are all the more sensible given the sweeping changes occasioned in 2010 by the Affordable Care Act.[26]

V. The Affordable Care Act Impacts the Rule

Under the Affordable Care Act, individuals must purchase health insurance or be taxed for failing to do so. As health insurance is extended to all citizens, payment for medical expenses by an insurer will become the exclusive method of billing and paying for health care.[27] Virtually every claim for medical expense damages will have been paid by a collateral source.[28] Logically, these payments must be reasonable since they are the only source of payment.

VI. Future Medical Expenses and Collateral Source Evidence

If the amount a provider expects as reimbursement is admissible to show the reasonableness of past medical expenses, then it should likewise be admissible as to future medical expenses.[29] Introduction of such evidence would be especially important in catastrophic injury cases. The evidence could be used to challenge not only the reasonableness of future life care plans but also the reliability of the expert testimony that supports them.

VII. Conclusion

Mississippi defendants are entitled to rebut the reasonableness and necessity of plaintiff's medical bills by "proper evidence."[30] In *Toccara Williams,* the Mississippi Supreme Court indicated that "proper evidence" includes the amount health care providers expect to receive from Medicare, Medicaid, and private insurance for services.

To develop this proof, defendants should consider serving plaintiff's health care provider with a subpoena for documents and testimony. The information sought might include: (1) an itemized invoice showing all services and charges rendered plaintiff; (2) all adjustments to the charges reflected in the itemized invoice; (3) all reimbursement received from or on behalf of plaintiff; (4) the reasonable amount of reimbursement the provider expects to receive in consideration for the services rendered plaintiff; (5) the reasonable and customary reimbursement the provider expects from Medicare, Medicaid, private insurance and self-pay patients for the same services provided plaintiff; (6) whether the provider ever receives payment of the full Charge Master amount; and (7) the reimbursement to charge ratio for services at issue. Armed with this evidence, defendants may succeed in deflating bloated claims for medical expenses. ■

[26] The manner in which we pay for health care has changed dramatically since Mississippi adopted the collateral source rule in 1951. Medicare and Medicaid did not exist until the Social Security Amendments of 1965. By some accounts, insurers today generally pay forty cents on the dollar and hospitals accept this amount in full satisfaction of billed medical charges. *Stanley v. Walker*, 906 N.E. 2d 852, 857 (Ind. 2009). Critics of the rule argue that the doctrine is outdated and "no longer appropriate in the age of insurance, managed care and public benefit programs." Wershbale, *supra* note 4, at 357. The 2010 Affordable Care Act amplifies this criticism.

[27] Benjamin A. Geslison & Kevin T. Jacobs, *The Collateral Source Rule and Medical Expenses: Anticipated Effects of the Affordable Care Act and Recent State Case Law on Damages in Personal Injury Lawsuits*, 80 DEF. COUNS. J. 239, 248 (July 2013).

[28] *Id.*

[29] *Id.*

[30] *Estate of Bolden v. Williams*, 17 So. 3d 1069, 1072 (Miss. 2009).

Alabama No Longer an Outlier State: Legislature Says "No" To Innovator Liability

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I. Introduction

Since the United States Supreme Court's decision in *Pliva, Inc. v. Mensing,*[1] the plaintiffs' bar has been feverishly searching for an alternate theory of recovery to raise when the claimant at issue took a generic prescription drug. One of those alternate theories is "innovator liability," which posits that the brand manufacturer should be liable for injuries caused by the generic equivalent of a brand-name drug even if the claimant did not ingest the brand manufacturer's product. Plaintiffs rationalize that because the FDA requires the generic manufacturer to copy the brand's label and warnings, the brand manufacturer should be liable.

The innovator theory contravenes a principal foundation of product liability law: that a manufacturer is not liable for injuries resulting from use of another manufacturer's product. Indeed, the logic is undeniable—if a manufacturer did not make the product, it cannot be liable for damages allegedly caused by its use.

In the context of pharmaceutical litigation, this foundational

[1] *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567, *reh'g denied*, 132 S. Ct. 55 (2011).

rule was set forth in *Foster v. American Home Products,*[2] which required product identification—a direct evidentiary link between the allegedly harmful product and the allegedly liable defendant-manufacturer.[3] The *Foster* court reasoned that making brand-name drug manufacturers liable for generic manufacturers' activities was unfair and impermissibly stretched the boundaries of legal foreseeability in product liability law.[4]

Nonetheless, this established body of law took a step backwards with the first mention of innovator liability in *Conte v. Wyeth, Inc.*[5] In *Conte,* the court concluded that *Foster*'s analysis was flawed because it did not consider concurrent liability, rationalizing that it was reasonable to require brand-name manufacturers to put correct information on their labels or be held liable for its failure to warn.[6] The *Conte* court held that it would not protect the brand-name manufacturer from foreseeable injuries caused by its allegedly inadequate warnings that the generic manufacturers are required to replicate.[7]

In addition to California, Alabama and Vermont are the only other jurisdictions to apply the innovator liability theory to hold a brand-name manufacturer liable for misstatement or omission for an injury caused by a generic drug manufactured by a different company.[8] However, Alabama recently took swift action to curtail the potential Pandora's Box of litigation created by the *Wyeth v. Weeks* decision. In doing so, the Alabama legislature reduced the number of innovator liability states to just two, a considerable minority to the number of states addressing the issue and holding otherwise.[9]

II. *Weeks*: The "Worst Prescription Drug/Medical Device Decision of 2014"

In Butler Snow's September 2013 Pro Te article "What Do California, Vermont, and Alabama Have In Common?"[10] we reported on what had been deemed by some commentators' as the "worst prescription drug/medical device decision of 2014."[11] To recap, in *Wyeth, Inc. v. Weeks*, the Alabama Supreme Court allowed a plaintiff claiming injury from a generic product to maintain a misrepresentation claim against the brand manufacturer. The original *Weeks* decision garnered widespread negative press, thus causing the Alabama Supreme Court to reconsider its original opinion, *en banc*.

At rehearing, Wyeth argued—supported by the majority of states—that it had no relationship with the Weeks plaintiffs and, thus, it owed them no duty to warn. However, the Alabama Supreme Court emphatically rejected this notion and admonished Wyeth's argument, holding:

> Wyeth's argument completely ignores the nature of prescription medication. The Weekses cannot obtain Reglan or any other prescription medication directly from a prescription-drug manufacturer. The only way for a consumer to obtain a prescription medication is for a physician or other medical professional authorized to write prescriptions (i.e. a learned intermediary) to prescribe the medication to his or her patient.
> ....
>
> When the warning to the prescribing health-care professional is inadequate, however, the manufacturer is directly liable to the patient for damage resulting from that failure.[12]

Although one would think—as the majority of states have previously held—that the above rationale would prevent brand-name manufacturer liability in the case of generic ingestion, the Supreme Court rejected such a conclusion, rationalizing:

> The substitution of a generic drug for its brand-name equivalent is not fatal to the Weekses' claim because the Weeks are not claiming that the drug Danny ingested was defective; instead, the Weekses' claim is that Wyeth fraudulently misrepresented or suppressed information concerning the way the drug was to be taken and, as discussed, the FDA mandates that the warning on a generic-drug label be the same as the warning on the brand-name-drug label and only the brand-name manufacturer may make unilateral changes to the label.[13]

The Alabama Supreme Court again relied heavily on the United States Supreme Court's holding in *Mensing*, noting that "the Supreme Court in PLIVA held that it would have been impossible for the generic manufacturers to change their warning labels without violating the federal requirement that the warning on the generic drug must match the warning on the brand-name version, preempting failure-to-warn claims against generic manufacturers."[14] The *Weeks* Court thus emphasized the FDA's role in drug labeling and restrictions placed upon generic manufacturers, remarking that "FDA regulations require that a generic manufacturer's labeling for a prescription drug be exactly the same as the brand-name manufacturer's labeling."[15] In further justification of its holding, the Alabama Supreme Court stated:

> it is not fundamentally unfair to hold the brand-name manufacturer liable for warnings on a product it did not

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[2] 29 F. 3d 165 (4th Cir. 1994).
[3] *Id.*
[4] *Id.* at 170-71.
[5] 168 Cal. App. 4th 89 (2008).
[6] *Id.* at 109.
[7] *Id.* at 110.
[8] *Wyeth, Inc. v. Weeks*, 2013 Ala. Lexis 2, *59 (Ala. Jan. 17, 2013); *Kellogg v. Wyeth*, 762 F. Supp. 2d 694 (D. Vt. 2010).
[9] At the end of this article is an appendix listing 102 judicial decisions, applying the law of 30 states, holding that a brand-name drug manufacturer is **not** liable for injuries caused by a competitor's generic equivalent.
[10] "What Do California, Vermont, and Alabama Have In Common?" *Pro Te: Solutio*, Vol. 6 No. 3 (September 2013).
[11] *Thumbs Down—The Worst Prescription Drug/Medical Device Decisions of 2014*, Drug and Device Law Blog (Dec. 24, 2014, 8:00 AM), http://druganddevicelaw.blogspot.com/2014/12/thumbs-down-worst-prescription.html.
[12] *Weeks*, 159 So. 3d at 673-674.
[13] *Id.* at 674.
[14] *Id.* at 677.
[15] *Id.*

produce because the manufacturing process is irrelevant to misrepresentation theories based, not on manufacturing defects in the product itself, but on information and warning deficiencies, when those alleged misrepresentations were drafted by the brand-name manufacturer and merely repeated, as allowed by the FDA, by the generic manufacturer.[16]

Justice Parker, relying on Justice Murdock's 2013 dissent in *Weeks*, stressed the potentially grave consequences of the court's dissolution of bedrock legal principles of duty and privity, noting:

> [n]othing in federal legislation or regulations at issue here requires this Court to ignore, modify, override our bedrock legal principles of duty and privity with regard to the originator of a pharmaceutical drug and a consumer who has not consumed a drug manufactured by the originator of the drug.[17]

The United States Supreme Court noted that while a consumer may be left without a remedy absent a legislative change, "it is not this Court's task to decide whether the statutory scheme established by Congress is unusual or even bizarre."[18]

III. The Alabama Legislature to the Rescue

Despite the Alabama Supreme Court's refusal to alter the *Weeks* decision, innovator liability will not stand in the State of Alabama. Less than one year after *Weeks*, the Alabama Legislature passed Act No. 2015-106 (S.B. 80), effectively abolishing innovator liability in the State of Alabama. Originally introduced in the Alabama Senate, Act No. 2015-106 passed the Alabama House of Representatives on April 28, 2015. With Governor Robert Bentley signing the bill into law on May 1, 2015, Act No. 2015-106 returned Alabama to the majority of states disallowing innovator liability in cases involving generic ingestion.

The statute, which took effect November 1, 2015 and has been codified at Alabama Code Section 6-5-530, states in pertinent part:

> Section 1. In any civil action for personal injury, death, or property damage caused by a product, regardless of the type of claims alleged or the theory of liability asserted, the *plaintiff must prove, among other elements, that the defendant designed, manufactured, sold, or leased the particular product the use of which is alleged to have caused the injury on which the claim is based, and not a similar or equivalent product*. Designers, manufacturers, sellers, or lessors of products not identified as having been used, ingested, or encountered by an allegedly injured party may not be held liable for any alleged injury. A person, firm, corporation, association, partnership, or other legal or business entity whose design is copied or otherwise used by a manufacturer without the designer's express authorization is not subject to liability for personal injury, death, or property damage caused by the manufacturer's product, even if use of the design is foreseeable.[19]

Theoretically, under this statutory approach, liability is limited to entities that "manufactured, sold, or leased" the product at issue, and may not be imposed on those whose original product design is later copied.

On its face, Alabama Code Section 6-5-530 makes no mention of pharmaceutical drug products or brand versus generic manufacturers.[20] Instead, the statute applies more broadly to "[d]esigners, manufacturers, sellers, or lessors of products."[21] Regardless, brand-name pharmaceutical manufacturers will likely sleep easier knowing innovator liability is no longer a viable claim in Alabama.

IV. Conclusion — How Does This Impact Mississippi?

Under Alabama Code Section 6-5-530, brand-name drug manufacturers may no longer be held liable under Alabama law for misrepresentations in cases where a plaintiff never ingested the brand drug product. Alabama legislatively re-joined the majority of states, including Mississippi, disallowing innovator liability.

Mississippi courts have repeatedly held that a brand-name drug manufacturer is ***not*** liable for injuries caused by a competitor's generic equivalent.[22] In *Lashley*, the Fifth Circuit, applying Mississippi law, held that the plaintiff's state law failure to warn claim against the generic manufacturer was preempted because federal law mandates that generic pharmaceutical drug labeling mirror that of the brand.[23] The court further held that the plaintiff's claims against the brand manufacturer were also barred because the plaintiff ingested the generic drug and, thus, the plaintiff failed to establish a duty was owed.[24] The *Gardley-Starks* Court, relying heavily on the Fifth Circuit's holding in *Lashley*, held the plaintiff's claims against the generic manufacturer for failure to warn were preempted.[25] Alabama's recent legislative enactment, as well as the weight of authority from other states, suggests that Mississippi courts will be unlikely to reverse course any time soon.

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[16] *Id.*
[17] *Id.* at 684.
[18] *Id. (citing Cuomo v. Clearing House Ass'n.*, 557 U.S. 519, 556 (2009)).
[19] Ala. Code § 6-5-530 (2015) (emphasis added).
[20] *See id.*
[21] *Id.*
[22] *Lashley v. Pfizer, Inc.*, 750 F. 3d 470 (5th Cir. 2014); *Washington v. Medicis Pharm. Corp.*, No. 3:12-cv-00126, 2013 WL 496063 (S.D. Miss. Feb. 7, 2013); *Gardley-Starks v. Pfizer, Inc.*, 917 F. Supp. 2d 597 (N.D. Miss. 2013).
[23] *Lashley*, 750 F. 3d. at 477.
[24] *Id.*
[25] *Gardley-Starks*, 917 F. Supp. 2d at 608.

Appendix of Pertinent Cases

Arkansas Law

- *Fullington v. Pfizer, Inc.*, 720 F. 3d 739 (8th Cir. 2013) (Arkansas law).
- *Bell v. Pfizer, Inc.*, 716 F. 3d 1087 (8th Cir. 2013) (Arkansas law).
- *Neal v. Teva Pharm. USA, Inc.*, No. 09-CV-1027, 2010 WL 2640170 (W.D. Ark. July 1, 2010) (Arkansas law).
- *Fields v. Wyeth, Inc.*, 613 F. Supp. 2d 1056 (W.D. Ark. 2009) (Arkansas law).

Colorado Law

- *Sheeks v. Am. Home Prods. Corp.*, No. 02CV337, 2004 WL 4056060 (Colo. Dist. Ct. Oct. 15, 2004) (Colorado law).

Florida Law

- *Metz v. Wyeth, L.L.C.*, 525 F. App'x 893 (11th Cir. 2013) (Florida law).
- *Guarino v. Wyeth, LLC*, 719 F. 3d 1245 (11th Cir. 2013) (Florida law).
- *Howe v. Wyeth, Inc.*, No. 8:09-CV-610, 2010 WL 1708857 (M.D. Fla. Apr. 26, 2010) (Florida law).
- *Levine v. Wyeth Inc.*, 684 F. Supp. 2d 1338 (M.D. Fla. 2010) (Florida law).
- *Dietrich v. Wyeth, Inc.*, No. 50-2009-CA-021586, 2009 WL 4924722 (Fla. Cir. Ct. Dec. 21, 2009) (Florida law).
- *Sharp v. Leichus*, 952 So. 2d 555 (Fla. Dist. Ct. App. 2007) (Florida law).

Georgia Law

- *Dement v. Alaven Pharm., LLC*, No. 10-EV-009036-3, 2014 WL 2404289 (Ga. Super. Ct. May 27, 2014) (Georgia law).
- *Tanner v. Alaven Pham., LLC*, No. 10-EV-009036-4, 2014 WL 2404287 (Ga. Super. Ct. May 27, 2014) (Georgia law).
- *Swicegood v. Pliva, Inc.*, 543 F. Supp. 2d 1351 (N.D. Ga. 2008) (Georgia law).
- *Reynolds v. Anton*, No. 01A-76719-3, 2004 WL 5000272 (Ga. Super. Ct. Oct. 28, 2004) (Georgia law).

Indiana Law

- *Stewart v. Sanofi Aventis U.S., LLC*, 15 F. Supp. 3d 1151 (N.D. Ala. 2014) (Indiana law).
- *Scott v. Elsevier Inc.*, No. 11-04445, slip op. (Mass. Super. Ct. Aug. 11, 2014) (Indiana law).
- *Short v. Eli Lilly & Co.*, No. 49D12-0601-CT-2187, 2009 WL 9867531 (Ind. Super. Ct. Mar. 25, 2009) (Indiana law).

Iowa law

- *Huck v. Wyeth, Inc.*, 850 N.W.2d 353 (Iowa 2014) (Iowa law).

Kentucky Law

- *Nicely v. Wyeth, Inc.*, 451 S.W. 3d 694 (Mo. Ct. App. 2014) (Kentucky law).
- *Franzman v. Wyeth, Inc.*, 451 S.W. 3d 676 (Mo. Ct. App. 2014) (Kentucky law).
- *White v. Elsevier Inc.*, No. 11-04441, slip op. (Mass. Super. Ct. July 26, 2013) (Kentucky law).
- *Smith v. Wyeth, Inc.*, 657 F. 3d 420 (6th Cir. 2011), pet. for reh'g en banc denied (Nov. 22, 2011), *pet. for cert. denied* (Apr. 30, 2012) (Kentucky law).
- *Wilson v. Wyeth, Inc.*, No. 3:07-CV-378, 2008 WL 2677049 (W.D. Ky. June 30, 2008), *aff'd sub nom. Smith v. Wyeth, Inc.*, 657 F. 3d 420 (6th Cir. 2011) (Kentucky law).
- *Morris v. Wyeth, Inc.*, No. L07-CV-176, 2008 WL 2677048 (W.D. Ky. June 30, 2008), *aff'd sub nom. Smith v. Wyeth, Inc.*, 657 F. 3d 420 (6th Cir. 2011) (Kentucky law).

Louisiana Law

- *Whitener v. Pliva, Inc.*, 606 F. App'x 762 (5th Cir. 2015) (Louisiana law).
- *Johnson v. Teva Pharms. USA, Inc.*, 758 F. 3d 605 (5th Cir. 2014) (Louisiana law).
- *Demahy v. Schwarz Pharm., Inc.*, 702 F. 3d 177 (5th Cir. 2012), *pet. for reh'g denied* (Dec. 7, 2012), *pet. for cert, denied* (Oct. 7, 2013) (Louisiana law).
- *Stanley v. Wyeth, Inc.*, 991 So. 2d 31 (La. Ct. App. 2008) (Louisiana law).

Maryland Law

- *Gross v. Pfizer, Inc.*, No. 10-cv-00110, 2010 WL 4485774 (D. Md. Nov. 9, 2010) (Maryland law).
- *Foster v. Am. Home Prods. Corp.*, 29 F. 3d 165 (4th Cir. 1994) (Maryland law).

Massachusetts Law

- *Kelly v. Wyeth*, No. 03-CV-3314, 2005 WL 4056740 (Super. Ct. Mass. May 6, 2005) (Massachusetts law).

Mississippi Law

- *Lashley v. Pfizer, Inc.*, 750 F. 3d 470 (5th Cir. 2014) (Mississippi law).
- *Washington v. Medicis Pharm. Corp.*, No. 3:12-cv-00126, 2013 WL 496063 (S.D. Miss. Feb. 7, 2013) (Mississippi law).
- *Gardley-Starks v. Pfizer, Inc.*, 917 F. Supp. 2d 597 (N.D. Miss. 2013) (Mississippi law).

Minnesota Law

- *Mensing v. Wyeth, Inc.*, 588 F. 3d 603 (8th Cir. 2009), *rev'd on other grounds sub nom. PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011), re-instated in relevant part, 658 F. 3d 867 (8th Cir. 2011) (Minnesota law).
- *Flynn v. Am. Home Prods. Corp.*, 627 N.W. 2d 342 (Minn. Ct. App. 2001) (Minnesota law).

Nevada Law

- *Moretti v. Wyeth, Inc.*, 579 F. App'x 563 (9th Cir. 2014) (Nevada law).
- *Baymiller v. Ranbaxy Pharms., Inc.*, 894 F. Supp. 2d 1302 (D. Nev. 2012) (Nevada law).

New Jersey Law

- *Coundouris v. Wyeth*, No. ATL-L-1940-10, 2012 WL 2401776 (N.J. Super. Ct. Law Div. June 26, 2012) (New Jersey law).
- *Westerlund v. Wyeth, Inc.*, No. MID-2174-05, 2008 WL 5592753 (N.J. Super. Ct. Law Div. Oct. 20, 2008) (New Jersey law).
- *Rossi v. Hoffman-LaRoche*, No. ATL-L-690-05, 2007 WL 7632318 (N.J. Super. Ct. Law Div. Jan. 3, 2007) (New Jersey).

- *Sloan v. Wyeth*, No. MRS-L-1183-04, 2004 WL 5767103 (N.J. Super. Ct. Oct. 13, 2004) (New Jersey law).

New York Law

- *Weese v. Pfizer, Inc.*, No. 153742/12, slip op. (N.Y. Sup. Ct. Oct. 8, 2013) (New York law).
- *Goldych v. Eli Lilly & Co., No.* 5:04-CV-1477, 2006 WL 2038436 (N.D.N.Y. July 19, 2006) (New York law).

North Carolina Law

- *Couick v. Wyeth, Inc.*, 691 F. Supp. 2d 643 (W.D.N.C. 2010) (North Carolina law).
- *Stoddard v. Wyeth, Inc.*, 630 F. Supp. 2d 631 (E.D.N.C. 2009) (North Carolina law).

Ohio Law

- *Hendricks v. Pharmacia Corp.*, No. 2:12-cv-00613, ECF No. 47, Report and Recommendation of U.S. Magistrate Judge (S.D. Ohio June 4, 2014) (Ohio law).
- *Hogue v. Pfizer, Inc.*, 893 F. Supp. 2d 914 (S.D. Ohio 2012) (Ohio law).

Oklahoma Law

- *Cardinal v. Elsevier Inc.*, No. 11-04442, slip op. (Mass. Super. Ct. Aug. 11, 2014) (Oklahoma law).
- *Schrock v. Wyeth, Inc.*, 727 F. 3d 1273 (10th Cir. 2013) (Oklahoma law).

Oregon Law

- *Phelps v. Wyeth, Inc.*, 857 F. Supp. 2d 1114 (D. Or. 2012), adopting Report and Recommendation of U.S. Magistrate Judge, 2012 WL 1021084 (D. Or. Feb. 24, 2012) (Oregon law); *see also Phelps v. Wyeth, Inc.*, No. 09-cv-6168, 2010 WL 2553619 (D. Or. May 28, 2010), findings and recommendation adopted by No. 09-cv-6168, 2010 WL 2553614 (D. Or. June 21, 2010) (Oregon law).

Pennsylvania Law

- *Colacicco v. Apotex, Inc.*, 432 F. Supp. 2d 514 (E.D. Pa. 2006), *aff'd in pertinent part and rev'd in other part*, *Colacicco v. Apotex, Inc.*, 521 F. 3d 253 (3d Cir. 2008), *vacated and remanded*, 129 S. Ct. 1578 (2009) (Pennsylvania law).

South Carolina Law

- *Fisher v. Pelstring*, No. 4:09-cv-00252, 2010 WL 2998474 (D.S.C. July 28, 2010) (South Carolina law).

Tennessee Law

- *Strayhorn v. Wyeth Pharms., Inc.*, 737 F. 3d 378 (6th Cir. 2013) (Tennessee law)

Texas Law

- *Eckhardt v. Qualitest Pharms., Inc.*, 751 F. 3d 674 (5th Cir. 2014) (Texas law).
- *Willis v. Schwarz-Pharm., Inc.*, 62 F. Supp. 3d 560 (E.D. Tex. July 23, 2014), adopting Report and Recommendation of U.S. Magistrate Judge (E.D. Tex. June 26, 2014) (Texas law).
- *Del Valle v. Teva Pharm. USA, Inc.*, 750 F. 3d 470 (5th Cir. 2014) (Texas law
- *Phares v. Actavis-Elizabeth L.L.C.*, 892 F. Supp. 2d 835 (S.D. Tex. 2012) (Texas law).
- *Craig v. Pfizer, Inc.*, No. 3:10-cv-00227, 2010 WL 2649545 (W.D. La. May 26, 2010), report and recommendation adopted by No. 3:10- cv-00227, 2010 WL 2649544 (W.D. La. June 29, 2010) (Texas law).
- *Negron v. Teva Pharm. USA, Inc.*, No. 09-16519, 2010 WL 8357563 (Tex. Dist. Ct. May 7, 2010) (Texas law).
- *Finnicum v. Wyeth, Inc.*, 708 F. Supp. 2d 616 (E.D. Tex. 2010) (Texas law).
- *Hardy v. Wyeth, Inc.*, No. 9:09-CV-152, 2010 WL 1049588 (E.D. Tex. Mar. 8, 2010), report and recommendation adopted by No. 9:09-cv-152, 2010 WL 1222183 (E D. Tex. Mar. 29, 2010) (Texas law).
- *Burke v. Wyeth, Inc.*, Civil No. G-09-82, 2009 WL 3698480 (S.D. Tex. Oct. 29, 2009) (Texas law).
- *Cousins v. Wyeth Pharm., Inc.*, No. 3:08-CV-0310-N, 2009 WL 648703 (N.D. Tex. Mar. 10, 2009) (Texas law).
- *Pustejovsky v. Wyeth, Inc.*, No. 4:07-CV-103-Y, 2008 WL 1314902 (N.D. Tex. Apr. 3, 2008) (Texas law).
- *Block v. Wyeth, Inc.*, 3:02-CV-1077, 2003 WL 203067 (N.D. Tex. Jan. 28, 2003) (Texas law).

Utah Law

- *Beutella v. A.H. Robins Co.*, No. 980502372, 2001 WL 35669202 (Utah Dist. Ct. Dec. 10, 2001) (Utah law).

West Virginia Law

- *Meade v. Parsley*, No. 2:09-cv-0038, 2009 WL 3806716 (S.D.W. Va. Nov. 13, 2009) (West Virginia law).

Multiple States' Law

- *Germain v. Teva Pharms., USA, Inc.* (*In re Darvocet, Darvon, & Propoxyphene Prods. Liab. Litig*), 756 F. 3d 917 (6th Cir. 2014) (68 appeals involving 22 different states' laws).
- *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, No. 2:11-MD-02226-DCR, 2013 WL 5184129 (E.D. Ky. July 29, 2013) (dismissing claims under Georgia and Texas law).
- *Esposito v. Lilly* (*In re Darvocet*), 856 F. Supp. 2d 904 (E.D. Ky. 2012) (dismissing claims under the law of 18 states, including Arkansas, Georgia, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, and Texas).
- *In re Darvocet, Damon & Propoxyphene Prods. Liab. Litig.*, No. 2:11-md-02226-DCR, 2012 WL 3984871 (E.D. Ky. Sept. 10, 2012) (dismissing claims under the law of 9 states, including Florida, Georgia, Michigan, Mississippi, New Hampshire, Oklahoma, South Carolina, Tennessee, and Texas, but allowing claims under California law to proceed).
- *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, No. 2:11-md-02226-DCR, 2012 WL 3610237 (E D. Ky. Aug. 21, 2012) (dismissing claims under the law of 8 states, including Arkansas, Connecticut, Georgia, Kentucky, Louisiana, Massachusetts, Oklahoma, and West Virginia).
- *In re Darvocet, Darvon & Propoxyphene Prods. Liab. Litig.*, No. 2:11-MD-02226-DCR, 2012 WL 767595 (ED. Ky. Mar. 7, 2012) (dismissing claims under the law of 14 states, including Arkansas, Connecticut, Georgia, Indiana, Kentucky, Louisiana, Massachusetts, Mississippi, New Jersey, New York, Oklahoma, Pennsylvania, Tennessee, and Texas). ■