UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

	:	**MDL NO. 1355**
IN RE: PROPULSID	:	
PRODUCTS LIABILITY LITIGATION	:	**SECTION "L"**
	:	
	:	**JUDGE FALLON**
.. ..	:	

REF: ***Aline Zeno, et al. v. Johnson & Johnson, et al.*****,**
Civil Action Number 00-282, ***And Only Regarding***
Plaintiff Samantha Ann Reed

ORDER & REASONS

Before the Court is the Defendants' Motion for Summary Judgment on the claims of Samantha Reed, a plaintiff in Civil Action No. 00-282, which has been consolidated with the above-captioned case for pretrial proceedings. For the following reasons, the Court GRANTS the defendants' Motion for Summary Judgment.

I. BACKGROUND

Plaintiff Samantha Reed ("Reed") filed suit in Civil Action No. 00-282 for personal injuries incurred while taking the drug Propulsid, a heartburn medication, manufactured by defendants.[1] The facts of Reed's

[1] The underlying facts and circumstances concerning Propulsid and the claims against the defendants are described in this Court's opinion, *In re Propulsid Products Liability Litigation,* 208 F.R.D. 133 (E.D. La. 2002).

medical history are undisputed.[2] The evidence shows that Reed made several visits, beginning in 1999, to River Parishes Hospital complaining of various gastric problems including diarrhea, nausea, vomiting, indigestion, and epigastric pain. Her doctors diagnosed her as having pancreatitis, gallstones, and gastroesophageal reflux disease ("GERD"). This latter disease was diagnosed on March 28, 1999, and, in April, 1999, her treating physician, Dr. Colin Bailey, prescribed Propulsid to treat her symptoms. The warning label for Propulsid, at the time it was prescribed, listed diarrhea, abdominal pain, and rapid heart beat (tachycardia) as potential side effects of Propulsid. Physicians prescribing Propulsid were also informed by the label that "QT prolongation, torsades de pointes (sometimes with syncope), cardiac arrest and sudden death have been reported in patients taking Propulsid." Dr. Bailey testified in this case that he was aware of the potential side effects of Propulsid when he prescribed it for Reed but apparently concluded this was the best alternative.

Dr. Bailey testified that he believed that the only prokinetic agent available for the treatment of GERD beside Propulsid was Reglan, and Propulsid had fewer side effects than Reglan, which can penetrate the blood-brain barrier and cause Parkinson's disease-like symptoms. Before taking Propulsid, plaintiff had taken a variety of medicines to alleviate her symptoms including Pepto Bismol, Kaopectate, Pepcid, Prilosec, Zantac, and Prevacid. None of these drugs provided any relief to the plaintiff. Plaintiff renewed the prescription for Propulsid monthly during the next five months. Dr. Bailey testified that Propulsid initially helped the plaintiff and alleviated her discomfort, but, in time, her initial symptoms returned.

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[2]The facts come from the defendants' Statement of Undisputed Facts in Support of their Motion for Summary Judgment. Because plaintiff did not file a response to these facts, they are deemed admitted under Local Rule 56.2E.

On August 17, 1999, Reed went to East Jefferson General Hospital complaining of diarrhea, nausea, and a "weak pulse." Her treating physician's diagnosis was "abdominal pain, diarrhea"; the doctor discontinued treatment with Propulsid.

On August 24, 2000, Reed was taken by ambulance to River Parishes Hospital and complained of experiencing "a near syncopal episode (self-resolving)." Upon examination by the emergency room physician, her physical findings and laboratory data results were unremarkable. She was discharged with instructions to return home and relax. *See* Emergency Room Record of Samantha Reed, attached as Exhibit C to Plaintiff's Motion for Summary Judgment. Shortly before this occurred, on June 20, 2000, the plaintiff filed suit in this Court alleging causes of action against Johnson & Johnson for damages under the Louisiana Products Liability Act ("LPLA"), La. Rev. Stat. Ann. § 9:2800.51-2800.60. Her case was consolidated with MDL 1355 for which this Court was designated the transferee court. After several years of discovery, the Court exercised its role as the original trial court in the Reed case and, after consulting with all parties, set the matter for trial.

Defendant now moves for summary judgment on plaintiff's LPLA claims, arguing that she has no material facts to support a claim under the LPLA's exclusive theories of recovery.

II. ANALYSIS

A. Summary Judgment Standard

A district court can grant a motion for summary judgment only when the "'pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56 (c)). When considering

a motion for summary judgment, the district court "will review the facts drawing all inferences most favorable to the party opposing the motion." *Reid v. State Farm Mut. Auto. Ins. Co.*, 784 F.2d 577, 578 (5th Cir. 1986). The court must find "[a] factual dispute . . . [to be] 'genuine' if the evidence is such that a reasonable jury could return a verdict for the nonmoving party . . . [and a] fact . . . [to be] 'material' if it might affect the outcome of the suit under the governing substantive law." *Beck v. Somerset Techs., Inc.*, 882 F.2d 993, 996 (5th Cir. 1989) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

"If the moving party meets the initial burden of showing that there is no genuine issue of material fact, the burden shifts to the non-moving party to produce evidence or designate specific facts showing the existence of a genuine issue for trial." *Engstrom v. First Nat'l Bank of Eagle Lake*, 47 F.3d 1459, 1462 (5th Cir. 1995) (citing *Celotex*, 477 U.S. at 322 - 24, and Fed. R. Civ. P. 56(e)). The mere argued existence of a factual dispute will not defeat an otherwise properly supported motion. *See Anderson*, 477 U.S. at 248. "If the evidence is merely colorable, or is not significantly probative," summary judgment is appropriate. *Id.* at 249 - 50 (citations omitted).

B. Theories of Recovery Under the LPLA

A plaintiff may recover under the LPLA if he or she proves that a product is unreasonably dangerous in any of four exclusive instances: failure in construction and composition; defective design; failure to provide adequate warning; and failure to conform to an express warranty. *See* LA. REV. STAT. ANN. § 9:2800.54(B). In this case, the plaintiff opposes the defendants' motion only as to the design

defect claim.[3] She does not dispute that the other theories of recovery under the LPLA because the facts of her case do not afford her any relief. Accordingly, this decision will discuss only her claims that Propulsid is unreasonably dangerous in design.

Section 2800.56 of the LPLA sets forth the following standard for design defect liability:

> A product is unreasonably dangerous in design, if, at the time the product left its manufacturer's control:
>
> (1) There existed an alternative design for the product that was capable of preventing the claimant's damage; and
>
> (2) The likelihood that the product's design would cause the claimant's damage and the gravity of that damage outweighed the burden on the manufacturer of adopting such alternative design and the adverse effect, if any, of such alternative design on the utility of the product. An adequate warning about a product shall be considered in evaluating the likelihood of damage when the manufacturer has used reasonable care to provide the adequate warning to users and handlers of the product.

Id. § 9:2800.56.

C. Conclusion

After considering the briefs, arguments of counsel, and the applicable law, it is the conclusion of the Court that the plaintiff has failed to establish the existence of a genuine issue of material fact to support her claims that Propulsid was defectively designed. With regard to the first requisite of section 2800.56, the plaintiff has failed to prove the existence of an alternative design capable of preventing her damage. The evidence of plaintiff's damage focuses on her intestinal track. The uncontroverted evidence reveals that the plaintiff suffered from diarrhea, abdominal pain, and a racing heartbeat before, during, and after she used Propulsid. She tried other medications, but they did not relieve her symptoms. The testimony does

[3]The thrust of the plaintiff's complaint seems to be that a drug designed for the treatment of a gastrointestinal problem should not have such dire side effects as sudden death, arrhythmia, and prolonged QT interval, and, if it does, as is the case with Propulsid, the drug is defectively designed.

show that there were alternative or different methods for treating her symptoms. This, however, is not sufficient to prove an alternative design under section 2800.56 of the LPLA. *See Theriot v. Danek Medical, Inc.*, 168 F.3d 253 (5th Cir. 1999). Furthermore, the evidence reveals that the plaintiff tried many other drugs before Propulsid, but none of them worked. So there is no proof that anything would have prevented or cured plaintiff's condition. There is only speculation, and this is not enough to sustain the plaintiff's burden of proof.

With regard to the second requisite of 2800.56, the plaintiff has failed to establish that Propulsid's design caused her damage or that the gravity of her damage outweighed the burden on the manufacturer of adopting an alternative design. The plaintiff's damages in this case seem to be limited to her intestinal track. She had this condition before, during, and after taking Propulsid. Propulsid neither caused nor cured her condition. Furthermore, as mentioned above, there is no proof that there was an alternative capable of curing or preventing the claimant's damage. Finally, the evidence regarding Propulsid's potential to cause a prolonged QTc interval or other cardiac problems is irrelevant to the facts of this case. Reed was diagnosed with diarrhea and abdominal pain, not a prolonged QTc interval or cardiac problems. The Court does note that Dr. Shell's report indicates an increased QTc interval during the time the plaintiff was using Propulsid. However, he cannot exculde other causes and cannot relate any cardiac problems arising out of the use of Propulsid. In fact, plaintiff's expert, Dr. William Shell reported that "this young woman has no apparent heart disease. There is no evidence of a prolonged QTc interval." (Expert Testimony Report of Dr. William Shell, attached as Exhibit C, Plaintiff's Opposition to Motion for Summary Judgment). Reed's only problems that Dr. Shell can attribute to Propulsid were diarrhea, abdominal pain, and an increased heart rate, and these symptoms pre-dated Propulsid's use as the Court has discussed

above.

Accordingly, for the foregoing reasons, IT IS ORDERED that the defendant's Motion for Summary Judgment be GRANTED. IT IS FURTHER ORDERED that the claims of plaintiff Samantha Reed be DISMISSED WITH PREJUDICE.

New Orleans, Louisiana this 17th day of February, 2003.

/s/ Eldon E. Fallon
UNITED STATES DISTRICT JUDGE