



American Home Products Corp. v. Ferrari, 131 S.Ct. 1567 (2011)

668 S.E.2d 236 (Ga. 2008)

Topics Covered: Vaccine Act

Issue

The issue in this case is whether the National Childhood Vaccine Injury Act preempts design defect claims asserted against a vaccine manufacturer.

AMA Interest

The AMA believes that, in order to preserve the viability of vaccine manufacture, patients who claim injuries from vaccines should recover any damages through the National Vaccine Injury Compensation Program, rather than through common law tort claims.

Case Summary

Marcelo and Carolyn Ferrari sued several vaccine manufacturers in a Georgia state court, alleging that their son had suffered neurological damage caused by vaccines made with the preservative thimerosal, which contained the toxic chemical mercury. They claimed that the vaccine had been designed defectively, and they asserted claims under Georgia common law, based on strict liability and negligence.

The trial court granted partial summary judgment in favor of the drug manufacturers, ruling that the National Childhood Vaccine Injury Act, 42 USC §§ 300aa-1, *et. seq.*, preempted the Ferraris' claims. However, the Georgia Court of Appeals reversed, and the Georgia Supreme Court affirmed the Court of Appeals, thus reinstating the Ferraris' case. They held that the Vaccine Act preempts certain types of claims based on defects in vaccine design, but the determination of whether the Ferraris' claims were of this nature would require a trial.

The vaccine manufacturers then petitioned the United States Supreme Court for *certiorari*. The Supreme Court granted *certiorari*, reversed the decision of the Georgia Supreme Court, and remanded for further proceedings consistent with its ruling in *Bruesewitz v. Wyeth*.

AMA Involvement

The AMA, along with the American Academy of Pediatrics and several other medical societies, filed an *amicus curiae* brief to support the vaccine manufacturers' *certiorari* petition.

United States Supreme Court brief