

PUBLICATION

Legislative Update for Brand Manufacturers Distributing in Alabama

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On April 28, 2015, the Alabama House of Representatives passed SB-80, thereby abolishing the highly criticized theory of innovator liability adopted in *Wyeth, Inc. v. Weeks*, ___ So.3d___, 2014 WL 4055813 (Ala. Aug. 15, 2014).

In *Weeks*, the Supreme Court of Alabama held initially in 2013—and then again on rehearing in 2014—that a brand-name manufacturer could be held liable for the physical injuries caused by a generic product that was made and sold by a different company. The court premised such liability on the fact that the warnings and labels relied upon were those of the brand drug, which FDA regulations require generic manufacturers to use.

SB-80, which passed the Alabama Senate 32-0 and the House 86-14, requires that a plaintiff be able to prove that the defendant's particular product—not simply a generic product—caused his or her alleged damages. The bill states, in relevant part:

Section 1. **In any civil action for personal injury, death, or property damage caused by a product, regardless of the type of claims alleged or the theory of liability asserted, the plaintiff must prove, among other elements, that the defendant designed, manufactured, sold, or leased the particular product the use of which is alleged to have caused the injury on which the claim is based, and not a similar or equivalent product.** Designers, manufacturers, sellers, or lessors of products not identified as having been used, ingested, or encountered by an allegedly injured party may not be held liable for any alleged injury. A person, firm, corporation, association, partnership, or other legal or business entity whose design is copied or otherwise used by a manufacturer without the designer's express authorization is not subject to liability for personal injury, death, or property damage caused by the manufacturer's product, even if use of the design is foreseeable.

SB-80 §1 (emphasis added).

SB-80 eliminates not only innovator liability but also market share liability, alternative liability, and any other sort of industry-wide liability theory in products liability actions. Additionally, the law protects non-manufacturing designers who do not "express[ly] authoriz[e]" the use of their particular design, "even if use of the design is foreseeable."

The passage of SB-80 is positive for brand manufacturers that sell or distribute products in Alabama, as brand-name companies no longer need to fear they will become the de facto insurers of their entire industries. SB-80 becomes effective "six months" after it becomes law and "shall apply to civil actions filed thereafter." SB-80 §4.

For more information, please contact the Alert authors Sara Turner or Julie Schiff or a member of our Product Liability & Mass Tort Group.