

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

JACOB GUILLIOT, ET AL.

CIVIL ACTION

VERSUS

NO: 02-3373

AVENTIS PASTEUR, INC., ET AL.

SECTION: "S" (5)

ORDER AND REASONS

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment filed by Eli Lilly and Company, American International Chemical, Inc., and Spectrum Laboratory Products, Inc. (Doc. #94) is **GRANTED**, and plaintiffs' claims against them are **DISMISSED WITH PREJUDICE**.

Plaintiffs, Dale and Angel Guillot, filed this action against several vaccine manufacturers and Thimerosal manufacturers claiming that the mercury-based preservative, Thimerosal, found in some vaccines caused their son to suffer brain damage. In their complaint, they specifically reference seven vaccines that were administered to the child in 1998. This court previously dismissed plaintiffs' claims against the vaccine manufacturers, and plaintiffs' only remaining claims are failure to warn claims brought under the Louisiana Products Liability Act against the Thimerosal manufacturer defendants. Under the LPLA, a plaintiff cannot recover against a manufacturer if the manufacturer did not produce the offending product. Demahy v. Schwarz Pharma., Inc., 702 F.3d 177, 182 (5th Cir. 2012).

The Thimerosal manufacturer defendants' motion for summary judgment argues that they cannot be held liable for failure to warn under the LPLA because they can prove that they did not produce the Thimerosal in the seven vaccines listed in the complaint. These defendants presented to the vaccine manufacturers the batch numbers for the vaccines administered to the child, and ask where the Thimerosal in those batches was obtained. The vaccine manufacturers' records indicate

that none of the Thimerosal manufacturer defendants sold to the vaccine manufactures the Thimerosal that was used in the batches of the vaccines that the child received. Plaintiffs' opposition does not dispute the defendants' evidence, nor does it offer any evidence that the Thimerosal manufacturer defendants produced the Thimerosal that was in the vaccines listed in the complaint. Thus, plaintiffs cannot prevail on their LPLA claim, and the motion for summary judgment is GRANTED. See Demah, 702 F.3d at 182.

New Orleans, Louisiana, this 3rd day of November, 2014.


MARY ANN VIAL LEMMON
UNITED STATES DISTRICT JUDGE