

Drugmakers seek lawsuit immunity

BY NAN ARON and JOHN PHILO • February 20, 200

When you use a prescription drug or medical device, you assume that if it causes you serious harm its maker will be held accountable -- right? Wrong. Not in Michigan today, and soon not in any other state if the drug industry has its way.

Since 1995, Michigan has been the only state that prohibits victims of unsafe drugs from going before a jury to seek compensation. The state law protecting manufacturers was passed in 1995 with strong support from Upjohn, now part of Pfizer, the largest drug company in the world.

Now Wyeth Pharmaceuticals, which is also merging with Pfizer, has a case before the U.S. Supreme Court. A decision in Wyeth's favor would take away the right of Americans in every state to be compensated when products that are supposed to promote health instead hurt patients.

The drug giant argues that once a company has permission from the U.S. Food and Drug Administration to market a medication or a device such as a defibrillator, heart pump or artificial heart valve, hip or knee, it can no longer be held accountable in state court for any harm that product causes.

This "hit and run" legal theory is like saying that once someone gets a driver's license, that person can't be held legally responsible for ramming your car on the freeway and sending you to the hospital.

The test case before the U.S. Supreme Court involves a professional musician named Diana Levine. Levine went to the emergency room for a severe migraine headache. One of the drugs administered there caused gangrene and then amputation of her arm.

Wyeth, which made and marketed the drug, knew there was significant risk of gangrene when the medicine was administered by an intravenous push injection. The risk had already been demonstrated in at least 20 cases. When Levine sought compensation for her injuries, a jury, and then her state's Supreme Court, found that Wyeth should be held accountable for its failure to warn doctors of this risk.

If the drug giant is able to convince the U.S. Supreme Court to overturn the jury verdict and the state court, manufacturers of medications and medical devices will be allowed to hit and run throughout the country. And they will lose an important incentive to make sure their products are safe in the first place.

Rather than replicating Michigan's anti-consumer policy nationwide, we need a Supreme Court ruling that will allow our legislators to repeal the state's hit-and-run law. Past experience has proved that FDA permission to market a product does not guarantee public safety. Well known drugs permitted by the FDA but later found to have caused serious health damage include Vioxx, Zoloft, fen-phen, Avandia and Celebrex.

Even if the Supreme Court rules in favor of the drug industry, there are other remedies. Congress can pass a law making it crystal clear that federal regulators' approval to market a product does not relieve manufacturers of responsibility to make the product safe.

In addition, Michigan's U.S. senators, Carl Levin and Debbie Stabenow, will have the opportunity to support appointments by President Barack Obama of federal judges at all levels who recognize that our Constitution provides for equal justice for all, not just for big companies or CEOs.

Drug companies spend millions of dollars a year lobbying Congress. The rest of us must be heard before it's too late.