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Supreme Court declines to hear case involving abortion drug

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Original article found online at: <http://www.upi.com/Archives/1992/02/24/Supreme-Court-declines-to-hear-case-involving-abortion-drug/8793698907600/>

WASHINGTON -- The Supreme Court Monday let stand a decision reversing a \$9.5 million jury award against the makers of an abortion inducement drug blamed for a patient's heart failure and subsequent brain damage.

The court, without comment, let stand the finding of an Illinois appeals court voiding the jury award against The Upjohn Co., Illinois Masonic Medical Center and a doctor.

The appeals court, in throwing out the \$9.5 million judgment, refused to allow a new trial. The Supreme Court of Illinois then declined to hear an appeal.

The case involved Shelby Moran, who sustained brain damage that has kept her confined to a nursing home since undergoing a second-trimester abortion at the medical center in 1978.

A doctor at the facility used the drug Prostaglandin F2 Alpha (Prostin), which is made by Upjohn, to induce the abortion.

Lawyers for Moran contend Upjohn was negligent in failing to include in the drug's labeling a warning that it could cause cardiac arrest.

Moran suffered cardiac arrest after being injected with the drug, and by the time she was revived had incurred brain damage.

In 1989 a jury that listened to eight weeks of testimony returned a verdict of more than \$9.5 million against Upjohn, the medical center and Dr. John J. Barton.

The appeals court, however, said Moran's lawyers were required to show through expert testimony that Upjohn knew Prostin could cause cardiac arrest in 1978, and that it did not. It reversed the verdict and threw out the case.

Moran's lawyers contend no expert testimony is needed, because the warning label from Upjohn clearly did not include cardiac arrest among its possible side effects, even though the company knew of at least nine cases where cardiac arrest followed use of the drug.

The appeals court said a 'lay person' could not be expected to reach a correct decision on a complicated medical question without expert testimony, and said warnings that could mean one thing for doctors could mean something else to jury members not schooled in medical terminology.

In 1981, Upjohn began warning that cardiac arrest was a possible side effect of the drug. But the court found that cannot be used to prove the company was aware of that specific danger in 1978.

The court also said it is possible Moran's cardiac arrest was not a side-effect of Prostin, but rather a 'result of other adverse reactions such as vomiting, bronchospasm, convulsion or heart block, which were listed by Upjohn as adverse reactions.'

Moran's attorneys contend they should have at least been entitled to a new trial. NEWLN: -----
NEWLN: 91-1018 The Northern Trust Co., et al., vs. The Upjohn Co., et al.