

MICHIGAN HIGH COURT UPHOLDS DRUG PRODUCT LIABILITY REFORM

by
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In a major victory for defendants in product liability suits, a well-orchestrated attack by plaintiff lawyers on Michigan's precedent-setting drug product tort reform statute went down in flames on March 26, 2003. The Michigan Supreme Court, in a 6 to 1 decision, held that the high threshold set by the state lawmakers for plaintiffs to bring lawsuits over injuries allegedly caused by Food and Drug Administration-approved drugs was indeed constitutional. *Taylor v. Smithkline Beecham Corp.*, 658 N.W.2d 127 (Mich. 2003).

As part of a larger product tort reform effort that took effect in March of 1996, the Michigan legislature mandated that drugs approved by FDA as safe and effective are neither defective nor unreasonably dangerous, and a manufacturer or seller would not be liable, as long as the drugs and their labeling were in compliance with that approval at the time they left the control of the company. Michigan Compiled Laws § 600.2946. Save for very limited exclusions involving bribery, drug approval based on fraud, and marketing after approval was withdrawn, the practical effect of the statute was to bring a lucrative area of litigation for trial lawyers to a screeching halt.

In the context of the "Fen-phen" diet drug litigation, the Michigan plaintiffs' bar led a consolidated and well-financed attack on the legislature's attempt to stem the rising tide of product liability litigation in the State. See Thomas J. Foley, *Judicial Intervention Undercuts Tort Reform In Michigan*, WLF LEGAL OPINION LETTER, June 25, 1999. The trial court and lower state appellate court sided with the personal injury bar, concluding that the drug product portion of the product tort reform statute was an unconstitutional delegation of legislative power to FDA. The Michigan Supreme Court accepted the industry's argument that the Act was not a delegation of power at all, but merely used the "independently significant decisions of the FDA as a measuring device to set the standard of care for manufacturers and sellers of prescription drugs in Michigan."

Bold Michigan legislative action, now with the support of its judicial branch, has effectively reigned in run-away product litigation in Michigan. Hopefully, the ability of this groundbreaking tort reform to withstand constitutional attack by the personal injury bar will serve as both precedent and inspiration for other states to consider similar measures.

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