McGilvray v. Wyeth LLC et al Doc. 16

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

	:	**MDL DOCKET NO. 4:03-CV-1507-BRW**
IN RE:	:	
PREMPRO PRODUCTS LIABILITY	:	
LITIGATION	:	**ALL CASES**

ORDER

Pending are Defendants' Motions for Judgment on the Pleadings (Doc. Nos. 3082, 3087). Plaintiffs have responded[1] and Defendants have replied.[2] The parties presented oral argument at a July 20, 2012 hearing.[3]

Defendants, manufacturers of generic hormone replacement drugs, assert that *PLIVA, Inc. v. Mensing*,[4] preempts any strict liability failure to warn claim against Defendants. Additionally, Defendants contend that the reasoning in *Mensing* would foreclose any design defect claims. Plaintiffs disagree, and request that, at the very least, they be permitted to amend their complaints.

At this point, it seems to me that permitting the plaintiffs leave to amend their complaints is reasonable. Accordingly, the plaintiffs whose cases are listed in Exhibit A must amend their complaints within three weeks of the date of this Order -- this is plenty of time considering that the request to amend complaints should have been made months, if not years, ago.

After a cursory review of several of the complaints in these cases, it appears that many make only basic failure to warn claims and are devoid of the claims Plaintiffs' counsel posited at

---

[1]Doc. Nos. 3094, 3095.

[2]Doc. No. 3102.

[3]Doc. No. 3106.

[4]131 S. Ct. 2567 (2011).

Dockets.Justia.com

the July 20, 2012 hearing. If a plaintiff does not amend her complaint by the deadline, Defendants may refile their motion for judgment on the pleadings in the individual case. Word to the wise: If a plaintiff fails to amend her complaint, and Defendants again seek dismissal, it is unlikely that I will again allow the plaintiff leave to amend her complaint.

Additionally, each amended complaint must set out, in plenary detail, the factual basis for the plaintiff's claims. For example, if the plaintiff is asserting "off-label promotion," the complaint must set out sufficient facts to support this claim. In other words, the specific who, what, when, and where will be required (considering that Plaintiffs have been accumulating discovery against Defendants for nearly 10 years, this requirement is reasonable). Each plaintiff also will be required to show, with specificity, how she was directly affected by each Defendant's conduct. Generally claiming that Defendants practiced "off-label promotion" will be considered insufficient, and may result in dismissal of the case.

CONCLUSION

Based on the findings of fact and conclusions of law above, Defendants' Motions for Judgment on the Pleadings (Doc. Nos. 3082, 3087) are DENIED without prejudice. Plaintiffs are permitted to amend their individual complaints as set out above.

IT IS SO ORDERED this 11th day of September, 2012.

/s/ Billy Roy Wilson
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Scott, Patsy	3:07-CV-00147
Lund, Judy	4:04-CV-00717
Gallegos, Margaret	4:04-CV-00723
Mesojedec, Ann Marie	4:04-CV-00809
Brown, Nona	4:04-CV-00816
Glier, Nancy	4:04-CV-00899
Watson, Patricia	4:04-CV-00938
Jenkins, Linda	4:04-CV-00996
Lopez, Amada	4:04-CV-01068
Trinnaman, Mary	4:04-CV-01071
Alexander, Janet	4:04-CV-01223
Cheltra, Denise M.	4:04-CV-01294
Anderson, Darlene Kay	4:04-CV-01297
Barnard, Avis	4:04-CV-01308
Trommer, Edith	4:04-CV-01620
Kiss, Marie S.	4:04-CV-01863
Griggs, Esther R.	4:04-CV-01959
Tsubota, Elaine	4:04-CV-02212
Baker, Carol	4:04-CV-02256
Newman, Beverly	4:04-CV-02316
Clouser, Mary J.	4:05-CV-00075
Lawson, Barbara	4:05-CV-00077, 4:11-CV-00101
Lee, Darlene	4:05-CV-00146
Herman, Linda	4:05-CV-00167
Dye, Susan	4:05-CV-00195
Posey, Janelle	4:05-CV-00206
Palomo, Olivia	4:05-CV-00253
Indyk, Rebeca	4:05-CV-00380
McMurray, Elaine	4:05-CV-00382
Daly, Eleanor	4:05-CV-00396
Shareff, Karen	4:05-CV-00406
Weissmer, Willa	4:05-CV-00423
Mullikin, Virginia	4:05-CV-00427
Pannell, Deborah	4:05-CV-00498
Strickland, Sandra	4:05-CV-00530
Burbridge, Pat	4:05-CV-00544
Toomey, Janet	4:05-CV-00549
Andenoro, Janice	4:05-CV-00558
Paquin, Ethel	4:05-CV-00598; 4:08-CV-01833
Campbell, Delores	4:05-CV-00614

Thompson, Gaye	4:05-CV-00651
Nickle, Lovena	4:05-CV-00657
Spicer, Barbara A.	4:05-CV-00697
Cummings, Morene	4:05-CV-00798
McCormack, Nancy	4:05-CV-00800
Weaver, Mary Jo	4:05-CV-00810
Mason, Barbara	4:05-CV-00832
Amdur, Patricia	4:05-CV-00841
Wilkerson, Shirley	4:05-CV-00910
Shea, Kathryn	4:05-CV-00969
Higginbotham, Carla	4:05-CV-00974
Douglass, Barbara Louise	4:05-CV-01133
Nikolchev, Grigorina	4:05-CV-01245
Anderson, Irene	4:05-CV-01246
Schoenberg, Carol	4:05-CV-01248
Cain, Helen	4:05-CV-01366
Smith, Jo Ann	4:05-CV-01378
Byrd, Laura	4:05-CV-01402
Moisi, Rose	4:05-CV-01404
Anderson, Barbara	4:05-CV-01408
Bowling, Virginia	4:05-CV-01433
Roth, Laura	4:05-CV-01446
Steinert, Minnie	4:05-CV-01516
Beaver, Eula M.	4:05-CV-01573
Miller, Doris	4:05-CV-01575
Blanco, Mercedes G.	4:05-CV-01620
Perotti, Deborah	4:05-CV-01633
South, Mary	4:05-CV-01680
Clark, Sylvia E.	4:05-CV-01754
Keener, Norma	4:05-CV-01793
Kamsch, Carole	4:05-CV-01803
Vernon, Beverly	4:05-CV-01858
Moore, Barbara J.	4:05-CV-01866
Johnson, Deborah E.	4:05-CV-01896
Smith, Helga K.	4:05-CV-01909
Robertson, Darline J.	4:06-CV-00001
Quinn, Marjorie A.	4:06-CV-00050
Hinkle, Joy	4:06-CV-00079
Gorski, Virginia	4:06-CV-00110
Cantwell, Lynn	4:06-CV-00121

Giambrone, Patti H.	4:06-CV-00160
Engle, Connie	4:06-CV-00228
Merricks, Lillian P.	4:06-CV-00233
Wilson, Sharon	4:06-CV-00240
Ridgeway, Ann	4:06-CV-00294
Ford, Linda	4:06-CV-00384
Brooks, Marilyn	4:06-CV-00403
Dudley, Ann	4:06-CV-00430
Stark, Audrey A.	4:06-CV-00435
Baker, Jacqueline	4:06-CV-00441
Trautman, Janet	4:06-CV-00442
Plowman, Joyce	4:06-CV-00443
Bolton, Barbara	4:06-CV-00493
Norwood, Keith Hunter	4:06-CV-00517
Abbey, Francine	4:06-CV-00537
Pick, Roslyn	4:06-CV-00581
Broussard, Angela	4:06-CV-00636
Briscoe, Brenda Kaye	4:06-CV-00661
Guillot, Claudia	4:06-CV-00697
Barr, Rebecca	4:06-CV-00704
Mahoney, Julia	4:06-CV-00714
Moffett, Linda W.	4:06-CV-00722
Kell, Rayjeana	4:06-CV-00772
Naquin, Carol	4:06-CV-00784
Flint, Mary Jo	4:06-CV-00793
Thomas, Jo Anne	4:06-CV-00800
Goldberg, Marlene	4:06-CV-00821
Stepp, Onie Lorene	4:06-CV-00873
Calhoun, Sharon	4:06-CV-00878
Russell, Barbara	4:06-CV-00879
Pinkerton, Bertha L.	4:06-CV-00881
Lyons, Mary	4:06-CV-00916
Wright, Bertha Lee	4:06-CV-00938
Harrison, Carolyn	4:06-CV-00940
Rosenberry, Mary Verna	4:06-CV-00959
Durain, Wanda	4:06-CV-00988
Duncan, Arizona L.	4:06-CV-00993
Black, Karen A.	4:06-CV-01022
Goodman, Donna K.	4:06-CV-01048
Brownewell, Dorothy	4:06-CV-01049

White-Brown, Margaret D.	4:06-CV-01120
Wojcik, Rosemary S.	4:06-CV-01127
Cavaliere, Geraldine	4:06-CV-01165
Burton, Mary Lou	4:06-CV-01186
Richardson, Lucille	4:06-CV-01193
Willenbrock, Darylle D.	4:06-CV-01200
Campbell, Sylvia	4:06-CV-01219
Cagle, Theda	4:06-CV-01220
Campbell, Bonnie	4:06-CV-01222
Bradley, Mary	4:06-CV-01224
Fortner, Doris	4:06-CV-01252
Derefield, Pamela S.	4:06-CV-01260
Mallin, Beverly	4:06-CV-01282
Hinton, Sarah A.	4:06-CV-01324
Kinser, Frances	4:06-CV-01339
Clement, Joyce	4:06-CV-01345
Martin, Elizabeth A.	4:06-CV-01389
Bikos, Bonnie	4:06-CV-01392
Puzzuole, Margaret	4:06-CV-01398
Sponza, Regina	4:06-CV-01399
Hunter, Shirley A.	4:06-CV-01403
Kagay, Joyce	4:06-CV-01431
Anthony, Sandra	4:06-CV-01433
Zimmerman, Joyce	4:06-CV-01438
Johnson, Sherry	4:06-CV-01443
Neubarth, Marie	4:06-CV-01455
Frank, Francis, Jr.	4:06-CV-01474
Roseman, Charlotte	4:06-CV-01488
Rosenbloom, Susan	4:06-CV-01502
Balis, Nancy A.	4:06-CV-01506
Schultz, Marilyn	4:06-CV-01516
Morgan, Alice	4:06-CV-01555
Sayers, Marjorie	4:06-CV-01564
Koch, Dorothy J.	4:06-CV-01617
Orgel, Lynne	4:06-CV-01645
Chambers, Zona	4:06-CV-01650
Rittenberry, Linda	4:06-CV-01679
Burbach, Julaine	4:06-CV-01696
Tipton, Janice	4:06-CV-01700
Hagstrand, Janet L.	4:06-CV-01712

Prickett, Judy C.	4:07-CV-00090
Strickland, Anne J.	4:07-CV-00093
Williams, Sharon J.	4:07-CV-00095
Kidd, Judith R.	4:07-CV-00100
Simpson, Arleane	4:07-CV-00126
McKnight, Marilyn	4:07-CV-00156
Battiste, Thelma	4:07-CV-00189
Lonsiak, Kathleen	4:07-CV-00211
Regan, Peggy	4:07-CV-00232
Spangler, Edith	4:07-CV-00251
Payne, Patricia Ann	4:07-CV-00321
Lopez, Melissa	4:07-CV-00323
Anderson, Carolyn	4:07-CV-00332
Snyder, Debbie	4:07-CV-00340
Tangman, Frances	4:07-CV-00419
Williams, Christine S.	4:07-CV-00427
McCune, Lavon	4:07-CV-00430
Kota, Miriam	4:07-CV-00467
Nussbaum, Gale	4:07-CV-00469
Harding, Joann D.	4:07-CV-00478
Dale, Jane R.	4:07-CV-00558
Kirschstein, Janet	4:07-CV-00653
McMichael, Linda	4:07-CV-00655
Irwin, Vivian	4:07-CV-00731
Stolbun, Judith Greer	4:07-CV-00816
Mills, Stanley	4:07-CV-00884
Scott, Toni	4:07-CV-01078
Turner, Mildred	4:08-CV-00035
Miller, Joan P.	4:08-CV-00062
Payne, Patty	4:08-CV-00185
Johnson, Eloise	4:08-CV-00290
Kielty, Cheryl	4:08-CV-00402
Smylie, Carol	4:08-CV-00443
Okon, Marilyn	4:08-CV-00462
Jewell, Paula	4:08-CV-00617
Draper, Helen	4:08-CV-00699
Amador, Silvia	4:08-CV-00779
Barnes, Marita A.	4:08-CV-00864
Chen, Margaret L.	4:08-CV-01268
Archbold, Sharon	4:08-CV-01288

Fisher, Terri L.	4:08-CV-01393
Peterson, Sandra	4:08-CV-01687
Shanle, Sheila	4:08-CV-01793
Reddy, Jeanne Marie	4:08-CV-01811
Redman, Virginia	4:08-CV-01816
Weaver, Brenda	4:08-CV-01848
Nichols, Linda	4:08-CV-01856
Costa, Frances	4:08-CV-01860
Shuckhart, Mary	4:08-CV-01876
Weaver, Rise L.	4:08-CV-01999
Blaisdell, Norman	4:08-CV-02116
Marshall, Valerie A.	4:08-CV-02188
Weaver, Rita	4:08-CV-02313
Kropf, Karen Leanne	4:08-CV-02314
McCarthy, Cynthia	4:08-CV-02388
Cook, Carol L.	4:08-CV-02413
Jenkins, Gwendolyn	4:08-CV-02514
Barnett, Jacklynn	4:08-CV-02695
Sands, Joyce	4:08-CV-02745
Geiser, Dorothy	4:08-CV-02787
Schlenk, Lois	4:08-CV-02796
Estell, Shirley	4:08-CV-03119
Reed, Mae Frances	4:08-CV-03121; 4:09-cv-00132
Bumpas, Vickie E.	4:08-CV-03167
Johann, Apollonia	4:08-CV-03178
Beaver, Donna	4:08-CV-03204
McLain, Judy	4:08-CV-03207
Haupert, Karen	4:08-CV-03211
Weinfurtner, Carol	4:08-CV-03213
Kaiser, Barbara J.	4:08-CV-03237
Crestelle, Carole	4:08-CV-03333
Jones, Sharon Lee	4:08-CV-03338
Hill, Jeanne	4:08-CV-03339
Kurinko, Ann Marie	4:08-CV-03340
Blattl, Kurt	4:08-CV-03358
Hicks, Mary E.	4:08-CV-03523
Woods, Dorothy	4:08-CV-03548
Finn, Kathleen	4:08-CV-03560
Morgan, Nancy	4:08-CV-03572
Alvarran, Bonnie	4:08-CV-03631

Sanford, Glenda	4:08-CV-03671
Burton, Sharon	4:08-CV-03677
Carter, Linda	4:08-CV-03690
Hennin, Pat	4:08-CV-03699
Cornell, Nancy	4:08-CV-03723
Goodman, Lorraine	4:08-CV-03777
Humphreys, Nancy	4:08-CV-03833
Mayo, Mary	4:08-CV-03905
Roy, Thelma	4:08-CV-03913
Saunders, Doris	4:08-CV-03923
Scarbro, Frances	4:08-CV-03927
Scott, Minnie	4:08-CV-03932
Mitchell, Iva	4:08-CV-03985
Utt, Brenda	4:08-CV-04017
Poe, Sharon	4:08-CV-04087
Midili, Denise	4:09-CV-00059
Huff, Beverly C.	4:09-CV-00103
Frambs, Geraldyne	4:09-CV-00741
Mackiewicz, Kerma	4:09-CV-00748
Whatley, Ernest Joe	4:10-CV-00128
Cox, Marsha	4:10-CV-00285
Turk, Jean	4:10-CV-00291
Banks, Linda	4:10-CV-00350
Steele, Carolyn	4:10-CV-00370
Bledsoe, Shirley	4:10-CV-00421
Plain, Diane	4:10-CV-00435
Langren, Roberta	4:10-CV-00438
Knutson, Linda	4:10-CV-00457
Slaton, Mary	4:10-CV-00461
Baker, Mary	4:10-CV-00464
Green, Kenneth	4:10-CV-00465
Hart, Marlene	4:10-CV-00475
Evosevich, Felecisima	4:10-CV-00478
Walton, Doris	4:10-CV-00505
Geneve, Barbara	4:10-CV-00542
Williams, Lucille	4:10-CV-00569
Hansmann, Kathleen	4:10-CV-00578
Lopez, Delfina	4:10-CV-00587
Kerns, Margie	4:10-CV-00600
Krcmarik, Janet	4:10-CV-00601

Oberg, Jeanne	4:10-CV-00602
Sargent, Patricia	4:10-CV-00605
Walther, Rose	4:10-CV-00609
Sundall, Kathleen	4:10-CV-00611
Ely, Carol	4:10-CV-00619
Vincent, Sandra	4:10-CV-00620
Lindsay, Helen	4:10-CV-00626
Winfield, Cynthia	4:10-CV-00629
Mehr, Jeanette	4:10-CV-00632
Erickson, Roberta	4:10-CV-00649
Wilson, Evie	4:10-CV-00656
Foster, Thressa	4:10-CV-00669
Garcia, Gloria	4:10-CV-00681
Genco, Lucille	4:10-CV-00682
Ferguson, Sandra	4:10-CV-00683
Bell, Greg	4:10-CV-00685
Clausen, Lois	4:10-CV-00687
McGilvray, Anne	4:10-CV-00782
King, Marilyn	4:10-CV-00792
Grossman, Herbert	4:10-CV-00797
Cox, Carolyn	4:10-CV-00798
Hagle, Irene	4:10-CV-00805
Swanson, Mary	4:10-CV-00813
Johnson, Barbara	4:10-CV-00817
Fornberg, Loretta	4:10-CV-00818
Kirchhoff, Rose	4:10-CV-00823
Holden, Kathleen	4:10-CV-00827
Cassidy, Theresa	4:10-CV-00828
Sivils, Sharon	4:10-CV-00830
Tallent, Patricia	4:10-CV-00839
Beedle, Joyce	4:10-CV-00842
Bolster, Sharon	4:10-CV-00846
Allgood, Tanya	4:10-CV-00848
Sedwick, Mary	4:10-CV-00871
Wille, Lois	4:10-CV-00886
Brandt, Judith	4:10-CV-00890
Gouge, Delores	4:10-CV-00891
Jacquemart, Sharron	4:10-CV-00912
Bussart, Norma	4:10-CV-00921
Moore, John	4:10-CV-00922

Meranto, Oneida	4:10-CV-00923
Fields, Dorothy	4:10-CV-00926
Gordon, Sharon	4:10-CV-00933
Wood, Ann M.	4:10-CV-00935
Mangan, Beverly	4:10-CV-00941
Provasnik, Judith	4:10-CV-00955
Anglin, Linda	4:10-CV-00988
Dahlman, Emma Louise	4:10-CV-00989
Weddle, Georganne	4:10-CV-00992
Raatz, Dixie	4:10-CV-01018
Marcus, Sandra	4:10-CV-01021
Beylen, Joan	4:10-CV-01029
Contreras, Sandra	4:10-CV-01030
Howard, Carolyn	4:10-CV-01034
Stanionis, Lee	4:10-CV-01035
Gilmore, Sheila	4:10-CV-01039
Crane, Livia Salazar	4:10-CV-01040
Sherril, Janie	4:10-CV-01041
Grossman, Shirley	4:10-CV-01042
Meiller, Jean	4:10-CV-01046
Sain, Sudarshain	4:10-CV-01060
Struckmann, Jean A.	4:10-CV-01061
Knobel-Besa, Penny	4:10-CV-01063
Dasen, Paula	4:10-CV-01080
Denney, Marge	4:10-CV-01212
Guerra, Rosemary	4:10-CV-01214
Owen, Joyce	4:10-CV-01236
Wynkoop, Joanne	4:10-CV-01239
Martin, Rose	4:10-CV-01241
Owens, Evelyn	4:10-CV-01267
Mosely, Patty Ann	4:10-CV-01272
Thomas, Sharon	4:10-CV-01286
Trout, Geraldine	4:10-CV-01289
Onody, Marilyn	4:10-CV-01298
Krueger, Ruth	4:10-CV-01306
Friedberg, Carolyn	4:10-CV-01313
DeBell, Alma	4:10-CV-01317
Miner, Nola Jean	4:10-CV-01324
Facer, Kelleen	4:10-CV-01347
Funk, Judith	4:10-CV-01351

Zand, Tabandeh	4:10-CV-01360
Peterson, Darlene	4:10-CV-01363
Unlandt, Leena	4:10-CV-01428
Hudman, Dorothy M.	4:10-CV-01576
Williams, Mary Ann	4:10-CV-01583
Lininger, Linda	4:10-CV-01617
Polk, Geneva	4:10-CV-01618
Nichols, Ginger G.	4:10-CV-01620
Ryan, Faye	4:10-CV-01625
Rackle, Karen	4:10-CV-01627
Robbins, Ruby	4:10-CV-01676
Pitsinger, Muriel	4:10-CV-01701
Gattis, Melissa	4:10-CV-02020
Weber, Jane S.	4:10-CV-02049
Belnap, Gary	4:10-CV-02074
Westerfield, Arlene	4:10-CV-02081
Boles, Dorothy	4:11-CV-00096
Eden, Barbara	4:11-CV-00097
Grobstein, Elaine	4:11-CV-00098
Hruska, Judith	4:11-CV-00100
Clark, Charlotte A.	4:11-CV-00109
Johnson, Carole	4:11-CV-00110
Weiford, Marjorie	4:11-CV-00111
Fields, Jo Ann	4:11-CV-00113
Monroe, Rosie	4:11-CV-00131
Terry, Carol Jane	4:11-CV-00132
Whatley, Dolores	4:11-CV-00203
Weymouth, Genevieve	4:11-CV-00293
Mari, Linda	4:11-CV-00322
Riegle, Virginia A.	4:11-CV-00787
Cline, Carolyn	4:12-CV-00340