Pharmaceutical Drug Liability

Drugs and medicines are frequently at the center of products liability suits. Manufacturers of these products have a duty to appropriately test the drugs and medicines before releasing them into the market, using testing criteria from the U.S. Food and Drug Administration. These criteria are regarded as industry standards, but the fact that a drug was properly licensed by the FDA has no effect on the manufacturer’s liability to an injured plaintiff, if the drug proves to be otherwise defective.

As with almost all medical products, with the exception of over-the-counter drugs, there will usually be a “learned intermediary” between a drug’s manufacturer and the ultimate user. This can be the doctor who prescribes a drug, a nurse who instructs the patient on proper use, or the pharmacist who fills the prescription. Often the lines of liability are blurry, and an experienced products liability attorney can help a plaintiff determine who may be at fault for resulting injuries.

Unavoidably Unsafe Products

Some prescription drugs are considered “unavoidably unsafe” products, which means that they cannot be made completely safe no matter how carefully they are manufactured. Such drugs may have potentially harmful side effects, but may be beneficial to the user nonetheless. If such drugs are properly prepared and accompanied by adequate warnings, they usually cannot form the basis of a successful products liability lawsuit.

Drug Manufacturer’s Duty to Warn

A drug manufacturer has a duty to warn of side effects of a drug when such effects are understood to occur, but is not expected to warn of unknown dangers. Often the manufacturer discharges this duty by providing the necessary information to the patient’s prescribing physician or to the pharmacist. The drug manufacturer is considered an expert in its field, and as such it has a continuing duty to keep abreast of knowledge regarding its products and take all reasonable steps to update medical professionals on their potential adverse effects. There is no duty to warn of possible reactions in unusually susceptible consumers, however, but just because a reaction is rare does not mean the manufacturer has no duty to warn about it or that the persons experiencing the reaction are unusually susceptible.

Time Lapse Issues

In some drug-related injury cases, the plaintiff will not be able to identify the precise manufacturer or supplier of the defective product because enough time has elapsed that the evidence is no longer available, such as in cases involving drugs ingested during pregnancy. In those cases, the damages may not become apparent until the children are grown. Asbestos-exposure cases are another example of this time lapse problem. In such cases, a variety of theories is available to shift the burden to the potential defendants to prove that they could not be responsible, or to allocate the damages among a number of potentially liable manufacturers.

The National Childhood Vaccine Injury Act

The National Childhood Vaccine Injury Act was established to provide a remedy to persons who have been injured as a result of childhood immunizations, so that they do not have to engage in lengthy and expensive litigation. Lawyers have an obligation to inform their clients who consult them about such injuries of the possibility of recovering under the Act.

Getting Legal Help for a Defective Product Injury

Product liability actions are often quite complex, and establishing legal fault often requires the assistance and testimony of experts. There are several theories under which a plaintiff might bring a claim, and several defenses that might defeat such a claim. Additionally, every state has its own laws and specific statutes that will affect a product liability action. It is therefore important to consult an experienced attorney if you or a loved one suffers injury caused by a potentially defective product.
Go here to learn more about an attorney's role in a product liability case.
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