

BURG SIMPSON ELDREDGE HERSH & JARDINE

P R E S S R E L E A S E

FOR IMMEDIATE DISTRIBUTION

March 4, 2009

ENGLEWOOD, COLORADO - March 4, 2009 - The U.S. Supreme Court today ruled 6 to 3 that drug manufacturers must take responsibility for their failure to adequately warn consumers and the general public about the adverse effects their drugs or products may cause to individuals. In the landmark opinion of *Wyeth v. Levine*, written by Justice John Paul Stevens, the Court rejected the drug company's argument that it should be completely immune from any responsibility for harm that its drug may have caused, simply because the drug had been approved for the market by the federal Food and Drug Administration ("FDA").

"I am very proud of our Supreme Court today – this is a momentous ruling for the protection of consumers' rights and for all Americans who play by rules and who only ask that everyone - the huge drug companies included - be held to the same standard," said Peter W. Burg, who has been appointed by U.S. District Judge Dan A. Polster in Cleveland, Ohio, to be Co-Chair and Co-Lead Counsel for the Plaintiffs in the Gadolinium-Based Contrast Agents Product Liability action, representing the interests of hundreds of individual injured plaintiffs, each of whom suffers from the disease commonly known as NSF, nationwide. **"What the drug manufacturers vehemently argued here was that they should be immune from responsibility for their own failure to properly warn about the risks of harm that their drugs posed to unsuspecting patients, simply because the FDA had previously approved the product for sale. The drug companies wanted the Supreme Court to give them 'blanket immunity' from any claims by innocent injured consumers for the sickness, disease, injury and even death that they have caused by their repeated failure to properly warn about the risks of their products. Today, the Supreme Court soundly rejected that argument, and re-affirmed that the big drug companies have to play by the same rules as the rest of us."**

In *Wyeth*, the Plaintiff was Diana Levine, a Vermont resident and individual consumer who consumed Phenergan, an anti-nausea drug manufactured by Wyeth. As a result of taking the drug, she developed gangrene and lost her arm by amputation. A Vermont jury returned a verdict finding that, had Wyeth adequately disclosed the risks posed by use of their drug by the IV-push method, the injury would not have occurred and awarded Levine compensatory damages. The Vermont Supreme Court upheld the jury verdict. Wyeth appealed the ruling to the U.S. Supreme Court, arguing that Levine's "failure to warn" claims were pre-empted by federal law because Phenergan's labeling had been approved by the federal Food and Drug Administration. Wyeth argued that in its view, it was "impossible" for Wyeth to comply both with FDA regulations and with their state-law duties to individual consumers. The U.S. Supreme Court rejected Wyeth's arguments, finding that a drug manufacturer **"bears responsibility for the content of its label at**

all times’’, and re-affirming the state courts’ long-standing history of protecting individual citizens.

The decision is also a significant one in the battle over states rights.

Burg Simpson Eldredge Hersh and Jardine, P.C. has its main office in Englewood, Colorado and specializes in the representation of individually injured consumers, and is currently at the forefront of mass tort litigation, leading the fight against large pharmaceutical companies nationwide.

Media Contacts:

Peter Burg/David TeSelle

Burg Simpson Eldredge Hersh & Jardine, P.C.

303-792-5595

pburg@burgsimpson.com

dteselle@burgsimpson.com