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In Victory for Common Sense, California Supreme Court Rejects Novel Liability Theory For Prescription Drugs (*Gilead Sciences, Inc. v. Superior Court*)

“Imposing liability for non-defective products would be devastating to manufacturers and consumers alike.”

— Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—The California Supreme Court rejected a radical new theory of liability for manufacturers of non-defective prescription drugs. The decision was welcome news for Washington Legal Foundation (WLF), which joined the U.S. Chamber of Commerce and the California Chamber of Commerce on an amicus brief urging reversal.

The case arose from Gilead Sciences’ successful HIV/AIDS drug, tenofovir disoproxil fumarate (TDF). Plaintiffs alleged injury from TDF but claimed no defect with the design, manufacture, marketing, or labeling of TDF. In denying Gilead’s summary judgment motion, the trial court held that Gilead could be held liable in tort for not developing and selling tenofovir Alafenamide (TAF)—a completely different drug. Yet plaintiffs did not argue that Gilead should be liable for not implementing a reasonable alternative design of the same drug under well-settled California product liability law. Rather, they contend that Gilead should be liable in tort for not developing and selling an entirely different product.

In a 6-1 decision, the Court recognized significant problems with imposing liability on a product lacking any defect. “Recognizing a broader duty under which liability may arise even absent a defect in the injury-producing product would create substantial tension with that body of law.” Embracing the plaintiffs’ rule, the majority held, would “ultimately undermine, rather than advance, public health and safety.” The Court stopped short, however, of issuing a blanket ruling. Chief Justice Guerrero, in her concurrence, would have gone further, explaining that a “straightforward application of this court’s precedents forecloses plaintiffs’ theory of liability without defect.”

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