**THE FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, PHILADELPHIA COUNTY**
**IN THE COURT OF COMMON PLEAS**

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| **STEPHEN M. MADDEN,** | : | **TRIAL DIVISION – CIVIL** |
| **Appellant** | : | |
| | : | **OCTOBER TERM, 2010** |
| **VS.** | : | **No. 0087** |
| | : | |
| **TEVA PHARMACEUTICALS USA, INC. and TEVA PHARMACEUTICALS INDUSTRIES, LTD. and SANOFI-AVENTIS US LLC and SANOFI-AVENTIS,** | : | **Superior Court No. 1936 EDA 2012** |
| **Appellees** | : | |

**OPINION**

**Tereshko, J.**

## PROCEDURAL HISTORY

Plaintiff Stephen M. Madden appeals this Court's Order dated January 3, 2011, sustaining Defendant Sanofi-Aventis U.S., LLC's Preliminary Objections and dismissing any and all claims against Sanofi-Aventis U.S., LLC, with prejudice.

## FACTUAL BACKGROUND

On September 20, 2008, Stephen M. Madden (hereinafter "Plaintiff") was prescribed Ambien 10 mg by a physician in Everett, Washington, following a total right knee replacement surgery. (Compl. ¶ 30). Ambien, and its generic bioequivalent, Zolpidem tartrate (hereinafter "Zolpidem"), is a sedative-hypnotic drug indicated for the short-term treatment of insomnia and intended to induce sleep. (Compl. ¶ 29). Plaintiff filled the prescription on October 1, 2008 at a Walgreens pharmacy in Redding, California. (Compl. ¶ 31). The pharmacist filled the prescription with the generic version of Ambien, Zolpidem 10 mg, manufactured by Teva Pharmaceuticals USA, Inc.

and Teva Pharmaceuticals Industries, Ltd. Plaintiff ingested Zolpidem as directed, before bedtime on October 2, 2008. (Compl. ¶ 33).

At or around midnight on October 3, 2008, Plaintiff got into his car and drove his vehicle off of the road and into a ditch. (Compl. ¶ 34). Plaintiff continued to drive the vehicle, colliding with fences and fence posts on Old Oregon Trail in Redding, California. (Compl. ¶ 34). Plaintiff ultimately crashed his vehicle at a high rate of speed into a tree and electric pole, causing him to be ejected from the vehicle to a distance between thirty (30) and fifty (50) feet. (Compl. ¶ 34).

In the early morning of October 3, 2008, Plaintiff was transported in critical condition by ambulance to the Trauma Room of Mercy Medical Center Redding in Redding, California. (Compl. ¶ 36). As a direct result of the single vehicle accident, Plaintiff suffered head and multiple system trauma, lacerations and swollen soft tissues, multiple severe facial fractures, a skull fracture with traumatic head injury, brain swelling, multiple rib fractures with pulmonary contusion, hypoxia, and multiple fractures to the lumbar spine, radius and ulna. (Compl. ¶ 38). Plaintiff's blood tested negative for intoxicants. (Compl. ¶ 37).

Plaintiff remained in the hospital for treatment until he was discharged to a rehabilitation center in December 2008. (Compl. ¶ 39). Plaintiff continues to reside in a convalescent home in Sylmar, California. (Compl. ¶ 40). Plaintiff has no recollection of driving and crashing his vehicle. (Compl. ¶ 40).

Sleep-driving is a term that refers to driving while not fully awake, after ingestion of a sedative-hypnotic, with amnesia for the event. (Compl. ¶ 41). Plaintiff states in his complaint that sleep-driving is a dangerous and known risk associated with Ambien and

its generic bioequivalent, Zolpidem. (Compl. ¶ 41). Sleep-driving may manifest as early as the first dose or after periods of uneventful use. (Compl. ¶ 42).

Plaintiff commenced this action on October 4, 2010 by filing a Complaint in the Court of Common Pleas of Philadelphia County against four defendants: Teva Pharmaceuticals USA, Inc. (hereinafter "Teva"), Teva Pharmaceuticals Industries, Ltd.[1], Sanofi-Aventis U.S., LLC[2] (hereinafter "Sanofi") and Sanofi-Aventis.[3] *See Docket*. On November 15, 2010, Sanofi filed Preliminary Objections to Plaintiff's Complaint. *Id*. On December 6, 2010, Plaintiff filed an Answer in Opposition to Sanofi's Preliminary Objections. *Id*. On December 13, 2010, Sanofi filed a Reply in Support of Preliminary Objections. By Order dated January 4, 2011, Judge Tereshko sustained Sanofi's Preliminary Objections and dismissed any and all claims against Sanofi, with prejudice. *Id*.

Teva filed Preliminary Objections to Plaintiff's Complaint on February 15, 2011. *Id*. By Order dated May 3, 2011, the Honorable Judge Lisa M. Rau overruled Teva's Preliminary Objections and directed Teva to file an Answer to Plaintiff's Complaint within twenty (20) days of the Order. *Id*. Teva filed an Answer with New Matter to Plaintiff's Complaint on July 6, 2011. *Id*. On July 26, 2011, Plaintiff filed a Reply to Teva's New Matter. *Id*. On April 23, 2012, Teva filed a Motion for Judgment on the Pleadings and on May 7, 2012, Teva filed a Motion for Extraordinary Relief. *Id*.

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[1] Plaintiff attempted to serve Teva Pharmaceuticals Industries, Ltd. on October 14, 2010 but service was not accomplished. *See Docket*.

[2] Sanofi-Aventis U.S., LLC is a pharmaceutical company that is incorporated in Delaware and headquartered in Bridgewater, New Jersey. (Compl. ¶ 5).Sanofi-Aventis U.S., LLC manufactures and sells the name-brand prescription medication Ambien in the United States – it does not sell or manufacture the generic form of zolpidem tartrate. (Compl. ¶ 18).

[3] There is no such "Sanofi-Aventis" entity. (Def.'s Prelim. Objections to Pl.'s Compl. N. 1). To the extent that Plaintiff intended to name Sanofi-Aventis S.A., Sanofi-Aventis S.A. is a French corporation based in France. *Id*. Sanofi-Aventis S.A. does not manufacture or sell Ambien. *Id*. Moreover, Sanofi-Aventis S.A. has not been served in this matter and is not a proper party to this litigation. *Id*.

By Order dated May 10, 2012, the Honorable Nitza I. Quinones-Alejandro granted Teva's Motion for Extraordinary Relief, extending the case management deadlines by sixty (60) days. *Id*. Judge Quinones-Alejandro granted Teva's Motion for Judgment on the Pleadings by Order dated May 21, 2012, dismissing Teva, with prejudice. *Id*.

On June 20, 2012, Plaintiff timely appealed the Court's Order dated January 3, 2011. *Id*. On July 23, 2012, Plaintiff filed his Rule 1925(b) Statement of Matters Complained of pursuant to this Court's Order dated July 2, 2012.

The issues on appeal are:

1. Whether the Court erred in concluding that Washington law applies to the present litigation after analyzing the case utilizing Pennsylvania conflict of law principles; and
2. Whether the Court erred in granting Sanofi's Preliminary Objections and dismissing Plaintiff's Complaint with prejudice, declining to hold Sanofi responsible for the labeling of the generic version of the drug Ambien pursuant to *Wyeth v. Levine*, 129 S. Ct. 1187 (2009), and *Pliva, Inc. v. Mensing*, 131 S. Ct. 2567 (2011).

**LEGAL ANALYSIS**

Pennsylvania Rule of Civil Procedure 1028(a)(4) permits a party to file a preliminary objections in the form of a demurrer to any pleading lacking legal sufficiency. Pa.R.C.P 1028(a)(4). The issue raised by a demurrer is whether the facts in the pleading itself are sufficient to entitle a claimant to relief. *Int'l Union of Operating Eng'rs, Local No 66, AFL-CIO v. Linesville Const. Co.*, 457 Pa. 220, 223, 322 A.2d 353, 356 (1974). A preliminary objection in the nature of a demurrer will be sustained only where the pleading, on its face, is insufficient to establish the pleader's right to relief. *Willet v. Pa. Med. Catastrophe Loss Fund*, 549 Pa. 613, 619, 702 A.2d 850, 853 (1997). In determining whether to sustain the demurrer, the court must admit as true all well-

pleaded, material, relevant facts set forth in the pleading and all reasonable inferences that may be drawn therefrom. *Id*.

Plaintiff avers that this Court erred in applying Washington law to the present litigation. Plaintiff filed his Complaint in Pennsylvania, but makes several claims against Sanofi based on events that occurred outside the Commonwealth. This raises a threshold conflict-of-law question that must be addressed to determine the substantive law that applies to Plaintiff's claims. In determining the applicable substantive law, for cases filed within the Commonwealth, Pennsylvania courts apply Pennsylvania conflict-of-law principles. *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed 1477 (1941).

Pennsylvania has abandoned the traditional "place of injury" approach to conflicts of law in favor of a more flexible approach. *Griffith v. United Air Lines, Inc.*, 416 Pa. 1, 23, 203 A.2d 796, 806 (1964). Under Pennsylvania law, conflicts of law are analyzed using a hybrid approach that "combines the approaches of both Restatement II (contacts establishing significant relationships) and 'interest analysis' (qualitative appraisal of the relevant States' policies with respect to the controversy)." *Melville v. Am. Home Assurance Co.*, 584 F.2d 1306, 1311 (3d Cir. 1978). In this case, both the significant relationship and interest analysis favor applying Washington law to Plaintiff's claims against Sanofi.

Section 145 of the Restatement II provides as follows:

> (1) The rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, with respect to that issue, has the most significant relationship to the occurrence and the parties under the principles stated in § 6.
> (2) Contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

(a) the place where the injury occurred,
(b) the place where the conduct causing the injury occurred,
(c) the domicil, residence, nationality, place of incorporation and place of business of the parties, and
(d) the place where the relationship, if any, between the parties is centered.

These contacts are to be evaluated according to their relative importance with respect to the particular issue. Restatement (Second) of Conflict of Laws § 145 (1971).

Plaintiff contends that this Court erred in applying Washington law to the present litigation when both the site of the accident and the residence of the plaintiff lay in California. None of Plaintiff's contacts with California, however, are pertinent to Plaintiff's claims against Sanofi. An analysis of the contacts relevant to Plaintiff's claims against Sanofi demonstrates that the relevant (and only) contact occurred in Washington.

Plaintiff seeks recovery against Sanofi based on two theories of liability: negligence and negligent misrepresentation. See Compl. P. 34-50. The facts alleged by Plaintiff indicate that the entire connection between Plaintiff and Sanofi, if any, begins and ends in Washington, and any conduct on the part of Sanofi that allegedly caused injury to Plaintiff would have therefore occurred in Washington. According to Plaintiff's Complaint, "On or about September 20, 2008, Plaintiff was prescribed the drug Ambien . . . by a physician in Everett, State of Washington . . . " (Compl. ¶ 30). Any and all relevant contact with Sanofi ends at this point in Everett, Washington. Plaintiff filled the prescription on October 1, 2008 in California with the generic drug Zolpidem, manufactured by Teva. (Compl. ¶ ¶ 31-32). All of the remaining events, including Plaintiff's alleged ingestion of Zolpidem and subsequent accident, occurred after he purchased the medication manufactured by Teva.

An "interest analysis" indicates that Washington also has the greater interest in having its law applied to the claims against Sanofi. At the center of Plaintiff's claims against Sanofi are allegations regarding the prescription written by a Washington physician and the information relied upon by that Washington physician. Washington recognizes the learned intermediary doctrine, which provides that the manufacturer or supplier of prescription drug has no legal duty to warn a consumer of the dangerous propensities of its drug, as long as adequate warnings are provided to the prescribing physician. *Estate of LaMontagne v. Bristol-Myers Squibb*, 127 Wash.App. 335, 345, 111 P.3d 857, 862 (2005).

Based on Plaintiff's allegations, the decision to prescribe Ambien was made in Washington, the prescription was written in Washington, and any warnings to the doctor would necessarily have been received in Washington. Therefore, any claims of negligence or negligent misrepresentation would be based on a representation to the prescribing physician in Washington; the physician's reliance on that misrepresentation would also have occurred in Washington. Accordingly, Washington has an interest in having its law applied to determine whether or not such allegations amount to a cognizable claim. Washington also has a general interest in ensuring that its law is applied to products liability claims involving alleged representations within its borders.

Moreover, Washington has a significant interest in ensuring that its physicians receive adequate information regarding the risks of products that they prescribe, thus protecting physicians in the State of Washington from increased liability and insurance premiums that may ultimately be passed on to consumers in the form of increased healthcare expenses. This is consistent with the purpose of the Washington Product

Liability Act (hereinafter "WPLA"), which was "designed to address a liability insurance crisis which could threaten the availability of socially beneficial products and services." *Wash. Water Power Co. v. Graybar Elec. Co.*, 112 Wash.2d 847, 850, 774 P.2d 1199, 1202 (1989); *see also* Wash. Rev. Code § 7.72.010, Preamble.

Permitting the significant expansion of liability that Plaintiff is seeking in this case would be in direct contrast to the goal of the WPLA and would only provide further disincentives to innovation and development as well as increased costs for consumers. Under Plaintiff's theory of liability, Sanofi would become a functional insurer for its competitor's products that it does not manufacture or sell. Ultimately, Washington has the greater interest in having its law applied to Plaintiff's claims against Sanofi.

Other states, including New Jersey, Pennsylvania, and California, have an interest in having their law applied as well. Sanofi's headquarters are located in New Jersey. Therefore, New Jersey arguably has an interest in regulating companies within its borders. Pennsylvania has an interest in applying its law in this case as the forum state. California has an interest in applying its law because Plaintiff resides in California, and the accident occurred in California. California's interest in having its law applied to Plaintiff's claims against Sanofi, however, is diluted for three reasons. First, Plaintiff traveled out of state to receive medical treatment. Second, Plaintiff's claims against Sanofi rely exclusively on alleged representations made by Sanofi to the prescribing physician in Washington. Finally, Plaintiff chose to file his lawsuit in Pennsylvania rather than California.

Considering the contacts and interests of the states involved, this Court properly concluded that Washington law should apply. The decision to prescribe Ambien was

made in Washington, the prescription was written in Washington, and any warnings to Plaintiff's physician were given in Washington. On balance, these considerations favor application of Washington law.

Sanofi cannot be held liable for Plaintiff's injuries under the WPLA. The WPLA provides the exclusive remedy for product liability claims in Washington. *Graybar*, 112 Wash.2d at 853, 774 P.2d 1199. The WPLA subsumes virtually all prior causes of action, including negligence and negligent misrepresentation.[4] Consequently, Plaintiff's claims can only be brought, if they can be brought at all, under the WPLA.

Under the WPLA, product liability claims can only be brought against the manufacturer or seller of the "relevant product." *See* Wash. Rev. Code §§ 7.72.010(3)-(4); *See also Id*. at 7.72.030. The "relevant product" consists of the product or those component parts that actually caused the injury. *Sepulveda-Esquivel v. Cent. Mach. Works, Inc.*, 120 Wash.App. 12, 19-20 n.2, 83 P.3d 895, 899 n.2 (2004) ("We do not address the other defenses raised by the parties because the product must be the 'relevant product' before there can be liability. That issue is determinative.").

Sanofi was not the manufacturer or seller of the product at issue in this case. *See* §§ 7.72.010(1)-(2). Here, it is undisputed that the Plaintiff purchased and ingested the generic, Zolpidem, manufactured and sold by Teva, not the brand-name, Ambien, manufactured by Sanofi. Accordingly, Plaintiff cannot assert a legally sufficient claim against Sanofi under Washington law. As such, the Court properly dismissed Plaintiff's claims against Sanofi.

[4] *See* Wash. Rev. Code § 7.72.010(4) (" 'Product liability claim' includes . . . but is not limited to, any claim or action previously based on: Strict liability in tort; negligence; breach of express or implied warranty; breach of, or failure to, discharge a duty to warn or instruct, whether negligent or innocent; misrepresentation, concealment or nondisclosure, whether negligent or innocent . . . ").

Finally, Plaintiff argues that federal law supports the notion that a pharmaceutical manufacturer can be liable for a product it did not manufacture or sell. Plaintiff cites *Wyeth v. Levine*, 129 S. Ct. 1187, 555 U.S. 555 (2009), and *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011), in support of this contention. *See* Appellant's Statement of Reasons for Appeal Under Rule 1925(b) ¶¶ 6-7. In *PLIVA*, the United States Supreme Court held that federal law pre-empted those state laws that imposed the duty to change a drug's label upon generic manufacturers. 131 S. Ct. at 2577-78.

In *Levine*, the Supreme Court of the United States held that FDA approval of a pharmaceutical product did not preempt state tort claims for failure to warn. 129 S. Ct. at 1204, 555 U.S. at 581. *Levine* held that "a central premise of federal drug regulation [is] that the manufacturer bears responsibility for the content of its labeling at all times." *Id*. at 1198, 570-71. This premise is equally valid for a generic manufacturer as it is for a name-brand manufacturer. "Manufacturers of generic drugs, like all other manufacturers are responsible for the representations they make regarding their products." *Foster v. Am. Home Prods. Corp.*, 29 F.3d 165, 170 (4th Cir. 1994).

Here, the Court properly dismissed Plaintiff's claims against Sanofi because Sanofi was not the manufacturer or seller of the product ingested by the Plaintiff. Here, it is undisputed that the Plaintiff purchased and ingested the generic drug, Zolpidem manufactured and sold by Teva, not the brand-name drug, Ambien manufactured by Sanofi. Moreover, courts across the country have overwhelmingly refused to allow claims against the manufacturer of a name-brand medication for damages allegedly

caused by the use of another manufacturer's generic-equivalent medication on both legal and policy grounds.[5]

In *Foster*, the Fourth Circuit addressed the precise theory Plaintiff asserts here:

> Using a name brand manufacturer's statements about its own product as a basis for liability for injuries caused by other manufacturers' products, over whose production the name brand manufacturer had no control . . . would be especially unfair when, as here, the generic manufacturer reaps the benefits of the name brand manufacturer's statements by copying its labels and riding on the coattails of its advertising. . . .

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[5] To date, more than 40 cases in approximately 20 states have held that a name-brand manufacturer is not liable for injuries allegedly caused by the use of a generic manufacturer's product. *See, e.g.*, *Foster v. Am. Home Prods. Corp.*, 29 F.3d 165, 171 (4th Cir. 1994); *Levine v. Wyeth, Inc.*, 684 F. Supp. 2d 1338, 1344 (M.D. Fla. 2010); *Fullington v. Pfizer, Inc.*, 2010 WL 3632747 (E.D. Ark. Sept 17, 2010); *Neal v. Teva Pharm. USA, Inc.*, 2010 WL 2640170, at *2 (W.D. Ark. July 1, 2010); *Mosley v. Wyeth Inc.*, 719 F.Supp.2d 1340 (S.D. Ala. 2010); *Craig v. Pfizer, Inc.*, 2010 WL 2649545, at *2-4 (Mag. E.D. La. May 26, 2010), *adopted*, 2010 WL 2649544 (W.D. La. June 29, 2010); *Finnicum v. Wyeth, Inc.*, 708 F.Supp.2d 616 (E.D. Tex. 2010); *Howe v. Wyeth Inc.*, 2010 WL 1708857, at *4-5 (M.D. Fla. Apr. 26, 2010); *Hardy v. Wieth, Inc.*, 2010 WL1049588, at *2-5 (Mag. E.D. Tex. March 8, 2010), *adopted*, 2010 WL 1222183 (E.D. Tex. Mar. 29, 2010); *Morris v. Wyeth, Inc.*, No. 09-0854, 2009 WL 4064103, at *4 (W.D. La. Nov. 23, 2009); *Meade v. Parsley*, No. 2:09-cv-00388, 2009 WL 3806716, at *3 (S.D.W. Va. Nov. 13, 2009); *Burke v. Wyeth, Inc.*, No. G-09-82, 2009 WL 3698480, at *2-3 (S.D. Tex. Oct. 29, 2009); *Stoddard v. Wyeth, Inc.*, 630 F.Supp.2d 631, 633-34 (E.D.N.C. 2009); *Fields v. Wyeth, Inc.*, 613 F. Supp. 2d 1056, 1061 (W.D. Ark. 2009); *Moretti v. Wyeth, Inc.*, No. 2:08-CV-00396, 2009 WL 749532, at *3-4 (D. Nev. Mar. 20, 2009); *Schrock v. Wyeth, Inc.*, 601 F. Supp. 2d 1262, 1266-67 (W.D. Okla. 2009); *Cousins v. Wyeth Pharm. Inc.*, No. 3:08-CV-0310-N, 2009 WL 648703, at *2 (N.D. Tex. Mar. 10, 2009); *Wilson v. Wyeth, Inc.*, No. 3:07-CV-378-R, 2008 WL 2677049, at *3-4 (W.D. Ky. June 30, 2008); *Smith v. Wyeth, Inc.*, No. 5:07-CV-18-R, 2008 WL 2677051, at *4 (W.D. Ky. June 30, 2008); *Morris v. Wyeth, Inc.*, No. 1:07-CV-176-R, 2008 WL 2677048, at *4 (W.D. Ky. June 30, 2008); *Pustejovsky v. Wyeth, Inc.*, No. 4:07-CV-103-Y, 2008 WL 1314902, at *2 (N.D. Tex. Apr. 3, 2008); *Swicegood v. Pliva, Inc.*, 543 F. Supp. 2d 1351, 1358 (N.D. Ga. 2008); *Barnhill v. Teva Pharms. USA, Inc.*, No. 06-0282-CB-M, 2007 WL 5787186, at *1-2 (S.D. Ala. Apr. 24, 2007); *LeBlanc v. Wyeth, Inc.*, No. Civ A 04-0611, 2006 WL 2883030, at *6 (W.D. La. Oct. 5, 2006); *Goldych v. Eli Lilly & Co.*, No. 5:04-CV-1477, 2006 WL 2038436, at *6 (N.D.N.Y. July 19, 2006); *Colacicco v. Apotex, Inc.*, 432 F. Supp. 2d 514, 540-41 (E.D. Pa. 2006), *aff'd in pertinent part*, 521 F.3d 253 (3d Cir. 2008), *vacated and remanded on other grounds*, 129 S.Ct. 1578 (2009); *Possa v. Eli Lilly & Co.*, No. 05-1307, 2006 WL 6393160, at *1 (M.D. La. May 10, 2006); *Tarver v. Wyeth, Inc.*, No. Civ.A.3-04-2036, 2005 WL 4052382, at *2 (W.D. La. June 7, 2005); *Block v. Wyeth, Inc.*, No. CIV.A.3:02-1077, 2003 WL 203067, at *2 (N.D. Tex. Jan. 28, 2003); *DaCosta v. Novartis AG*, No. CV 01-800-BR, 2002 WL 31957424, at *8-9 (D. Or. Mar. 1, 2002); *Buchanan v. Wyeth Pharms. Inc.*, No. CV-2007-900065, 2008 WL 7136137 (Ala. Cir. Ct. May 15, 2007); *Sheeks v. Am. Home Prods. Corp.*, No. 02CV337, 2004 WL 4056060, at *2 (Colo. Dist. Ct. Oct. 15, 2004); *Dietrich v. Wyeth, Inc.*, No. 50-2009-CA-021586, 2009 WL 4924722, at *3-6 (Fla. Cir. Ct. Dec. 21, 2009); *Sharp v. Leichus*, No. 2004-CA-643, 2006 WL 515532, at *3 (Fla. Cir. Ct. Feb. 17, 2006), *aff'd per curiam*, 952 So. 2d 555 (Fla. Dist. Ct. App. 2007); *Reynolds v. Anton*, No. 01A-76719-3, 2004 WL 5000272, at *9 (Ga. Super. Ct. Oct. 28, 2004); *Huck v. Trimark Inc.*, 991 So. 2d 31, 34-35 (La. Ct. App. 2008); *Kelly v. Wyeth, Inc.*, No. CIV.A.MICV200303314B, 2005 WL 4056740, at *2 (Super. Ct. Mass. May 6, 2005); *Flynn . Am. Home Prods. Corp.*, 627 N.W.2d 342, 350 (Minn. Ct. App. 2001); *Westerlund v. Wyeth, Inc.*, No. MID-2174-05, 2008 WL 5592753, at *3 (N.J. Super. Ct. Oct. 20, 2008); *Sloan v. Wyeth, Inc.*, No. MRS-L-1183-04, 2004 WL 5767103, at *4 (N.J. Super. Ct. Oct. 13, 2004); *Beutella v. A.H. Robins Co.*, No. 980502372, 2001 WL 35669202, at *3 (Utah Dist. Ct. Dec. 10, 2001).

29 F.3d 165, 170-71 (4th Cir. 1994). Plaintiff has specifically alleged that Teva, not Sanofi, manufactured the product ingested by the Plaintiff. As such, Plaintiff has failed to state a legally sufficient claim against Sanofi.

**CONCLUSION**

For the foregoing reasons, this Court respectfully requests that its decision to sustain Sanofi-Aventis U.S., LLC's Preliminary Objections and dismiss any and all claims against Sanofi-Aventis U.S., LLC, with prejudice, be **AFFIRMED**.

**BY THE COURT:**

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**DATE** **ALLAN L. TERESHKO, J.**

cc:
**All counsel**
**Joseph P. Grimes, Esq., for Appellant**
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