Pfizer Birth Control Recall: Are Lawsuits On The Horizon?
By Joseph Orovic
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Pfizer's recall of a million packets of birth control pills raised concerns about women taking the drugs suddenly facing the prospect of unplanned pregnancies. Inevitable talk of lawsuits ensued.

The world's largest drug maker announced the recall on Jan. 31, citing 14 lots of Lo-Obral-28 and 14 lots of Norgestrol and Ethinyl Estradiol, warning of a packaging error that mixed up placebos with tablets that contain the active ingredient.

It was a rare case where a megalith drug company's error could lead to a truly jarring side effect: pregnancy. Which begs the question: Could Pfizer realistically pay damages as the result of an unexpected pregnancy caused by a recall? Could a suit feasibly force the company to cover the cost of an abortion?

The legal waters remain murky -- such cases do not reach a court room too often, said Professor Nadia Sawicki at Loyola University's Beazely Institute for Health and Law Policy.

"I'm not aware of any cases where a wrongful conception suit is brought against the manufacturer of contraception," she said.

"Wrongful conception" refers to a child conceived as the result of some sort of negligence. In Pfizer's case, a trial would concern whether the pharmaceutical giant met its duty towards women taking its drug, or did its actions lead to a pregnancy that otherwise would not have occurred.

Pfizer did not return several requests for comment as of this writing.

"To prove a case of negligence, the plaintiff has to demonstrate Pfizer has a duty, that they breached a duty. Then you have to prove causation and injury," Sawicki said.

No contraceptive drug promises 100 percent effectiveness, and the drugs recalled by Pfizer are no exception. That could give the drug maker some leeway in distancing itself from any pregnancy allegedly caused by negligence.

"From a causation perspective, it might be difficult to prove that Pfizer's negligence was the actual cause of the injuries," Sawicki said. "There are many other things that could have caused the pregnancy."

A woman with a history of taking the same prescription drug over a prolonged with no pregnancy could make a case for causation, said Mark Zamora, a Georgia-based attorney who handles unsafe drug suits.

"If it clearly is a case where they put the wrong pill in the wrong slot, then maybe," he said, adding the odds are very slim such a case would ever arise.
Should a jury decide Pfizer neglected its duty and as a result, caused a pregnancy, the matter of damages raises another thorny problem. Realistically, expenses as a result of bringing a child into the world would be covered. But future expenses, such as the cost of college, may be more difficult to win, Sawicki said.

"Damages are another complicated issue in the cases that we've seen. The plaintiff is going to be able to easily recover the cost of the negligently performed procedure, subsequent medical expenses etc."

But the cost of an abortion? Not likely.

"This is the sort of thing I can see a lot of people getting worried about, but realistically, I don't think it's going to have as significant of an impact," Sawicki said. "In part it's going to be difficult for plaintiffs to make their case, in part because it's hard to claim damages, and in part because so few cases make it to trial."