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Product Liability

The Innovator Liability Doctrine: *Conte v. Wyeth*

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The doctrine of “innovator liability” raises the question of whether the manufacturer of a product, namely a brand-name prescription drug in the case of *Conte v. Wyeth*, would be liable for the injury caused by an equivalent generic drug manufactured by another company. This doctrine could potentially have a major impact in product liability law, expanding its scope to apply to manufacturers of other types of products.

In *Conte v. Wyeth*, the California appellate court recognized the doctrine of “innovator liability.” This is the first highly publicized case that allowed juries to potentially impose liability on a pharmaceutical company for “innovator liability.”

Ms. Conte was being treated for acid reflux disease. Her doctor prescribed a generic version of a drug named Metoclopramide. This drug was developed by Wyeth. Wyeth marketed the drug under the brand name Reglan.

Ms. Conte did not ever take Reglan. Her doctor prescribed the generic version of the drug. Ms. Conte alleged that after taking the generic drug for 12 weeks, she developed side effects. Ms. Conte started a lawsuit against Wyeth. She claimed that Wyeth was liable because Wyeth, as innovator of the drug Reglan, obtained original FDA approval of Reglan and drafted the warnings for Reglan. She claimed that her doctor relied on this innovator’s information when he prescribed the generic version of the drug to her. She claimed that during this submission to the FDA, Wyeth failed to disclose information about possible side effects.

Wyeth moved to dismiss this case because the plaintiff did not consume any product manufactured by Wyeth. The plaintiff consumed the generic version of the drug that was manufactured by a competitor. The consumer did not purchase their product.

The appeal court in California decided that Wyeth owed a duty to the consumers of generic versions of drugs that Wyeth developed. The court concluded that it is foreseeable that doctors who prescribe generic versions of a drug were relying on information provided to the FDA by the company that innovated the drug. Accordingly, the appeal court ruled that the plaintiff’s claims against Wyeth would be allowed to proceed to a jury trial.

This doctrine of “innovator liability” will become a widely discussed subject among legal commentators. From a manufacturer’s point of view, it seems fundamentally unfair to allow the potential imposition of liability against the manufacturer when the plaintiff consumed the product manufactured by a competitor.

There is a good chance that plaintiff’s in other areas of product liability law will cite this case in efforts to impose similar “innovator liability” on the manufacturers of other types of products.

Defendant Wyeth appealed to the Supreme Court of California. The Supreme Court of California declined to review this decision.

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