

The National Childhood Vaccine Injury Act Preempts All Vaccine Defective Design Claims

2.25.2011

Brad A. Catlin

On February 22, 2011, the United States Supreme Court decided that the National Childhood Vaccine Injury Act preempted all state law defective design claims in *Bruesewitz v. Wyeth LLC*, Case No. 09-152. The Court's ultimate decision is newsworthy, as it precludes many potential tort suits. However, the portion of the case that I found most interesting was the manner in which the Court interpreted the text of the relevant statute in order to reach this result. In doing so, the Court described a nuance on a standard judicial canon that I had never heard of before.

The National Childhood Vaccine Injury Act established a no-fault compensation program for people injured by childhood vaccines. Congress included a section that preempted certain state law claims as part of that Act. 42 U.S.C. § 300aa-22(b)(1) states as follows:

No vaccine manufacturer shall be liable in a civil action for damages arising from a vaccine-related injury or death associated with the administration of a vaccine after October 1, 1988, if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warnings.

The majority and dissent disagreed over how this statute should be interpreted. The majority concluded that the statute clearly excluded defective design claims.

The "even though" clause clarifies the word that precedes it. It delineates the preventative measures that a vaccine manufacturer must have taken for a side-effect to be considered "unavoidable" under the statute. Provided that there was proper manufacture and warning, any remaining side effects, including those resulting from design defects, are deemed to have been unavoidable. State-law design-defect claims are therefore preempted.

The dissent argued that the majority's interpretation made the phrase "if the injury or death resulted from side effects that were unavoidable" superfluous. It, therefore, tried to give that phrase some meaning.

Given that the "even though" clause requires the absence of manufacturing and labeling defects, the "if" clause's reference to "side effects that were unavoidable" must refer to side effects caused by something other than manufacturing and labeling defects. The only remaining kind of product defect recognized under traditional products liability law is a design defect. Thus, "side effects that were unavoidable" must refer to side effects caused by a vaccine's design that were "unavoidable."

...

[W]hen Congress intends to pre-empt design defect claims categorically, it does so using categorical (e.g., "all") and/or declarative language (e.g., "shall"), rather than a conditional term ("if").

...

The plain text and structure of the Vaccine Act thus compel the conclusion that §22(b)(1) pre-empts some — but not all — design defect claims. Contrary to the majority's and respondent's categorical reading, petitioners correctly contend that, where a plaintiff has proved that she has suffered an injury resulting from a side effect caused by a vaccine's design, a vaccine manufacturer may invoke § 22(b)(1)'s liability exemption only if it demonstrates that the side effect stemming from the particular vaccine's design is "unavoidable," and that the vaccine is otherwise free from manufacturing and labeling defects.

The majority acknowledged that its interpretation of the statute rendered the "if" clause superfluous, but held that this didn't matter.

Petitioners and the dissent contend that the interpretation we propose would render part of § 300aa-22(b)(1) superfluous: Congress could have more tersely and more clearly preempted design-defect claims by barring liability "if . . . the vaccine was properly prepared and was accompanied by proper directions and warnings." The intervening passage ("the injury or death resulted from side effects that were unavoidable even though") is unnecessary. True enough. But the rule against giving a portion of text an interpretation which renders it superfluous does not prescribe that a passage which could have been more terse does not mean what it says. The rule applies only if verbosity and prolixity can be eliminated by giving the offending passage, or the remainder of the text, a competing interpretation. That is not the case here.

The Court's statement that statutory language can be read as superfluous if ignoring that language does not change the interpretation of the statute is a canon of statutory construction that I have never heard of before. I can think of creative ways that this could be used in cases

involving the interpretation of either statutes or contracts and suggest that you add this principle to your arsenal of statutory construction tools.

Lessons:

1. The rule against interpreting a portion of a statute as superfluous does not apply if eliminating the superfluous language does not give the remainder of the text a competing interpretation.