3:12-CV-111-J-34JBT

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

FILED IN COMPUTER A. E.

16- 2012-CA-001661

CHARLOTTE LEE THOMPSON,

Plaintiff,

vs.

McNEIL - PPC, INC., McNEIL CONSUMER HEALTHCARE and JOHNSON & JOHNSON, INC.,

Defendants.

LAW DIVISION:

DOCKET NO.:

CIVIL ACTION DIVISION CV-A

COMPLAINT AND DEMAND FOR JURY TRIAL

FILED
FEB 17 2012
CLERK CIRCUIT COURT

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CLERK CIRCUIT COURT

Plaintiff, by and through her attorneys, for her Complaint and Jury Demand against Defendants, states, avers, and alleges as follows:

BACKGROUND

1. This is an action for damages suffered by Plaintiff as a direct and proximate result of the Defendants' and/or their corporate predecessors negligent and wrongful conduct in connection with the design, development, manufacture, testing, packaging, promoting, marketing, distribution, labeling, and/or sale of the pain reliever acetaminophen, sold under the trade name "Tylenol."

PARTIES, VENUE AND JURISDICTION

2. This is an action for damages that exceeds the jurisdictional minimum of this Court.

3. Venue is appropriate in this Circuit as the cause of action alleged herein occurred in Duval County, Florida and the Tylenol pain reliever that is the subjected of this action was

sold and purchased in Duval County. Furthermore, at all times material hereto, the Defendant's were authorized to conduct business in the State of Florida and did conduct business in Duval County, Florida.

4. This suit is brought under the causes of action under the statutory and common law of the State of Florida to recover damages and other relief, including the costs of suit and reasonable attorneys' and expert fees, for the injuries Plaintiff sustained as a result of the Defendants' and/or their corporate predecessors' negligent and wrongful conduct in connection with, inter alia, the design, development, formulation, manufacturing, testing, packaging, promoting, marketing, distributing, labeling, recommended dosing and/or sale of the pain reliever acetaminophen, sold under the trade name "Tylenol."

5. Plaintiff is a resident and citizen of the State of Florida.

6. Defendant McNeil-PPC, Inc. is a corporation organized and existing under the laws of the State of New Jersey. McNeil-PPC conducts substantial business within the State of Florida. McNeil-PPC, Inc. and is subject to the jurisdiction and venue of this Court.

7. Defendant McNeil Consumer Healthcare is a division of McNeil-PPC, Inc. McNeil Consumer Healthcare conducts substantial business within the State of Florida. McNeil Consumer Healthcare is subject to the jurisdiction and venue of this Court.

8. Defendant Johnson & Johnson, Inc. is a corporation organized and existing under the laws of the State of New Jersey, conducts substantial business within the State of Florida. Johnson & Johnson, Inc. and is subject to the jurisdiction and venue of this Court.

9. At all times relevant, Defendants were engaged in the business of designing, developing, licensing, manufacturing, packaging, distributing, selling, marketing, and/or

introducing into interstate commerce, and into the State of New Jersey, either directly or indirectly through third parties or related entities, the pain reliever acetaminophen, sold under the trade name "Tylenol."

FACTUAL BACKGROUND

10.. At all times relevant hereto, Defendant McNeil-PPC, Inc. (a wholly owned subsidiary of Johnson and Johnson, Inc.), manufactured, packaged, labeled, marketed and/or distributed products with the trade name "Tylenol", including but not limited to, Tylenol Extra Strength (hereinafter referred to collectively as "Tylenol").

11. At all times relevant hereto, Defendant McNeil Consumer Healthcare (a division of McNeil-PPC, Inc.), manufactured, packaged, labeled, marketed and/or distributed a product with the trade name "Tylenol."

12. At all times relevant hereto, Tylenol was also marketed extensively by McNeil's parent company, Johnson & Johnson, Inc.

13. Johnson & Johnson, Inc. and/or McNeil maintain ultimate control and authority over the design, manufacture, packaging, marketing, distribution, labeling and sale of Tylenol.

14. The only active ingredient in the product Tylenol is the drug "acetaminophen."

15. Acetaminophen is the leading cause of acute liver failure in the United States.

16. The potential for acetaminophen-induced liver damage and failure have been well documented and well known to the Defendants for many years prior to the incident involving Ms. Thompson.

17. Prior to February 18, 2008, Charlotte Lee Thompson ("Ms. Thompson") purchased Tylenol and took Tylenol for several days before experiencing liver failure. Ms. Thompson was mindful of the recommended dose limits of Tylenol and always took the

medication accordingly.

18. On or about February 18, 2008, Ms. Thompson was seen on an emergent basis at Shands Jacksonville Hospital with severe liver damage.

19. She remained at Shands through February 29, 2008.

20. Ms. Thompson's liver damage was caused by the toxic effects of the Tylenol she ingested.

21. The subject Tylenol product taken by Ms. Thompson, and which proximately caused her injuries and suffering, was designed, manufactured, packaged, labeled, and placed into the stream of interstate commerce by Defendants.

22. The Defendants are joint tortfeasors, jointly and severally liable to Ms. Thompson.

COUNT I

PRODUCTS LIABILITY ACT - DEFECTIVE PRODUCT

23. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein and further alleges as follows:

24. At all times material hereto, Defendants engaged in the business of selling, distributing, supplying, manufacturing, packaging, labeling, marketing, and promoting the drug Tylenol, which is defective and unreasonably dangerous to consumers, including Ms. Thompson.

25. At all times material hereto, the drug Tylenol was sold, distributed, supplied, manufactured, packaged, marketed and/or promoted by Defendants.

26. At all times material hereto, the drug Tylenol, was expected to reach, and did reach, consumers in this state and throughout the United States, including the Plaintiff, without substantial change in the condition in which it was sold.

27. At all times material hereto, Tylenol was sold, marketed, distributed, supplied,

manufactured, packaged, labeled and/or promoted by the Defendants, in a defective and unreasonably dangerous condition at the time it was placed in the stream of commerce in ways which include, but are not limited to, one or more of the following particulars:

(a) The drug was not accompanied by adequate instructions and/or warnings to fully apprise consumers, including Ms. Thompson, of the full nature and extent of the risks and side effects associated with its use, including but not limited to, the increased risk of liver damage and liver failure associated with use of the product while not eating (vis-à-vis stomach virus, flu, nausea, etc.), otherwise known as a fasting state;

(b) When placed in the stream of commerce, the drug contained unreasonably dangerous defects, including but not limited to defective labeling, and was not reasonably safe as intended to be used, subjecting Ms. Thompson to risks that exceeded the benefits of the drug;

(c) When placed in the stream of commerce, it was defective in design and formulation, making use of the drug more dangerous than an ordinary consumer would expect;

(d) The drug was insufficiently tested;

(e) The recommended maximum dosing for the drug was too high, subjecting Ms. Thompson to risks that exceeded the benefit of the drug;

(f) The drug caused harmful side effects that outweighed any potential utility;

(g) The packaging of the drug was defective, including but not limited to, the failure to incorporate appropriate icons and pictographs;

28 Additionally, Plaintiff pleads all Florida statutes and/or common law causes of

action for defective design.

29 As a direct and proximate result of the subject products' defects, Ms. Thompson suffered severe physical injuries. Ms. Thompson endured substantial pain and suffering. She incurred significant expenses for medical care and treatment. Ms. Thompson suffered a loss of earning capacity, economic loss, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein.

COUNT II

PRODUCTS LIABILITY ACT - FAILURE TO WARN

30. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein and further alleges as follows:

31. The drug, Tylenol was defective and unreasonably dangerous when it left the possession of Defendants, in that it contained warnings insufficient to alert consumers, including the Plaintiff herein, to the dangerous risks and reactions associated with the drug.

32. The Plaintiff was administered the drug for its intended purposes.

33. The Plaintiff could not have discovered any defect in the drug through the exercise of ordinary care.

34. Defendants as manufacturers and/or distributors of a medication are held to the level of knowledge of an expert in the field.

35. The warnings that were given by the Defendants were not accurate, insufficient, unclear, and/or ambiguous.

36 Defendants had a continuing duty to warn the Plaintiff of the dangers associated with the drug.

37. Additionally, Plaintiff pleads all Florida statutes and/or common law causes of action for failure to warn.

38. As a direct and proximate result of the subject products' defects, Ms. Thompson suffered severe physical injuries. Ms. Thompson endured substantial pain and suffering. She incurred significant expenses for medical care and treatment. Ms. Thompson suffered a loss of earning capacity, economic loss, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein

COUNT III

PRODUCTS LIABILITY ACT - BREACH OF IMPLIED WARRANTY

39. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully set forth herein and further alleges as follows:

40. Defendants manufactured, marketed, distributed, and supplied Tylenol for pain relief and fever reduction.

41. At the time Defendants marketed, sold, and distributed Tylenol for use by Plaintiff, Defendants knew of the use for which Tylenol was intended and impliedly warranted the drug to be of merchantable quality and safe and fit for such use.

42. Ms. Thompson reasonably relied upon the skill, superior knowledge, and judgment of Defendants.

43 Ms. Thompson purchased and consumed Tylenol for fever and/or pain.

44. Due to Defendants' wrongful conduct as alleged herein, Ms. Thompson could not have known about the risks and side effects associated with Tylenol until after she ingested it.

45. Contrary to such implied warranty, Tylenol was not of merchantable quality and was not safe or fit for its intended use, as alleged herein.

46. Additionally, Plaintiff pleads all Florida statutes and/or common law causes of action for breach of implied warranty.

47. As a direct and proximate result of the subject products' defects and Defendants'

breach of implied warranty, Ms. Thompson suffered severe physical injuries. Ms. Thompson endured substantial pain and suffering. She incurred significant expenses for medical care and treatment. Ms. Thompson suffered a loss of earning capacity, economic loss, and was otherwise physically, emotionally and economically injured. Plaintiff seeks actual and punitive damages from the Defendants as alleged herein.

WHEREFORE, Plaintiff demands judgment against the Defendant's, costs and trial by jury.

DATED: This 16th day of February, 2012.

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