

June 02, 2010

**Public Justice has just struck another blow for access to justice by arguing against federal preemption in a U.S. Supreme Court case involving vaccine preemption.** The case -- *Bruesewitz v. Wyeth, Inc.* -- will decide whether the National Childhood Vaccine Injury Act (the "Act") preempts state-law design defect claims against vaccine drug manufacturers. Our *amici* brief, which was filed on behalf of Public Justice and the American Association for Justice, and Public Citizen, emphasizes the important role that the tort system plays in promoting public safety and compensating victims.



The case involves the diphtheria, tetanus, and pertussis ("DTP") vaccine, which is manufactured by Wyeth, Inc. Tragically, Hannah Bruesewitz, then a healthy six-month-old, suffered catastrophic injuries hours after receiving an unsafe version of the vaccine. **Hanna's parents allege that, at the time Hannah was injured by the dangerous vaccine, Wyeth already knew how to manufacture a much safer alternative, but delayed seeking approval from the FDA in order to cut costs. By the time Wyeth finally decided to market the safer alternative, Hannah's life was destroyed.**

Her parents pursued a timely but unsuccessful petition for compensation before the Court of Federal Claims, which was established pursuant to the federal Vaccine Act to offer monetary awards to individuals who suffer certain vaccine-related injuries. They then sued Wyeth in court, seeking compensation for Hannah's terrible injuries based on a showing that less toxic vaccine alternatives were readily available and should have been administered to Hannah.

**The U.S. Court of Appeals for the Third Circuit dismissed the case on federal preemption grounds, finding that the Vaccine Act expressly preempts all design defect claims related to vaccines, even in cases where the adverse side effects are demonstrably avoidable!** But the Act says, "No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death... if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings." Sadly, the Court bought Wyeth's argument that Congress viewed any and all side effects from vaccines as "unavoidable," and thus that it intended the Act's express preemption clause to wipe out all design defect claims related to vaccines. In response, the Bruesewitz's argued that the risks of certain vaccines -- in particular, the dangerous version of DPT marketed by Wyeth -- are "avoidable," and, as to such vaccines, there is no federal preemption under the Act.

The United States Supreme Court granted review in order to decide whether all vaccine manufacturers are completely immune from common-law tort liability, even in cases where the manufacturer could easily have chosen to market a safer alternative.

**We appeared in this case to argue for the rights of injury victims across America. Our brief emphasizes that, contrary to Wyeth's claims, the common-law tort system plays an**

**absolutely essential role in spurring manufacturers to make their products safer. If the tort system is not allowed to operate with respect to vaccines, then vaccine manufacturers will have far less incentive to improve the safety of their products.** Such a result would pose a threat to the health and safety of every American.

To read our *amici* brief, [click here](#).

The brief was principally authored by Valerie Nannery of the Center for Constitutional Law, with assistance and input from Public Justice Senior Attorney Leslie Brueckner. Thanks to them both. Thanks to you, too, for making this important public interest work possible.

Together, we can -- and must -- preserve access to justice for all.

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