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Plaintiffs' Claims Against Gilead Permitted to Proceed in HIV Drug Lawsuits

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Gilead Sciences, Inc. ("Gilead") manufacturers the HIV drugs: Truvada, Atripla, Viread, Stribild, and Complera. After being named as a defendant in multiple lawsuits in 2018, Gilead filed a motion to dismiss all of the plaintiffs' claims in the lawsuits, arguing that they were preempted by federal law, including the design defect allegations. Plaintiffs allege that these HIV drugs, which contain tenofovir disoproxil fumarate ("TDF"), cause kidney damage, such as chronic kidney disease, and bone damage, such as osteoporosis or osteopenia.

U.S. District Judge, Jon S. Tigar, recently held that "Gilead could have independently complied with both state and federal law prior to submitting the TDF drugs for FDA approval. Because Gilead has not presented 'clear evidence' that the [U.S. Food and Drug Administration] would not have approved the allegedly safer versions of the drugs that plaintiffs contend would have complied with state law, plaintiffs' pre-approval design-defect claims are not preempted." The judge also allowed plaintiffs to proceed with any of their fraud and consumer protection claims, based on Gilead's alleged omissions.

However, Judge Tigar did grant a portion of Gilead's motion, dismissing claims related to plaintiffs' claim that Gilead had failed to warn them and their doctors about the risks associated with the HIV drugs insofar as those claims are based on assertions that Gilead could have made a required label change after 2008. Judge Tigar advised that plaintiffs could amend their Complaints with additional information to try to revive the claim. Claims related to fraud and consumer protection claims were also dismissed insofar as the claims were based on alleged misrepresentations Gilead made about the HIV drugs.

With Judge Tigar's recent ruling, additional complaints are expected to be filed in the near future with an application for official consolidation to follow.

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