

Justices weigh lawsuits over vaccine side effects (Update)

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Members of the Supreme Court gather for a group portrait at the Supreme Court in Washington, Friday, Oct. 8, 2010. Seated from left are: Associate Justices Clarence Thomas, Antonin Scalia, Chief Justice John Roberts, Associate Justices Anthony M. Kennedy, and Ruth Bader Ginsburg. Standing, from left are: Associate Justices Sonia Sotomayor, Stephen Breyer, Samuel Alito Jr., and Elena Kagan. (AP Photo/Pablo Martinez Monsivais)

(AP) -- The Supreme Court is trying to sort out whether drug companies can be sued for claims of serious side effects from childhood vaccines without driving vaccine makers from the market and risking a public health crisis.

The court heard arguments Tuesday in an appeal filed by Pittsburgh-area parents who want to sue drug maker Wyeth, which is owned by Pfizer Inc., for the health problems they say their 18-year-old daughter suffered from a vaccine she received in infancy.

Several justices appeared sympathetic to the parents' plea to be allowed to make their case in court.

Wyeth, backed by the Obama administration and many public health groups, argued that Congress shielded drug companies from most vaccine lawsuits when it created a special vaccine court 24 years ago to handle the claims.

But if lawmakers wanted to prevent lawsuits like the one at issue Tuesday, "they could have said simply that no vaccine manufacturer may be held civilly liable if the vaccine is properly prepared and accompanied by proper directions and adequate warnings," Justice Ruth Bader Ginsburg said.

On the other hand, Chief Justice John Roberts said, it could be argued "that because they set up a compensation scheme, that was a good sign that they didn't want to allow state law claims."

The vaccine court has paid out more than \$1.9 billion to more than 2,500 people who claimed a connection between a vaccine and serious health problems. The court has dismissed more than 5,000 other claims and has another 5,000 pending, mostly alleging links between vaccines and autism.

Justice Stephen Breyer sketched the argument made in court papers by pediatricians, other doctors and public health organizations that if the drug companies lose, judges and juries will be making decisions about vaccines, instead of the Food and Drug Administration. "The result could well be driving certain vaccines from the market, and basically, a lot of children will die," Breyer said.

David Frederick, the lawyer for the parents, tried to assure the court that most people still would accept decisions by the vaccine court because of

the time and cost of filing lawsuits.

But the drug companies say drug makers could face a flood of lawsuits over the side effects of vaccines in the event of an unfavorable Supreme Court decision. Among the claims would be those from families of autistic children who say the vaccines, or mercury-based thimerosal that once was used to preserve them, are linked to autism. Numerous studies have addressed vaccines and autism and found no link, including with the preservative.

"That is 5,000 potential claimants in state court," said Kathleen Sullivan, Wyeth's lawyer at the Supreme Court. Sullivan said Congress set up the vaccine court as a way to keep companies making enough vaccines for American children.

But Frederick said Congress did not explicitly rule out the kind of lawsuit Russell and Robalee Bruesewitz filed against Wyeth, asserting that the company was slow to move ahead with a safer vaccine because it would not be as profitable. Frederick said the threat of such claims would motivate drug companies to introduce safer vaccines more quickly.

"We're talking about trying to eliminate the most horrifying and horrible incidents of injury from vaccines that we compel children to take," Frederick said.

A federal trial judge and the Philadelphia-based 3rd U.S. Circuit Court of Appeals ruled in favor of Wyeth.

According to the lawsuit, Hannah Bruesewitz was a healthy infant until she received the diphtheria, tetanus and pertussis vaccine in April 1992. Within hours of getting the DPT shot, the third in a series of five, the baby suffered a series of debilitating seizures. Now a teenager, Hannah

suffers from residual seizure disorder, the suit says.

The vaccine court earlier rejected the family's claims. But Frederick said the rules of the vaccine court, unlike traditional courts, restrict the kind of information plaintiffs can seek from the drug companies.

Justice Elena Kagan did not take part in the argument because of her work on the case while she served as a top Justice Department official.

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