



# Court of Appeal concludes brand-name drug manufacturer can be held liable for negligence to individuals injured by generic form of drug

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*T.H. v. Novartis Pharmaceuticals Corporation*  
(Mar. 9, 2016, D067839) \_\_ Cal.App.4th \_\_

Novartis Pharmaceuticals Corporation manufactured a brand-name medication approved for treatment of asthma. Physicians also prescribed this medication to pregnant women to prevent or inhibit preterm labor. In the late 1970's, studies began to question the safety and efficacy of using the medication for this off-label purpose.

The plaintiffs allegedly suffered neurological injuries in utero after their mother consumed a generic form of the medication nearly six years after Novartis sold its interest in the medication. The trial court sustained Novartis's demurrer without leave to amend, concluding that Novartis owed the plaintiffs no duty for claims arising from use of the generic form of the medication after Novartis sold its rights to the drug.

On appeal, the plaintiffs argued that at the time Novartis owned the drug, it could have warned of potential fetal harm from use of the drug to prevent or inhibit preterm labor. Plaintiffs claimed that if Novartis had provided such warnings, the warnings would have remained in effect until their mother was prescribed the drug, and the mother's physicians would not have prescribed the generic form of the drug during her pregnancy. The Court of Appeal held that plaintiffs' claims for negligence and negligent misrepresentation could survive a demurrer and reversed the trial court.

## More Information

For further information about this case, please contact Horvitz & Levy partners David Axelrad or Dean A. Bochner (818.995.0800).