

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

GLEND A MCCOY, ET AL.

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v.

Case No. 4:09cv496
(Judge Schneider/Judge Mazzant)

PFIZER, INC., ET AL.

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On March 2, 2011, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants’ Renewed Motion for Partial Summary Judgment as to Survival Claims Based on Lack of Capacity should be granted in part and denied in part.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, this Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge’s report as the findings and conclusions of the Court.

It is, therefore, **ORDERED** that Defendants’ Renewed Motion for Partial Summary Judgment as to Survival Claims Based on Lack of Capacity (Dkt. #54) is DENIED.

Plaintiffs shall have thirty (30) days to obtain the consent of all of the heirs at law of Micayla or Dylan. If the McCoy s cannot obtain the consent of the heirs, then these claims should be dismissed for lack of capacity. Plaintiffs shall notify the Court at the end of the thirty (30) days whether consent has been obtained by all of the heirs at law.

The Court finds that Defendants' motion is DENIED as to whether the McCoys lack the capacity to sue on behalf of the estate of Andrea.

It is SO ORDERED.

SIGNED this 29th day of March, 2011.

A handwritten signature in black ink, reading "Michael H. Schneider", written over a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE