

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

IN RE: PROPULSID	:	MDL NO. 1355
PRODUCTS LIABILITY LITIGATION	:	SECTION "L"
	:	
	:	JUDGE FALLON
.....	:	

THIS DOCUMENT RELATES TO THE FOLLOWING CASES:

**Civil Action No. 00-2577, and only on behalf of
Plaintiff Patricia L. Deiz, wife of and on behalf of
Richard Diez, Richard Diez, Jr., and Marc J. Diez**

ORDER & REASONS

Before the Court is the Defendants' Motion for Partial Summary Judgment Dismissing Composition, Express Warranty, and Design Claims. For the following reasons, the Court GRANTS the motion as it relates to the express warranty and composition claims, and RESERVES ruling on the design claims.

BACKGROUND

Plaintiff Diez seeks damages for the wrongful death of her husband resulting from treatment with Propulsid. The plaintiff's case has been scheduled for trial before this Court, and the defendants have moved for partial summary judgment on three of the four exclusive theories of liability under the Louisiana Products Liability Act ("LPLA"), LA. REV. STAT. ann. § 9:2800.51-.60.

ANALYSIS

The LPLA provides the exclusive method of recovery against the manufacturer of "unreasonably dangerous" products. *Id.* 2800.52. A plaintiff may prove that a product is unreasonably dangerous in one of four ways: (1) construction or composition; (2) design; (3) failure to provide an adequate warning; and (4) failure to conform to the manufacturer's express warranty. *Id.* 2800.52(B). In this case, the parties do not dispute that the plaintiffs have a valid theory of recovery on the warning theory. Similarly, there is no dispute that the plaintiffs do not have a theory of recovery under the construction or composition or express warranty prongs of the LPLA. Accordingly, summary judgment pursuant to Federal Rule of Civil Procedure 56 is appropriate as to those claims. The parties do dispute, however, whether a plaintiff may recover for a design defect in a prescription drug under the LPLA. The defendants' motion is currently under review by the Court, and the Court will reserve ruling on that issue until a later time.

Trial on the plaintiff's design and warnings claims is scheduled to commence before this Court on Monday, March 17, 2003. Rule 42(b) of the Federal Rules of Civil Procedure provides that this Court may "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim ... or of any separate issue." The Court finds that separate trials of the warnings and design claims meet these criteria of Rule 42. Accordingly, the Court will SEVER the design and warnings claims and will proceed to trial on the warnings claim. Trial on this issue shall begin on Monday, March 17, 2003.

CONCLUSION

For the foregoing reasons, the Court GRANTS IN PART the defendants' Motion for Partial

Summary Judgment only as to the construction/ composition and warranty claims against the defendants under the LPLA. The Court will RESERVE RULING on the issue of design defect. Further, the Court will SEVER the warnings theory from the design theory and proceed to trial on the former on March 17, 2003.

New Orleans, Louisiana this 11th day of March, 2003

/s Eldon E. Fallon
UNITED STATES DISTRICT JUDGE