



WHAT STATES HAVE ADOPTED THE LEARNED INTERMEDIARY DOCTRINE?

The majority of jurisdictions, including the following states, have accepted that a drug manufacturer is relieved from warning each patient who receives a product when the manufacturer properly warns the the prescribing physician of the product's dangers:

Alabama: Walls v. Alpharma USPD, 887 So.2d 881, 883 (Ala. 2004).
 Alaska: Shanks v. Upjohn Co., 835 P.2d 1189, 1200 & n.17 (Alaska 1992).
 Arizona: Piper v. Bear Medical Systems, Inc., 883 P.2d 407, 415 (Ariz. App. 1993).
 Arkansas: West v. Searle & Co., 806 S.W.2d 608, 613 (Ark. 1991).
 California: Carlin v. Superior Court, 920 P.2d 1347, 1354 (Cal. 1996).
 Colorado: Hamilton v. Hardy, 549 P.2d 1099, 1110 (Colo. App. 1976).
 Connecticut: Hurley v. Heart Physicians, P.C., 898 A.2d 777, 783-84 (Conn. 2006).
 Delaware: Lacy v. G.D. Searle & Co., 567 A.2d 398, 400-01 (Del. 1989).
 District of Columbia: Mampe v. Ayerst Laboratories, 548 A.2d 798, 801 & n.6 (D.C. 1988).
 Florida: E.R. Squibb & Sons, Inc. v. Farnes, 697 So.2d 825, 827 (Fla. 1997).
 Georgia: McCombs v. Synthes, 587 S.E.2d 594, 595 (Ga. 2003).
 Hawaii: Craft v. Peebles, 893 P.2d 138, 155 (Hawaii 1995).
 Idaho: Sliman v. Aluminum Co. of America, 731 P.2d 1267, 1270 (Idaho 1986).
 Illinois: Happel v. Wal-Mart Stores, Inc., 766 N.E.2d 1118, 1127 (Ill. 2002).
 Indiana: Ortho Pharmaceutical Corp. v. Chapman, 388 N.E.2d 541, 548-59 (Ind. App. 1979).
 Kansas: Savina v. Sterling Drug, Inc., 795 P.2d 915, 928 (Kan. 1990).
 Kentucky: Larkin v. Pfizer, Inc., 153 S.W.3d 758, 761 (Ky. 2004).
 Louisiana: Kampmann v. Mason, 921 So.2d 1093, 1094 (La. App. 2006).
 Maryland: Rite Aid Corp. v. Levy-Gray, 894 A.2d 563, 577 (Md. 2006).
 Massachusetts: Cottam v. CVS Pharmacy, 764 N.E.2d 814, 820 (Mass. 2002) (but questions applicability of doctrine to contraceptives, see MacDonald v. Ortho Pharmaceutical Corp., 475 N.E.2d 65, 69-70 (Mass. 1985)).
 Michigan: Smith v. E.R. Squibb & Sons, Inc., 273 N.W.2d 476, 479 (Mich. 1979).
 Minnesota: Mulder v. Parke Davis & Co., 181 N.W.2d 882, 885 n.1 (Minn. 1970).
 Mississippi: Miss. Code Ann. §11-1-63(c)(ii); Janssen Pharmaceutica, Inc. v. Bailey, 878 So.2d 31, 57 (Miss. 2004).
 Missouri: Krug v. Sterling Drug, Inc., 416 S.W.2d 143, 146-47 (Mo. 1967).
 Montana: Hill v. Squibb & Sons, 592 P.2d 1383, 1387-88 (Mont. 1979).
 Nebraska: Freeman v. Hoffman-La Roche, Inc., 618 N.W.2d 827, 841-42 (Neb. 2000).
 Nevada: Allison v. Merck & Co., 878 P.2d 948, 958 n.16 (Nev. 1994) (plurality op.).
 New Jersey: N.J. Stat. §2A:58C-4; Perez v. Wyeth Laboratories, Inc., 734 A.2d 1245, 1257 (N.J. 1999) (note exception for DTC advertised products in Perez v. Wyeth Laboratories, Inc., 734 A.2d 1245, 1256 (N.J.,1999).

New Mexico: Serna v. Roche Laboratories, Division of Hoffman-LaRoche, Inc., 684 P.2d 1187, 1189 (N.M. App. 1984).
 New York: Spensieri v. Lasky, 723 N.E.2d 544, 549 (N.Y. 1999).
 Ohio: Ohio Rev. Code §2307.76(c); Howland v. Purdue Pharma, L.P., 821 N.E.2d 141, 146 (Ohio 2004).
 Oklahoma: Edwards v. Basel Pharmaceuticals, 933 P.2d 298, 300-01 (Okla. 1997).
 Oregon: Oksenholt v. Lederle Laboratories, 656 P.2d 293, 296-97 (Or. 1982).
 Pennsylvania: Coyle v. Richardson-Merrell, Inc., 584 A.2d 1383, 1385 (Pa. 1991).
 South Carolina: Madison v. American Home Products Corp., 595 S.E.2d 493, 496 (S.C. 2004).
 Tennessee: Pittman v. Upjohn Co., 890 S.W.2d 425, 429 (Tenn. 1994).
 Texas: Humble Sand & Gravel, Inc. v. Gomez, 146 S.W.3d 170, 190-91 (Tex. 2004).
 Utah: Schaererr v. Stewart's Plaza Pharmacy, Inc., 79 P.3d 922, 928-29 (Utah 2003).
 Virginia: Pfizer, Inc. v. Jones, 272 S.E.2d 43, 44 (Va. 1980).
 Washington: Washington State Physicians Insurance Exchange & Ass'n v. Fisons Corp., 122 Wn.2d 299, 338, 858 P.2d 1054(1993).

The following jurisdictions are silent on acceptance of the learned intermediary theory. Federal courts, however, have made an Erie prediction that the jurisdictions would adopt the learned intermediary doctrine:

Iowa: Petty v. United States, 740 F.2d 1428, 1440 (8th Cir. 1984).
 Maine: Violette v. Smith & Nephew Dyonics, Inc., 62 F.3d 8, 13 (1st Cir. 1995).
 New Hampshire: Brochu v. Ortho Pharmaceutical Corp., 642 F.2d 652, 656 (1st Cir. 1981).
 North Dakota: Ehlis v. Shire Richwood, Inc., 367 F.3d 1013, 1017 (8th Cir. 2004).
 Puerto Rico: Guevara v. Dorsey Laboratories, Division of Sandoz, Inc., 845 F.2d 364, 366 (1st Cir. 1988).
 South Carolina: Odom v. G.D. Searle & Co., 979 F.2d 1001, 1004 (4th Cir. 1992).
 South Dakota: McElhaney v. Eli Lilly & Co., 575 F. Supp. 228, 231 (D.S.D. 1983), aff'd, 739 F.2d 340 (8th Cir. 1984).
 Wisconsin: Monson v. AcroMed Corp., 1999 WL 1133273, at *20 (E.D. Wis. May 12, 1999).
 Wyoming: Thom v. Bristol-Myers Squibb Co., 353 F.3d 848, 851-53 (10th Cir. 2003).

West Virginia has specifically rejected the doctrine with respect to prescription medical product cases. State ex rel. Johnson & Johnson Corp. v. Karl, 647 S.E.2d 899, 913-14 (W.Va. 2007). Rhode island and Vermont have no precedent, state or federal, addressing the learned intermediary rule.