UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: MIRAPEX PRODUCTS LIABILITY LITIGATION	MDL No. 07-1836 (MJD/FLN)
KATHRYN GILLETTE and RAIF SZCZEPANSKI Plaintiffs, v. BOEHRINGER INGELHEIM PHARMACEUTICALS, INC., PFIZER INC., PHARMACIA CORPORATION, and PHARMACIA & UPJOHN LLC, Defendants.	Civil No. 15-CV-3005 (MJD/FLN) **MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS PFIZER INC., PHARMACIA CORPORATION AND PHARMACIA & UPJOHN LLC'S MOTION FOR SUMMARY JUDGMENT**

Pfizer Inc., Pharmacia Corporation and Pharmacia & Upjohn LLC (collectively "Pfizer") submit this memorandum in support of their Motion for Summary Judgment in the captioned complaint. Plaintiffs allege that Plaintiff Gillette suffered injury as a result of taking the pharmaceutical Mirapex; in particular, plaintiffs allege that Gillette's compulsive gambling began only after her physician *increased* the dosage of Mirapex in April 2010. *See* Amended Complaint ¶21-22.

Because Ms. Gillette's pharmacy records demonstrate that beginning at least by April 2010, and for all times that she alleges she suffered from compulsive gambling, she only took generic pramipexole, and not the branded product Mirapex, Pfizer joins in the motion for summary judgment concurrently filed by co-defendant Boehringer Ingelheim Pharmaceuticals Inc. ("BIPI").

Pfizer here moves for summary judgment on the additional ground that after January 1, 2004, Pfizer had no ownership of, and no responsibility for, the Mirapex NDA. Thus, even if Indiana were to recognize a claim against the brand-name manufacturer where plaintiff has ingested only the generic product – which it does not - there is no viable claim against Pfizer.

FACTUAL BACKGROUND

The Federal Food & Drug Administration ("FDA") approved the New Drug Application ("NDA") for Mirapex on July 1, 1997. *See* Declaration of Seema Divan ("Divan Decl.") at ¶2. While the NDA was initially submitted to FDA by The Upjohn Company, through a series of mergers and acquisitions, Pfizer later assumed responsibility for the NDA. *Id.* As of January 1, 2004, Pfizer transferred the NDA for Mirapex to BIPI. *Id.* at ¶3. After that date, Pfizer no longer sold any branded Mirapex, and no longer maintained any responsibility for the Mirapex NDA. *Id.*

Plaintiff Gillette alleges that she was prescribed Mirapex beginning in 2001 for the treatment of restless leg syndrome. Amended Complaint ¶20. As set forth in BIPI's motion for summary judgment, it was only after Gillette's physician increased the dosage of the medication in April 2010 that she began suffering symptoms of compulsive gambling. According to the NDC codes reflected in Gillette's pharmacy records beginning in 2010 – represented to be the only pharmacy records available – all of Gillette's prescriptions by that time were filled with generic pramipexole dihydrochloride, not with branded Mirapex. *See* Declaration of James Segretario (submitted in support of BIPI motion), ¶ 4. The NDC numbers listed are not numbers used by Pfizer for distribution of Mirapex or generic pramipexole dihydrochloride. Divan Decl. ¶4.

ARGUMENT

The vast majority of courts across the country have recognized that a brand manufacturer of a prescription product cannot be held liable to a consumer unless that consumer actually used the brand manufacturer's product. *In re Darvocet, Darvon, and Propoxyphene Products Liability Litigation*, 756 F.3d 917, 936-37 (6th Cir. 2014). As reflected in BIPI's motion for summary judgment, Indiana law is consistent with the majority holding on this point. Because Pfizer did not manufacture or sell any of the product that allegedly caused her injury, Pfizer joins in the motion filed by BIPI.

Pfizer is even further removed from the potential line of liability, as it was not the brand name manufacturer during the time period Gillette suffered her alleged injuries. In those minority of cases that permit claims against brand name manufacturers, the courts have based the decision on the potential for the prescribing physician to rely on the brand name product labeling when writing the prescription, even if the prescription was ultimately filled with a generic. *In re Darvocet*, 756 F.3d at 936-37; *see also Kellogg v. Wyeth, Inc.*, 762 F.Supp.2d 694 (D. Vt. 2010) ("reasonably foreseeable that a physician will rely upon a brand name manufacturer's representations—or the absence of representations—about the risk of side effects of its drug, when deciding to prescribe the drug for a patient, regardless of whether the pharmacist fills the prescription with a generic form of the drug"); *Conte v. Wyeth, Inc.*, 85 Cal.Rptr.3d 299, 311 (Cal. App. 2008) (manufacturer "that authors and disseminates information about a product manufactured and sold by another may be liable for negligent misrepresentation where the defendant should reasonably expect others to rely on that information and the product causes injury.").

Here, however, because Pfizer no longer had control of the NDA, it no longer disseminated information about, and indeed had no ability to update labeling for, Mirapex. Thus, under any potential theory, Pfizer owed no duty to plaintiff or to her physicians and therefore cannot be held liable for any injuries allegedly suffered after January 1, 2004. Because Gillette's alleged compulsive behavior began in 2010 – six years after Pfizer transferred the NDA to BIPI – Pfizer cannot be held liable here.

CONCLUSION

For all of the reasons set forth in BIPI's motion for summary judgment and above, Pfizer is entitled to summary judgment in this case.

Dated: March 1, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via first-class mail this 1st day of March, 2016, to the following:

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Pro Se Plaintiffs

I certify that on March 1st, 2016, a copy of the foregoing was served electronically on counsel of record for all parties through the Court's CM/ECF system.

Dated: March 1, 2016

Lori B. Leskin
Counsel for Pfizer Inc.