing breast cancer.

Bernstein "underscored the appropriateness of punitive damages" and "rendered an opinion that strikes at the heart of one of Wyeth's defenses"—that women who continued to use the drugs after the WHI study could not prevail, said Millrood, who represents the plaintiffs in this case as well. "It is likely to serve as a bellwether opinion for courts evaluating that fact scenario."