

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior Judge Walker D. Miller

Civil Action No. 11-cv-00202-WDM-CBS

JANET POMMREHN,

Plaintiff,

v.

WRIGHT MEDICAL TECHNOLOGY, INC.,  
a Delaware corporation; and  
WRIGHT MEDICAL GROUP, INC.,  
a Delaware corporation,

Defendants.

---

**ORDER DENYING MOTION TO DISMISS AS MOOT**

---

Miller, J.

This case is before me on the Motion to Dismiss, filed April 25, 2011, by defendants Wright Medical Technology, Inc. and Wright Medical Group, Inc. (ECF No. 4). Plaintiff Janet Pommrehn filed a response to the motion to dismiss on May 12, 2011, and, on May 13, 2011, filed an Amended Complaint which Defendants answered on May 26, 2011.

In the motion to dismiss, Defendants argued that Plaintiff's claims for strict liability and negligence are barred by the statute of limitations, that Plaintiff failed to adequately plead her claim for breach of the implied warranty of fitness for a particular purpose, and that Plaintiff failed to state a claim for fraud, malice, or willful and wanton conduct. Brief in Support of Motion to Dismiss (ECF No. 5). Plaintiff's Amended Complaint removes the claims for implied warranty of fitness of a particular purpose and fraud, malice, or willful and wanton conduct, thus mooting the motion to dismiss those claims.

In her response to the motion to dismiss, Plaintiff explains her theory of calculating when her claims of strict liability and negligence arose for purposes of the relevant statutes of limitations. Additionally, in her Amended Complaint, Plaintiff includes allegations that she has met the statutes of limitations for her remaining claims. Defendants answered the Amended Complaint and simply denied the allegations on the statute of limitations issue. I conclude that, by this denial and by choosing to answer rather than to refile the motion to dismiss, Defendants are proceeding on the merits of Plaintiff's claims.

Accordingly, it is ordered:

Defendants' Motion to Dismiss, filed April 25, 2011 (ECF No. 4), is denied as moot.

DATED at Denver, Colorado, on May 31, 2011.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Walker D. Miller", is written over the text "BY THE COURT:". The signature is fluid and cursive.

s/ Walker D. Miller  
United States District Judge