

PUBLIC JUSTICE E-LERT AMERICA'S PUBLIC INTEREST LAW FIRM

March 9, 2011

When people use generic drugs instead of name-brand drugs, should that choice eliminate their rights? The U.S. Supreme Court will soon decide. Generic drug manufacturers say yes. **Public Justice and the Center for Constitutional Litigation (CCL) say no.**

Two years ago, the Supreme Court held in *Wyeth v. Levine* that federal law does NOT preempt -- i.e., wipe out -- lawsuits against name brand drug manufacturers for failing to warn of their drugs' dangers. Now, however, generic drug manufacturers are arguing in *Pliva v. Mensing* that federal law DOES preempt and immunize them from lawsuits for failing to warn of their drugs' dangers. Since over 70 percent of the drugs sold today are generic drugs, the case could hardly be more important. CCL and Public Justice are representing Gladys Mensing of Minnesota before the Court -- and fighting for the rights of everyone who uses generic drugs.

To read our brief in *Pliva v. Mensing*, [click here](#).

Mensing contracted tardive dyskinesia (TD) -- a severe neurological disorder characterized by involuntary movements of the mouth, tongue, lips, and extremities, involuntary chewing movements, and a general sense of agitation -- after taking the generic version of a prescription drug called Reglan. The drug's label dramatically understated the risk of developing TD to Mensing and her doctor (who prescribed it), but the generic drug manufacturers say that doesn't matter. They say they can't be sued for inadequate labeling -- no matter what they knew about the drug's dangers -- even though the Supreme Court has already held that Reglan's manufacturer can.



Our client Gladys Mensing developed tardive dyskinesia, a neurological disorder with symptoms similar to Parkinson's, after taking a drug prescribed by her doctors

The [Eighth Circuit Court of Appeals rejected the preemption argument](#), as have the Fifth and Ninth Circuits and many district courts. But the Supreme Court decided to hear it anyway. So we have to fight. The case is incredibly important: if claims against generic manufacturers are wiped out, the vast majority of people taking prescription drugs in America will be left without a remedy at all.

Thanks to Louis Bograd of the Center for Constitutional Litigation, lead counsel in the case, who primarily authored the brief with input from Public Justice's [Claire Prestel](#) and [Leslie Brueckner](#). Lou will argue the case on March 30 and we are co-counsel.

Plaintiffs' counsel are Michael Johnson and Lucia McLaren of [Goldenberg & Johnson, P.L.L.C.](#) in Minneapolis and Daniel McGlynn of [McGlynn, Glisson & Mouton](#) in Baton Rouge, LA. In a second case combined with *Mensing* before the Court, counsel is Richard Tonry, II, Raymond Brinson, Brian Glorioso, and Kristine Sims of [Tonry, Brinson & Glorioso, L.L.C.](#) in Slidell, LA.

Thanks, as well, to the impressive group of *amici* that have joined CCL and Public Justice in opposing preemption here: the federal government, Minnesota and 42 other states, the District of Columbia, the National Conference of State Legislators, Rep. Henry Waxman, the American Medical Association, the National Coalition Against Censorship, the American Association for Justice, the Constitutional Accountability Center, Public Citizen, AARP, two former editors of the *New England Journal of Medicine*, and professors of economics, medicine, health policy, torts, civil procedure and administrative law.

And, as always, thanks to you. Your support is helping us fight for the health and safety of all.

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