

Product Liability Preemption for Generic Drug Manufacturers—The Current Landscape

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Recently, pharmaceutical giant GlaxoSmithKline (GSK) filed an appeal of the trial judge's decision to deny the company judgment as a matter of law and a new trial in a wrongful death case. The jury found GSK liable for failure to warn because an individual committed suicide while taking the generic version of GSK's anti-depressant Paxil, which contained allegedly insufficient warnings on its label about suicide risk.

Even though the decedent took a generic version of Paxil, the court allowed the plaintiff to move forward against GSK with an innovator liability theory. But, as courts work through innovator liability cases, many recent proposals aim to change the way generic pharmaceuticals are labeled and advertised, which, in turn, could have an impact on the way failure to warn cases are litigated in the years to come.

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