IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT W. MOORE,	:	
Plaintiff	:	
	:	**CIVIL ACTION**
v.	:	
	:	
WATSON PHARMACEUTICALS LABS,	:	**NO. 01-4260**
Defendant.	:	
	:	

ORDER AND MEMORANDUM

ORDER

AND NOW, this 15th day of January 2002, upon consideration of Defendant, Watson Pharmaceuticals, Inc.'s Motion to Strike Plaintiff's Complaint in its Entirety Pursuant to Federal Rule of Civil Procedure 12(b)(6), treated by the Court as a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6), (Document No. 3, filed December 4, 2001), and the Court noting that, notwithstanding its Order of December 10, 2001, instructing plaintiff to respond to Defendant's Motion to Strike Plaintiff's Complaint within fourteen (14) days of plaintiff's receipt of the Motion, plaintiff, Robert W. Moore, has failed to respond to the Motion,[1] and good cause appearing, **IT IS ORDERED** that Defendant, Watson Pharmaceuticals, Inc.'s Motion to Strike Plaintiff's Complaint in its Entirety Pursuant to Federal Rule of Civil Procedure 12(b)(6), treated by the Court as a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6), is **GRANTED** and the Complaint is **DISMISSED WITH PREJUDICE**.

[1] The Court's Order of December 10, 2001, provided that "[i]f additional time is needed, it must be requested by letter to the Court (Chambers, Room 12613) before the time for responding has expired. In the event plaintiff fails to comply with this Order, the Court will decide the Motion based on defendant's submission." Plaintiff neither responded to the Motion nor requested additional time for doing so.

MEMORANDUM

I. INTRODUCTION

Plaintiff's pro se Complaint, a one paragraph letter, purports to set forth a product liability claim against defendant. The Complaint alleges that prior to August 19, 1999, plaintiff had a hernia repair at Berwick Hospital and that in connection with that procedure, his physician prescribed "a pain relief medication called Hydrocodone." The Complaint goes on to state that "I believe that this medication caused Severe stress, anxiety, and mood swings. Which [sic] ultimately led to my admission to the Emergency room at The Bloomsburg Hospital." The Complaint ends with the statement that "I have documentation by a licensed psychologist that 'The Medication is called Hydrocodone and according to The PDR, it can have the side effects of increased anxiety and mood Swings.'"

Plaintiff does not state in the Complaint that defendant manufactured the Hydrocodone which he ingested. In response, defendant admits in its Motion that it is one of a number of manufacturers of Hydrocodone. For purposes of this Motion only, the Court will treat the defendant as the manufacturer of the Hydrocodone prescribed for plaintiff.

Turning again to the Complaint, the Court notes that plaintiff does not state the way in which he claims the Hydrocodone prescribed for him was defective. However, in view of the nature of plaintiff's allegations, the Court will treat the Complaint as claiming that the Hydrocodone was defective because it was sold without an adequate warning of danger involved in its use.

Defendant filed a Motion to Strike Plaintiff's Complaint under Federal Rule of Civil Procedure 12(b)(6) on December 4, 2001. Defendant raises two arguments in the Motion, as

follows:

1. Under the "learned intermediary rule," the manufacturer of prescription drugs fulfills its duty to warn by providing an adequate warning to a licensed physician. Because defendant warned physicians of the relevant side effects in the Physician's Desk Reference ("PDR"), as alleged by plaintiff in the Complaint, defendant argues that it cannot be liable for failure to warn; and,

2. Plaintiff failed to allege proximate cause in that he did not allege that an adequate warning would have caused him to change his behavior – i.e., to refuse Hydrocodone.

The Court grants the Motion based on the first argument advanced by defendant – the learned intermediary rule. For that reason, it need not reach defendant's second argument relating to causation.

II. DISCUSSION

Plaintiff complains in this case that Hydrocodone caused him severe stress, anxiety, and mood swings. He then goes on to allege in the Complaint that increased anxiety and mood swings are listed as side effects of Hydrocodone in the PDR.

In deciding a motion to dismiss, courts generally consider only the allegations contained in the complaint, any exhibits attached to the complaint, and matters of public record. See, e.g., Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n.2 (3d Cir. 1994); Alifano v. Merck & Co., – F. Supp. 2d –, 2001 WL 1580269, at *1 (E.D. Pa. Dec. 7, 2001). Courts may, however, consider a document that is not attached to a complaint as an exhibit when plaintiff's claims are based upon the document. In re Rockefeller Ctr. Props. Secs. Litig., 184 F.3d 280, 287 (3d Cir. 1999); Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196

(3d Cir. 1993).

The Court concludes that the 1999 edition of the PDR relating to Hydrocodone manufactured by defendant, a copy of which is appended to defendant's Motion as Exhibit "C," is authentic and is a copy of the document to which reference is made in the Complaint. Accordingly, the Court will consider the PDR in deciding defendant's Motion.

The PDR for Hydrocodone manufactured by defendant states that "[t]he most frequently reported adverse reactions are light-headedness, dizziness, sedation, nausea and vomiting." Continuing, the PDR reports that adverse reactions related to the central nervous system include "anxiety" and "mood changes." The Court concludes that the adverse reactions reported in the PDR, "anxiety" and "mood swings," are essentially identical to the symptoms about which plaintiff complains, "Severe stress, anxiety, and mood swings."

In Pennsylvania, as in most other states, a manufacturer of prescription drugs meets its duty to warn by providing adequate information concerning a drug's side effects to a "learned intermediary" – that is, a medical professional, as opposed to the general public or an individual consumer. Mazur v. Merck & Co., 964 F.2d 1348, 1355 (3d Cir. 1992) (citing Incollingo v. Ewing, 282 A.2d 206, 220 (Pa. 1971)). "Under Pennsylvania's learned intermediary doctrine, a manufacturer will be held liable only where it fails to exercise reasonable care to inform the one for whose use the product is supplied of the facts that make the product likely to be dangerous." Burton v. Danek Med. Inc., 1999 WL 118020, at *8 (E.D. Pa. March 1, 1999) (citing Rosci v. AcroMed, Inc., 669 A.2d 959, 969 (Pa. Super. 1995)).

Plaintiff states in the Complaint that the Hydrocodone about which he complains was prescribed by a physician in 1999 in connection with a hernia repair. As stated, defendant listed

the Hydrocodone it manufactures in the 1999 PDR. The reactions of which plaintiff complains are duly noted in the PDR. The Court therefore concludes that defendant provided adequate warning to plaintiff's physician. Accordingly, pursuant to the learned intermediary rule, plaintiff's Complaint fails to state a claim upon which relief can be granted.

III. CONCLUSION

For the foregoing reasons, Defendant, Watson Pharmaceuticals, Inc.'s Motion to Strike Plaintiff's Complaint in its Entirety Pursuant to Federal Rule of Civil Procedure 12(b)(6), treated by the Court as a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6), is granted. The Complaint is dismissed with prejudice.

BY THE COURT:

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JAN E. DUBOIS, J.