IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Christine Dietz and Bradley Dietz,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
	)	
Allergan, Inc. f/k/a Inamed Corporation,	)	
Allergan USA, Inc., Allergan PLC,	)	No. 20 L 4813
Michael Epstein, M.D., Northbrook	)	
Plastic Surgery, LLC, and	)	
Michael A. Epstein, M.D., S.C.,	)	
	)	
Defendants,	)	
	)	
Abbvie, Inc.,	)	
	)	
Respondent in Discovery.	)	

MEMORANDUM OPINION AND ORDER

The Illinois Code of Civil Procedure prohibits dismissing a defendant-seller of a product if that party knew of the product's defect. The Federal Food, Drug and Cosmetics Act authorizes federal regulation of medical devices and expressly and impliedly preempts certain state regulations. In this case, a question exists as to a defendant-physician's knowledge of defects in the breast implants sold to the plaintiffs. The plaintiffs have, however, failed and will be unable to allege: (1) the defendant-manufacturer violated Food and Drug Administration regulations at the time of the plaintiffs' injuries; and (2) their claims are not different from or in addition to federal requirements applicable to the breast implants. For these reasons, the defendant-physician's motion to dismiss is denied, but the defendant-manufacturer's motion to dismiss is granted with prejudice.

Facts

On November 17, 2006, the United States Food and Drug Administration (FDA) issued a premarket approval (PMA) letter for Inamed silicone-filled breast implants. On January 26, 2011, the FDA reported instances of anaplastic large cell lymphoma (ALCL) in women with breast implants. The FDA stated it was investigating a possible association between breast implants and ALCL, and that women with breast implants may have a very small increased risk of developing the disease in the scar capsule adjacent to the implant. The announcement specified that, "if you have breast implants, there is no need to change your routine medical care and follow-up. ALCL is very rare; it has occurred in only a very small number of the millions of women who have breast implants."

On August 8, 2011, Christine Dietz met with Dr. Michael Epstein to discuss breast implant surgery. On September 6, 2011, Epstein posted on his website information about the FDA's investigation into a possible connection between breast implants and the increased risk of a rare form of cancer. Epstein wrote the number of women receiving an ALCL diagnosis is "extremely rare. In fact, the risk of having breast implants and getting this diagnosis is less likely than being hit by lightning." He also stated it was, "not even completely certain" the 60 women who had been diagnosed with ALCL "truly have ALCL." He continued by writing: "I can assure you that . . . Allergan, in conjunction with the FDA[,] are voraciously investigating this matter and will have definitive answers as soon a possible."

On February 9, 2012, Christine and Bradley Dietz purchased BIOCELL Natrelle textured silicone-filled breast implants, style 115, designed and manufactured by Allergan, Inc.[1] The same day,

[1] Neither party explained that Allergan's Natrelle silicone-filled textured breast implants were previously called Inamed silicone-filled breast implants, and were approved under P020056. The approval included style 115, BIOCELL textured round midrange projection gel filled breast implants. Aaron Sheinin, *Textured Breast Implants Recalled for Cancer Risk*,

Epstein surgically placed the breast implants into Christine's chest. On May 23, 2018, Christine informed Epstein of pain in her chest. Studies confirmed the existence of a large tissue mass in Christine's chest, and she received a diagnosis of breast implant associated large cell lymphoma (BIA-ALCL), a form of non-Hodgkin's lymphoma. Christine underwent subsequent medical treatment at Rush University Medical Center.

On July 24, 2019, Allergan announced a worldwide, voluntary recall of the product. The announcement followed the FDA's request to initiate the recall based on the risk of BIA-ALCL associated with the breast implants.

On April 30, 2020, Christine and Bradley filed a 25-count complaint against the defendants and the respondent in discovery. Count 1 sounds in negligence and is brought by Christine against Allergan. The count alleges Allergan owed Christine a duty to exercise due care and caution in the design and manufacture of its breast implants. Christine claims Allergan breached its duty by: (1) failing to warn Christine and Epstein about the dangers associated with the implants; (2) failing to report adequately and appropriately and in a timely fashion the adverse events associated with the implants; (3) failing to recall its implants in a timely fashion; and (4) selling and distributing the implants when Allergen knew or should have known they could cause cancer. Count 2 is Christine's cause of action for strict product liability against Allergan. The count alleges Allergan had a duty to design, manufacture, distribute, and sell its implants so that they were neither defective nor unreasonably dangerous and to warn of the dangers it knew or should have known existed. Counts 5 and 6 match counts 1 and 2, respectively, but are directed against Allergan USA. Counts 3, 4, 7, and 8 are Bradley's causes of action for consortium based on Christine's causes of action.[2]

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https://www. webmd.com/women/news/20190724/textured-breast-implants-recalled-for-cancer-risk.

[2] Counts 9-12 are directed against Allergan PLC, the parent company of Allergan, Inc. and Allergan USA, Inc. Allergan PLC is headquartered in Dublin, Ireland, and, as of the date of this opinion, has not yet been served.

The complaint also brings causes of action against Epstein, Michael A. Epstein, M.D., S.C. (Epstein SC), and Northbrook Plastic Surgery, LLC (Northbrook). Count 14 is Christine's cause of action for strict product liability directed against Epstein. The count alleges Epstein owed Christine a duty to warn of the dangers and risks associated with the BIOCELL Natrelle breast implants and failed to do so. Count 18 is Christine's strict product liability cause of action against Northbrook based on its agency relationship with Epstein, and alleges the same duties and breaches as against Epstein. Count 22 is Christine's strict product liability cause of action against Epstein SC based on its agency relationship with Epstein, and alleges the same duties and breaches as against Epstein. Counts 16, 20, and 24 are Bradley's causes of action for consortium against Epstein, Northbrook, and Epstein SC corresponding to each of Christine's causes of action.[3]

On May 14, 2020, the FDA informed Allergan it had failed to comply with three of the six required post-approval studies:[4] the core post-approval study, the device failure study, and the informed decision process.[5] Failure to comply with any post-approval requirement constitutes a sufficient basis for withdrawing a PMA. The commercial distribution of a device not in compliance with these conditions violates the Federal Food, Drug, and Cosmetic Act. *See* 21 U.S.C. ch. 9, § 301, *et seq.*

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[3] Counts 13, 15, 17, 19, 21, and 23 are Christine and Bradley's causes of action for product liability based in negligence; they are not subject to the motion to dismiss. Count 25 is directed against AbbVie, Inc., as the respondent in discovery.

[4] There are six post-approval requirements: the core post-approval study, the large post-approval study, the device failure study, the focus group study, the informed decision process, and an adjunct study.

[5] During the core post-approval study, studies must continue until all patients have completed a 10-year evaluation to assess the long-term clinical performance of the product. The device-failure study requires a manufacturer to inform patients of the failed 10-year evaluation and collect data on safety endpoints. The informed decision process requires 50 randomly selected physicians during the physician-training program to survey patients every year until the FDA ends the survey.

On June 24, 2020, Epstein, Epstein SC (collectively, Epstein), and Northbrook Plastic Surgery, LLC (Northbrook) filed a motion to dismiss counts 14, 16, 18, 20, 22, and 24. On July 29, 2020, Allergan, Inc. and Allergan USA, Inc. (collectively, Allergan) filed a combined motion to dismiss all counts directed against them. The parties filed their respective response and reply briefs.

Analysis

I. Epstein and Northbrook's Motion to Dismiss

Epstein and Northbrook seek dismissal of various claims pursuant to Code of Civil Procedure section 2-621. That section authorizes the dismissal of a defendant under certain circumstances. As provided, in part:

> (a) In any product liability action based on any theory or doctrine commenced or maintained against a defendant or defendants other than the manufacturer, that party shall upon answering or otherwise pleading file an affidavit certifying the correct identity of the manufacturer of the product allegedly causing injury, death or damage.
>
> * * *
>
> (b) Once the plaintiff has filed a complaint against the manufacturer or manufacturers, and the manufacturer or manufacturers have or are required to have answered or otherwise pleaded, the court shall order the dismissal of a product liability action based on any theory or doctrine against the certifying defendant or defendants, provided the certifying defendant or defendants are not within the categories set forth in subsection (c) of this Section.
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> * * *
>
> (c) A court shall not enter a dismissal order relative to any certifying defendant or defendants other than the manufacturer . . . where the plaintiff can show one or more of the following:

> (1) That the defendant has exercised some significant control over the design or manufacture of the product, or has provided instructions or warnings to the manufacturer relative to the alleged defect . . .
>
> (2) That the defendant had actual knowledge of the defect in the product . . .; or
>
> (3) That the defendant created the defect in the product. . . .

735 ILCS 5/2-621(a), (b) & (c). Section 2-621, the so-called "distributor statute," has as its purpose to allow a non-manufacturing defendant that did not create or contribute to the alleged defect, "to defer liability upstream to the ultimate wrongdoer, the manufacturer." *Brobbey v. Enterprise Leasing Co.*, 404 Ill. App. 3d 420, 429 (1st Dist. 2010) (quoting *Saieva v. Budget Rent-A-Car of Rockford*, 227 Ill. App. 3d 519, 526 (2d Dist. 1992) and citing other cases). In other words, section 2-621 incentivizes non-manufacturing defendants to identify the alleged tortfeasor-manufacturer in exchange for a dismissal from a case. *See Cassidy v. China Vitamins, LLC*, 2018 IL 122873, ¶ 14. That is why section 2-621(b) is commonly referred to as the "seller's exception" to liability. *Id.* (citing *Cassidy*, 2017 IL App (1st) 160933, ¶ 19).

In strict liability actions, a duty exists to warn of known defects under negligence principles. *Brobbey*, 404 Ill. App. 3d at 428 (citing Restatement (Second) of Torts, § 388 (1965)). A plaintiff establishes a *prima facie* case of strict liability by pleading and proving: (1) the product's condition produced an injury; (2) the product's condition was unreasonably dangerous; and (3) the condition existed when the product left the manufacturer's control. *Id.* (quoting and citing cases). "[A]ll entities in the distributive chain of an allegedly defective product, including manufacturers, sellers, wholesalers, distributors, and lessors of the product, are strictly liable in products liability actions for injuries resulting from that product." *Id.* (citing *Murphy v. Mancari's Chrysler Plymouth, Inc.*, 381 Ill. App. 3d 768, 772-73 (1st Dist. 2008)).

Epstein presents two arguments in support of his motion to dismiss, the first of which is based on his affidavit attached as an exhibit. Epstein avers that he was a middleman who merely sold the breast implants to Christine and Bradley. Neither he nor Northbrook designed, engineered, controlled, or manufactured the breast implants. Allergan shipped them in sealed shipping boxes, and Epstein surgically placed the breast implants as they had been received into Christine's body. Epstein did not alter the breast implants prior to implantation. In accord with the section 2-621(a), Epstein specifically identifies Allergan as the manufacturer.

Epstein next argues that he did not have actual knowledge of the breast implants' defect. Although Epstein, on September 6, 2011, posted a blog on his practice's website commenting on the then-recently announced FDA investigation into a possible link between breast implants and ALCL, he argues such an announcement does not mean he knew or should have known of the product's dangers. Epstein correctly notes that Allergan did not issue a voluntary recall of its breast implants until July 24, 2019, more than seven years after Christine's February 9, 2012 implantation surgery. Based on that date, Epstein argues, he could not have known of a defect until July 2019 at the earliest, validating his request for a dismissal with prejudice.

Christine and Bradley present various responses. First, they argue Epstein is not protected under section 2-621 because he had actual knowledge of the breast implants' defect that later caused Christine's injury. On September 6, 2011, five months before Christine's February 9, 2012 implantation surgery, Epstein posted a blog on his website containing information about the FDA's investigation into a possible connection between breast implants and the increased risk of a rare form of cancer. Second, Epstein knew the Allergan breast implants were dangerous because the FDA later issued a recall based on the increased risk of BIA-ALCL. Third, Epstein, as an agent of Northbrook, purchased the

Allergan breast implants before selling them to Christine and Bradley.

It is undisputed that Epstein's affidavit correctly identifies Allergan as the manufacturer of the breast implants implanted into Christine's chest. On that point, Epstein unquestionably fulfills the section 2-621(a) requirement. Yet Epstein can claim the seller's exception in section 2-621(b) only if his conduct or knowledge falls outside section 2-621(c). As to that provision, there is no evidence, and no argument, that Epstein exercised any control over the design or manufacture of the breast implants and provided no instructions or warnings to Allergan relative to the alleged defect. *See* 735 ILCS 2-621(c)(1). Similarly, there is no evidence or argument that Epstein created the defect in the Allergan breast implants. *See* 735 ILCS 2-621(c)(3).

That leaves section 2-621(c)(2), the subparagraph concerning a defendant's actual knowledge of a product's dangerous condition. One court has explained the standard by which a court is to judge the "actual knowledge" standard. As stated in *Murphy*:

> we find that a plaintiff relying upon the "actual knowledge of the defect" exception contained in section 2-621(c)(2) (735 ILCS 5/2-621(c)(2) (West 2006)) to avoid dismissal of its strict liability claim against a nonmanufacturer defendant must allege that the nonmanufacturer defendant had actual knowledge of the physical characteristics of the product that the plaintiff claims were unreasonably dangerous and that said characteristics made the product unreasonably dangerous.

381 Ill. App. 3d 768, 770 (1st Dist. 2008).

Here, Christine and Bradley's complaint alleges Epstein knew Allergan breast implants were unreasonably dangerous and defective before he surgically implanted them into Christine's chest. Apart from the complaint's allegations, the record is plain

that by September 6, 2011, Epstein knew of a potential link between Allergan breast implants and an increased risk of an ALCL diagnosis. On that date, Epstein posted a blog on his website explicitly acknowledging an FDA investigation into the link between breast implants and ALCL. Epstein attempted to minimize the risk, stating there was only a "slight increase" in the rate of women receiving an ALCL diagnosis, and that such a diagnosis was "extremely rare." According to Epstein, the chances of receiving such a diagnosis were "less likely than being hit by lightning." Epstein, nonetheless, explicitly acknowledged the investigation implicated Allergan products. He went so far as to write: "I can assure you that . . . Allergan, in conjunction with the FDA[,] are voraciously investigating this matter and will have definitive answers as soon as possible."

At a minimum, there is nothing in the record explaining why Epstein chose to go forward with Christine's breast implantation knowing the FDA and Allergan were investigating the potential link between breast implants and ALCL. There also exists no record as to why Epstein chose to proceed with Christine's surgery using Allergan breast implants given his explicit knowledge that Allergan products were subject to the FDA investigation. Further, there is no evidence explaining why Epstein chose to proceed with Christine's surgery rather than await the investigation's outcome given that the FDA and Allergan were "voraciously investigating this matter and will have answers as soon as possible." It is also unknown why Epstein chose to proceed with Christine's surgery using Allergan's breast implants rather than an alternative product that may not have been a subject of the FDA's investigation. Epstein may be able to provide information relating to these and other gaps in the factual record. At this time, however, there remain factual questions as to the extent of Epstein's actual knowledge of the defects associated with Allergan's breast implants. For those reasons, this court must deny the motion to dismiss counts 14, 16, 18, 20, 22 and 24.

II. Allergan's Motion to Dismiss

Allergan seeks to dismiss various counts of the complaint based, in part, on Code of Civil Procedure section 2-619. 735 ILCS 5/2-619. A section 2-619 motion to dismiss authorizes the involuntary dismissal of a cause of action based on defects or defenses outside the pleadings. *See Illinois Graphics Co. v. Nickum*, 159 Ill. 2d 469, 485 (1994). A court considering a section 2-619 motion must construe the pleadings and supporting documents in a light most favorable to the nonmoving party. *See Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008). All well-pleaded facts contained in the complaint and all inferences reasonably drawn from them are to be considered true. *See Calloway v. Kinkelaar*, 168 Ill. 2d 312, 324 (1995). A court is not to accept as true those conclusions unsupported by facts. *See Patrick Eng., Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. As has been stated: "The purpose of a section 2-619 motion is to dispose of issues of law and easily proved issues of fact early in the litigation." *Czarobski*, 227 Ill. 2d at 369.

The foundation for Allergan's argument lies with the medical device amendments (MDA) Congress enacted in 1978 to the Federal Food, Drug and Cosmetics Act (FDCA). 21 U.S.C. § 360c *et seq.* The MDA gave the FDA exclusive authority to regulate medical devices and established a "regime of detailed federal oversight." *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 316 (2008). Up to that point, states had generally regulated the use of medical devices. *Id.* at 315. Congress adopted the MDA in response to the undue burden imposed by various state regulations. H.R. Rep. No. 94-853, at 45 (1976). The post-MDA statutory and administrative scheme created a comprehensive federal regulatory system for medical devices. *See Riegel,* 552 U.S. at 316-17.

In addition to the extensive regulatory framework provided by the MDA, Congress included an express preemption clause in the statute. That provision states, in part:

> Except as provided in subsection (b) of this section, no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement —
> (1) which is different from, or in addition to, any requirement applicable under this chapter to the device, and
> (2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under this chapter.

21 U.S.C. § 360k(a). *Riegel*, 552 U.S. at 316 (observing section 360k(a) is an express preemption provision). In addition to the statute's express preemption provision, state causes of action are impliedly preempted under the FDCA "no private right of action" provision. 21 U.S.C. § 337(a). That section directs all actions to enforce the FDCA "shall be made in the name of the United States. . . ." *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 349 n.4 (2001).

Under the MDA, innovative Class III devices "incur the FDA's strictest regulation" and must receive a PMA from the FDA before being marketed. *Id.* at 344. Class III devices cover a variety of products, including those that present "a potential unreasonable risk of illness or injury." 21 U.S.C. § 360c(a)(1)(C)(ii). Such products include heart valves, cerebella stimulators, and pacemakers. *Riegel*, 552 U.S. at 317. It is undisputed the FDA reviewed the Inamed/Allergan Natrelle silicone-filled breast implants Christine received as Class III products.

Class III approval is a rigorous process. *Riegel*, 552 U.S. at 317. The FDA reviews Class III devices first by determining whether the device may be classified as "substantially equivalent" to another device exempt from the PMA process. *Id.* (referring to the section 510(k) process). If the product is not substantially equivalent, the product must then go through the PMA process. *Id.* at 318. If a product receives a PMA, the manufacturer is

prohibited from making any changes in specifications, manufacturing processes, or labeling that would affect the product's safety or effectiveness. *Id.* at 319 (citing 21 U.S.C. § 360e(d)(6)(A)(i)). All Class III products are also subject to extensive reporting requirements. *Id.* (citing 21 U.S.C. § 360i).

It is plain that *Riegel*, through its interpretation of express preemption in section 360k(a), and *Buckman*, through its finding of implied preemption in section 337(a), "create a narrow gap through which a plaintiff's state-law claim must fit if it is to escape express or implied preemption." *Bryant v. Medtronic, Inc.*, 623 F.3d 1220, 1204 (8th Cir. 2010); *Perez v. Nidek Co.*, 711 F.3d 1109, 1120 (9th Cir. 2013). To avoid preemption, a plaintiff bringing a state, common law tort claim must allege the state law duty at issue parallels a federal requirement. *Riegel*, 552 U.S. at 330. The court in *Riegel* thus established a two-part test for determining if a state law claim is expressly preempted by the MDA: (1) determine if the federal government has established requirements applicable to the medical device; and (2) if so, determine whether the state law claims are based on requirements with respect to the device that are different from, or in addition to, the federal ones, and relate to safety and effectiveness. *Riegel*, 552 U.S. at 321-22; *Raleigh v. Alcon Labs., Inc.*, 403 Ill. App. 3d 863, 873 (1st Dist. 2010). If, for example, a plaintiff can show a medical device manufacturer failed to follow FDA-approved processes and procedures and the plaintiff's injury resulted from those deviations, the plaintiff's claim is parallel and may proceed. *See Bass v. Stryker Corp.*, 669 F.3d 501, 510 (5th Cir. 2012). In contrast, if a plaintiff challenges the suitability of the manufacturer's precise processes or procedures approved by the FDA, such a claim is not parallel and may not proceed. *Id.* 512.

As to the first requirement, it is uncontested the FDA established specific requirements governing the Allergan breast implants Christine and Bradley purchased and Epstein implanted. Allergan breast implants are a Class III medical device whose design, manufacture, and labeling the FDA

evaluated, approved, and regulated at the highest level of scrutiny through the PMA process. Allergan's breast implants cannot, therefore, be manufactured, labeled, sold, or distributed inconsistently with any PMA condition.

The dispute in this case focuses, therefore, on the second part of the *Riegel* test – whether Christine and Bradley's state law claims are based on requirements different from, or in addition to, the federal ones. Christine and Bradley's strict products causes of action claim Allergan had a duty to design, manufacture, distribute, and sell its implants so they were neither defective nor unreasonably dangerous and to warn of the dangers it knew or should have known existed. Their negligence causes of action claim Allergan failed to warn Christine and Epstein about the dangers associated with the implants, report adequately and appropriately and in a timely fashion the adverse events associated with the implants, recall its implants in a timely fashion, and discontinue selling and distributing the implants when Allergen knew or should have known they could cause cancer.

Christine and Bradley argue that their claims are valid based on *Woodill v. Parke Davis & Co.*, 58 Ill. App. 3d 349 (1st Dist. 1978). The most obvious shortcoming of *Woodill* is that the court issued its opinion before Congress passed the MDA in 1978 and, therefore, never considered the amendments. Even if *Woodill* had been decided later, the court would have had no occasion to address the MDA. The *Woodill* court held that strict liability does not extend to include recovery for emotional distress and mental anguish to an injured minor's parents. *Id.* at 355. The court also held that a breach of implied warranty may be an appropriate claim against the manufacturer of a prescription drug. *Id.* In this case, Christine and Bradley are seeking recovery for their own injuries and do not raise implied warranty claims. *Woodhill* is, consequently, of no help.

This case lies squarely within the rubric of *Riegel* and its progeny. Each of Christine and Bradley's claims challenges the

suitability and reasonableness of Allergan's processes and procedures. These are the same processes and procedures the FDA approved through its PMA process when evaluating Allergan's breast implants as a Class III product. Christine and Bradley point to the FDA's May 14, 2020 warning letter to Allergan. Yet, that letter is dated nearly ten months after Allergan announced on July 24, 2019 its worldwide breast implants recall. Although the FDA's letter gave Allergan 15 days to comply with FDA regulations or face revocation of the PMA, Christine and Bradley's argument raises issues after the fact. Christine and Bradley have not and cannot allege that Allergan had violated FDA regulations at the time Epstein implanted the breast implants into Christine's chest. The FDA letter is, therefore, irrelevant as to whether Allergan followed the FDA-approved processes and procedures for medical devices before and at the time of Christine's surgery.

Even if Christine and Bradley's claims escape express preemption, they must fail under the implied preemption provision in section 337(a). That any action to enforce the FDCA must be brought in the name of the United States, 21 U.S.C. § 337(a), means the statute's regulations may be "enforced exclusively by the Federal Government." *Buckman*, 531 U.S. at 352. Further, Congress granted the FDA "complete discretion" in deciding "how and when [its enforcement tools] should be exercised." *Heckler v. Chaney*, 470 U.S. 821, 835 (1985). That discretion is necessary "to achieve a somewhat delicate balance of statutory objectives," a balance that "can be skewed" if private tort suits are allowed. *Buckman* 531 U.S. at 348. In short, section 337(a) forbids private plaintiffs from asserting any "state claim [that] would not exist if the FDCA did not exist," or any claim for which "'the existence of [the] federal enactments is a critical element.'" *Riley v. Cordis Corp.*, 625 F. Supp. 2d at 777, 790 (D. Minn. 2009) (quoting *Buckman*, 531 U.S. at 353).

The straightforward fact is the FDA had approved the design, manufacture, and labeling of Allergan's breast implants. The FDA also had follow-up reporting requirements based on the

use of the breast implants. To require Allergan to provide additional warnings, report adverse events in a timely fashion, recall implants, and discontinue selling the implants would impose processes, procedures, and restrictions beyond those imposed by the FDA. As such, none of Christine and Bradley's claims is parallel to the FDA's requirements and, therefore, none of their claims against Allergan may proceed because they are expressly preempted by the MDA. Even if Christine and Bradley's claims are not expressly preempted, they are impliedly preempted because they present a private right of action for enforcement of alleged regulatory violations of the FDCA.

Conclusion

Based on the foregoing, it is ordered that:

1. Epstein and Northbrook's motion to dismiss counts 14, 16, 18, 20, 22, and 24 is denied;
2. Allergan's motion to dismiss counts 1-10 and 12-13 is granted with prejudice; and
3. Pursuant to Illinois Supreme Court Rule 304(a) there is no just reason to delay either enforcement or appeal or both of this order.

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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