

**GIBSON DUNN**



**Appellate & Constitutional Law Update**

**August 3, 2026**

## **California Supreme Court Holds That Drug Manufacturers Cannot Be Held Liable For Selling Nondefective Drugs On The Theory That They Should Have Made Safer Drugs Available Sooner**

*Gilead Tenofovir Cases*, S283862 – Decided August 3, 2026

**The California Supreme Court today rejected the theory that Gilead violated a duty of care to users of one HIV drug because it did not immediately commercialize another HIV drug fast enough.**

*“[W]e conclude that drug manufacturers do not owe a duty of care to users of a nondefective drug when making decisions about whether and when to commercialize an allegedly safer alternative drug.”*

**JUSTICE GROBAN, WRITING FOR THE COURT**

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### Background:

California products-liability law requires manufacturers to design and make reasonably safe products and provide adequate warnings about them. In *Gilead*, plaintiffs allege manufacturers owe a new duty: to develop and commercialize safer alternatives to existing products even if the existing product is not defective. Plaintiffs all took a life-saving HIV medication first brought to market by Gilead in 2001. Plaintiffs acknowledge this drug is not defective but claim they are now suffering from its disclosed side effects. Plaintiffs claim these injuries were avoidable because Gilead should have brought to market sooner an allegedly safer alternative, a drug that had mixed early safety test results and did not go through comprehensive testing until 2011.

Gilead moved for summary judgment, arguing it owed no duty to bring the second drug to market. The trial court denied Gilead's motion. Gilead petitioned for a writ of mandate, which the Court of Appeal largely denied. The Court of Appeal held that manufacturers have a broader duty of care under California Civil Code section 1714 that "extend[s] beyond the duty not to market a defective product." (*Gilead Tenofovir Cases* (2024) 98 Cal.App.5th 911, 918.) The California Supreme Court granted review.

### Issues Presented:

Does a drug manufacturer have a duty of reasonable care to users of a drug it is currently selling, which is not alleged to be defective, when making decisions about the commercialization of an allegedly safer, and at least equally effective, alternative drug?

### Court's Holdings:

No. The Court declined "to recognize, for the first time anywhere, sweeping *liability* for injuries caused by a concededly nondefective drug because the manufacturer failed to make a different drug available sooner."

The California Supreme Court expressed substantial doubt about the Court of Appeal's conclusion that manufacturers have a duty that extends beyond designing and manufacturing nondefective products and providing adequate warnings about them. But instead of holding that a defect is the sine qua non of every products-liability case, the Court assumed for the sake of argument that manufacturers could still have a duty even if their products aren't defective and decided that there should be an exception to that duty.

In deciding that an exception to a broad duty of care is warranted, the Court performed the multi-factor analysis prescribed by *Rowland v. Christian* (1968) 69 Cal.2d 108. The factors include the foreseeability of harm to the plaintiff, the goal of preventing future harm, the moral blameworthiness of the defendant's conduct, and the extent of the burden on the defendant and society in imposing a duty. The Court explained, among other things, that drug manufacturers cannot foresee whether a drug alternative will be safer based only on preliminary trials; that the rule endorsed by the Court of Appeal would likely discourage innovation and might undermine public health; that a defendant isn't morally blameworthy simply because it seeks to make a profit; and that it would be unduly burdensome to require drug manufacturers to continue researching and developing any drug whenever preliminary testing suggests it might prove safer than an existing drug.

### What It Means:

- The case marks a departure from the California Supreme Court's typical unanimity. There are four opinions—the majority opinion (written by Justice Groban), two concurrences (written by Chief Justice Guerrero and Justice Kruger), and a dissent (written by Justice Evans). Chief Justice Guerrero wrote separately to explain that, in her view, the Court should have held that absent a defect, no products-liability suit can ever go forward. Justice Kruger, for her part, emphasized that the majority assumed only for the sake of argument that manufacturers can still have a duty to consumers even if their products aren't defective. And Justice Evans endorsed the broad conception of duty adopted by the Court of Appeal.
- Although the Supreme Court declined to endorse the novel theory that a manufacturer could be held liable because it did not bring an allegedly safer product to market faster, any plaintiffs advancing that theory in future cases will likely have a difficult time contending with the extensive reasoning debunking that theory in both the majority opinion and Chief Justice Guerrero's concurring opinion.
- The Supreme Court again demonstrated an inclination to consider the practical effects of a novel theory of liability—something that it has done in other recent cases, such as *Kuciemba v. Victory Woodworks, Inc.* (2023) 14 Cal.5th 993, in which it expressed concern about the flood of litigation that would result if employers had a duty of care to prevent their employees from bringing COVID-19 home to their family members. Here, the Court warned of the risk of “adverse consequences for pharmaceutical innovation, public health, and patient safety.”

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**Gibson Dunn represented a group of amici who supported the prevailing party:  
the National Association of Manufacturers, the Alliance for  
Automotive Innovation, the American Tort Reform Association,  
the American Coatings Association, the American Chemistry Council,  
the Medical Devices Manufacturers Association, and the  
Consumer Technology Association.**

**Gibson Dunn Appellate Honors**

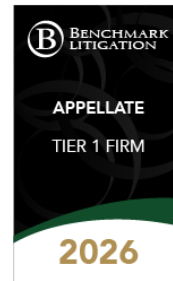
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The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the California Supreme Court. Please feel free to contact the following practice group leaders:

### Appellate and Constitutional Law

[Thomas H. Dupree Jr.](#)

+1 202.955.8547

[tdupree@gibsondunn.com](mailto:tdupree@gibsondunn.com)

[Allyson N. Ho](#)

+1 214.698.3233

[aho@gibsondunn.com](mailto:aho@gibsondunn.com)

[Julian W. Poon](#)

+1 213.229.7758

[jpoon@gibsondunn.com](mailto:jpoon@gibsondunn.com)

[Jeffrey B. Wall](#)

+1 202.955.8533

[jwall@gibsondunn.com](mailto:jwall@gibsondunn.com)

[Bradley J. Hamburger](#)

+1 213.229.7658

[bhamburger@gibsondunn.com](mailto:bhamburger@gibsondunn.com)

[Michael J. Holecek](#)

+1 213.229.7018

[mholecek@gibsondunn.com](mailto:mholecek@gibsondunn.com)

[Daniel R. Adler](#)

+1 213.229.7634

[dadler@gibsondunn.com](mailto:dadler@gibsondunn.com)

*This alert was prepared by Daniel R. Adler, Matt Aidan Getz, and John Collins.*

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