

SACKS & WESTON
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Attorneys for Plaintiffs

GREGORY CLARK and	:	
LINDA MEASHEY , individually and on	:	PHILADELPHIA COUNTY
behalf of others similarly situated	:	COURT OF COMMON PLEAS
	:	
	:	CIVIL DIVISION
	:	
Plaintiffs,	:	
	:	CLASS ACTION
vs.	:	
	:	
	:	
	:	No. 01819
PFIZER INC. , and	:	
WARNER-LAMBERT COMPANY, LLC	:	June Term 2004
	:	
Defendants.	:	
_____ :	:	Jury Trial Demanded

AMENDED COMPLAINT

PARTIES

1. Plaintiff Gregory Clark is an adult individual and a citizen of the Commonwealth of Pennsylvania, who resides at 4621 Linden Avenue, Philadelphia County, Philadelphia Pennsylvania 19114.

2. Plaintiff Linda Meashey is an adult individual and a citizen of the Commonwealth of Pennsylvania, who resides at 11 Palmyra Bellegrave Road, Annville, Lebanon County, Pennsylvania 17003.

3. Defendant, Pfizer, Inc. (APfizer@), is a foreign corporation operating and existing under the laws of the State of Delaware since June 2, 1942, and licensed to do and doing business in the Commonwealth of Pennsylvania. Its corporate headquarters is located in New York, New York. On June 19, 2000, Pfizer, Inc. acquired Warner-Lambert Company, including its Parke-Davis division. The acquisition was accounted for as a pooling of interests. Pfizer, Inc. restated all of its consolidated financial statements for periods prior to the acquisition to include the results of operations and financial position of Warner-Lambert Company, as if the two companies had always been merged.

4. Defendant, Warner-Lambert Company, LLC (AWarner-Lambert@) is a foreign corporation operating and existing under the laws of the State of Delaware and licensed to do and doing business in the Commonwealth of Pennsylvania. Its principal place of business is Morris Plains, New Jersey. Warner-Lambert=s Parke-Davis Division, prior to merger with Pfizer, was engaged in, among other things, the development, manufacture, promotion, sale and interstate distribution of prescription drugs intended for human use in the United States. Warner-Lambert=s pharmaceutical manufacturing facilities are located in Puerto Rico, from which it ships products to all fifty states and the District of Columbia.

5. Both Pfizer and Warner-Lambert have appointed CT Corporation System, located at 1635 Market Street, Philadelphia County, Philadelphia, Pennsylvania 19103, as their agent for service of process in the Commonwealth of Pennsylvania.

JURISDICTION AND VENUE

6. Venue is appropriate in this county because the defendants transact business in the Commonwealth of Pennsylvania and in the County of Philadelphia.

7. Venue in Philadelphia County is also appropriate under Pa.R.C.P. 2179(a)(1) because defendants Pfizer and Warner-Lambert maintain their registered offices in Philadelphia County.

8. Defendants contracted to supply goods and/or services in the Commonwealth of Pennsylvania and in the County of Philadelphia.

9. As hereinafter more fully appears, defendants caused harm and injury to citizens within the Commonwealth of Pennsylvania and in the County of Philadelphia.

10. As hereinafter more fully appears, defendants violated, within the jurisdiction of this Commonwealth, various statutes of the Commonwealth of Pennsylvania.

11. Plaintiffs and the class members do not assert any federal claims in the prosecution of this litigation. Plaintiffs and the class members seek relief as provided by Pennsylvania, and not federal, law. Plaintiffs and each member of the class have individually incurred damages under the laws of Pennsylvania in an amount less than \$75,000. Neither of the plaintiffs, nor any member of the class, seeks damages exceeding \$75,000, nor do their damages individually exceed \$75,000, inclusive of interest and attorneys= fees and all relief of any nature sought hereunder. Neither of the plaintiffs, nor any of the class members, seeks any form of Acommon@ recovery, but rather individual recoveries not to exceed \$75,000 for any class member, inclusive of interest and attorneys=

fees and all relief of any nature sought hereunder. Plaintiffs and the class members voluntarily limit their claims to less than \$75,000 each.

GENERAL ALLEGATIONS

12. The Parke-Davis division of Warner-Lambert (AParke-Davis@) developed, manufactured, promoted, sold and distributed Neurontin for human use in the United States prior to the acquisition of Warner-Lambert by Pfizer.

13. Neurontin is, and at all times pertinent to this action, has been, developed, manufactured, promoted, sold and distributed in the United States and the Commonwealth of Pennsylvania by defendants.

14. Neurontin is a prescription drug available in capsule, tablet and/or oral solution form. It is indicated, and FDA-approved, for the treatment of partial seizures associated with epilepsy (as adjunctive therapy), and the management of post-herpetic neuralgia (pain associated with herpes zoster skin rash outbreaks).

15. Neurontin is not FDA-approved for any other uses and has not been lawfully established to be effective for treatment of other ailments.

16. Reported side effects of Neurontin include, but are not limited to: suicidal behavior/attempts at suicide, paranoia, memory loss, hostility/rage, unsteadiness, severe mania, severe depression, abnormal thinking, incoordination, dizziness, drowsiness, water retention, nausea and/or vomiting, ataxia (inability to control muscles), fatigue, and/or viral infection.

17. Because of the expense and time involved with filing a New Drug Application (ANDA@) with the FDA (which, if approved, would permit additional uses of Neurontin),

and/or conducting clinical trials to prove its safety and efficacy, defendants never sought FDA approval for the use of Neurontin to treat any other ailments.

18. Beginning in or about 1995, defendants began a scheme of promoting and marketing Neurontin to doctors throughout the United States, including plaintiffs= and the class members= doctors, through misrepresentations and a series of enticing vacations, lavish dinners, kickbacks and monetary incentives, among other things.

19. Physicians are permitted to prescribe prescription drugs for unapproved uses. However, under applicable statutes and regulations, the manufacturers of Neurontin were not permitted to promote and/or market prescription drugs for unapproved uses.

20. Defendants actively and relentlessly promoted and marketed to doctors, including plaintiffs= and the class members= doctors, that Neurontin was useful for the treatment of unapproved uses, including: bipolar and other social and mood disorders, pain syndromes, peripheral neuropathy and diabetic neuropathy, treatment of epilepsy alone (monotherapy), reflex sympathetic dystrophy (RSD), attention deficit disorder (ADD), restless leg syndrome (RLS), trigeminal neuralgia, essential tremor, migraines, chronic pain (including knee pain), anxiety and related depression and/or drug and alcohol withdrawal seizures.

21. In fact, no evidence had been established at the time which legally justified the prescription of Neurontin for these uses, and this was known to the defendants.

22. Defendants engaged in various promotional and marketing schemes to realize a quick profit with Neurontin before its patent expired. Parke-Davis=s original patent was set to expire in December of 1998. Once the patent had expired, defendants would have been

forced to share the market with other generic drug companies offering customers a less expensive alternative to Neurontin.

23. Pursuant to its promotional and marketing schemes, Parke-Davis entered into an agreement with Medical Education Systems (MES), a Delaware Limited Liability Company. As a result of said agreement, MES became responsible for research, preparation and publication of numerous scientific articles pertaining to Neurontin and its efficacy for unapproved uses. The content, authors and publication locations of these articles were all subject to approval by Parke-Davis. MES ghostwriters authored much of the contents in the articles and later added a doctor's name. Doctors who agreed to have their names associated with the articles were compensated monetarily.

24. In or about 2003, as a direct result of defendants' active marketing and promotion of Neurontin for unapproved uses, plaintiff Gregory Clark was prescribed the drug Neurontin to treat knee pain incident to three surgical procedures. Knee pain is not an approved indication for Neurontin.

25. In approximately August, 2000, as a direct result of defendants' active marketing and promotion of Neurontin for unapproved uses, plaintiff Linda Meashey was prescribed the drug Neurontin to treat bipolar disorder. Bipolar disorder is not an approved indication for Neurontin.

26. Defendants actively and fraudulently concealed the wrongdoing described herein.

27. In May 2004, news media reported that defendants had entered into a criminal plea agreement with the U.S. government, and a civil settlement agreement with the

attorneys general of the states, in which defendants admitted the wrongdoing described herein.

28. In fact, defendant Warner-Lambert did plead guilty to all counts in criminal Information. A copy of the Information is attached hereto, and its allegations, as admitted by Warner-Lambert, are incorporated herein by reference.

29. The misconduct set forth in the criminal Information continued throughout the class period.

30. Plaintiffs, the class members or their doctors, in the exercise of reasonable diligence, could not have discovered defendants' wrongdoing before this announcement. Many doctors and members of the class may not have been exposed to these media revelations, and therefore may still be unaware of defendants' wrongdoing.

31. As a direct and proximate result of the foregoing marketing and promotional schemes, plaintiffs and the class members sustained injuries, including ascertainable economic losses, by purchasing, Neurontin, a drug not indicated for their ailments and not legally established to be effective for treatment of their ailments.

CLASS ACTION ALLEGATIONS

32. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

33. Plaintiffs bring this action individually and as a class action pursuant to Pa.R.C.P. 1701 et seq., on behalf of an opt-out class defined as follows:

a. All persons who purchased Neurontin, or its generic equivalent, gabapentin, in the Commonwealth of Pennsylvania primarily for personal, family or household purposes from 1995 to the present, other than for treatment of partial

seizures associated with epilepsy (as adjunctive therapy), or for management of post-herpetic neuralgia (pain associated with herpes zoster skin rash outbreaks).

b. Excluded from the class definitions are any persons who have already settled or otherwise compromised their claims against the defendants.

c. Also excluded from the class definitions are officers and employees of defendants.

d. Class members may opt out of the putative class at any time within a six-month period after conclusion of the initial notice program. All class members who have not affirmatively elected to opt out of the putative class by the specified date will be bound by the class action resolution.

34. Plaintiffs are members of the class they seek to represent. Plaintiffs' interests coincide with, and are not antagonistic to, those of the other class members. Plaintiffs' claims are typical of the claims of the other class members, and plaintiffs will fairly and adequately represent and protect the interests of the class as a whole.

35. Questions of law and fact are common to all class members. More specifically, and without limitation, the following questions of law and fact are common to all class members:

a. Whether defendants promoted and marketed the drug Neurontin to doctors throughout the United States for unapproved uses;

b. Whether defendants knew or should have known that there was a lack of supporting evidence that Neurontin would be effective to treat the unapproved uses for which it was prescribed;

c. Whether defendants failed to disclose material facts regarding the efficacy of Neurontin when used for unapproved purposes;

a. Whether defendants' failure to disclose material facts regarding the efficacy of Neurontin when used for unapproved purposes caused harm;

b. Whether defendants negligently, recklessly and/or intentionally concealed the efficacy of Neurontin when used for unapproved purposes;

c. Whether defendants breached any express warranty, implied warranty or warranty of fitness for a particular purpose;

d. Whether defendants violated the Unfair Trade Practices and Consumer Protection Law, 73 P.S. ' 201-1 et seq.;

e. When, and whether, plaintiffs and the class members, through the exercise of reasonable diligence, could have discovered the true facts concerning Neurontin's efficacy for unapproved uses.

f. Whether plaintiffs and the class members are entitled to prejudgment interest.

21. Questions of law and fact common to all members of the class predominate over any questions affecting only individual members. The common issues are the most significant issues in the case, and can be resolved for all the members of the class in one action.

22. The plaintiff class, which is believed to be in the tens of thousands, is so numerous as to make joinder impractical.

23. The representative plaintiffs will fairly and adequately assert and protect the interest of the class, in that:

a. The representative plaintiffs have no conflicts of interest with absent class members in the maintenance of this action and pursues this action for the benefit of the plaintiff class. Plaintiffs have no present relationship with defendants, in any official or unofficial capacity.

b. The representative plaintiffs have adequate financial resources to conduct this litigation in a manner assuring that the interests of the plaintiff class will not be harmed. Class counsel has agreed and has the ability to advance costs of this litigation.

c. The representative plaintiffs have retained counsel who are experienced in class action litigation and who will adequately represent the interests of the class.

24. A class action will provide a fair and efficient method of adjudicating this controversy, in that:

a. Common questions of law and fact predominate over any question affecting only class members. The common issues are the most significant issues in the case, and can be resolved for all members of the class in one action.

b. Proof of defendants' violations of the Unfair Trade Practices and Consumer Protection Law, breaches of warranty, and defendants' misrepresentations are the same for every class member. Resolving these issues on a class basis will achieve the greatest efficiency with regard to cost, time, complexity and judicial economy.

c. Neither the size of the class nor any other factor makes it likely that difficulties will be encountered in the management of this action as a class action.

d. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would confront the defendants with incompatible standards of conduct.

e. The prosecution of separate actions by individual class members or the individual joinder of all class members in this action, would create massive and unnecessary burdens on the resources of this Court and other courts.

f. Because of the disparity of resources available to defendants versus those available to individual class members, prosecution of separate actions works a financial hardship on many class members.

g. While the exact number of class members cannot be known, the cost of notifying those who are known will not be unduly burdensome.

COUNT I
MISREPRESENTATION

25. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

26. Defendants, directly or indirectly, made material misrepresentations, or failed to disclose material facts, to plaintiffs, the class members and their doctors regarding the efficacy of Neurontin when used for unapproved purposes. In particular, Defendant engaged in a promotional campaign for Neurontin that encouraged doctors to prescribe the drug for

purposes unapproved by the FDA, and for which there was no, or insufficient, proof of safety and/or effectiveness.

1. Defendants, through their experience, were in a position of superiority over plaintiffs, the class members and their doctors with respect to knowledge of:

- a. The safety and efficacy of Neurontin for unapproved uses; and
- b. The side effects of Neurontin in patients taking it for unapproved uses.

2. Defendants had a duty to disclose these facts to plaintiffs, the class members and their doctors, and failed to do so. As such, defendants misrepresented facts known to them to be deceptive and/or failed to disclose their complete knowledge of the efficacy of Neurontin for unapproved uses.

3. The material misrepresentations and omissions were, or should have been, known by the defendants to be deceptive when made.

4. Defendants intended, or could reasonably have foreseen or expected, that these material misrepresentations and omissions would influence plaintiffs, the class members and their doctors in their decision to purchase or prescribe Neurontin for unapproved uses.

5. Plaintiffs, the class members and their doctors in fact relied to their detriment and injury upon the deceptive statements of fact made by defendants.

6. As a direct and proximate cause of defendants' conduct, plaintiffs and the class members have suffered actual damages including, without limitation, the amounts which they spent for Neurontin.

WHEREFORE, plaintiffs respectfully requests this Court to grant the relief requested in Count VI of this Complaint.

COUNT II
NEGLIGENCE

7. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

8. Defendant owed a duty to plaintiffs, the class members and their doctors to exercise the ordinary care and diligence exercised by a reasonable and prudent manufacturer under the same or similar circumstances.

9. Defendants owed a duty to Plaintiff and the class members and their doctors to provide adequate warnings of the safety and effectiveness of Neurontin.

10. Defendants owed a duty to Plaintiff and the class members and their doctors to ensure that defendants' marketing and promotional efforts did not weaken or vitiate the safety and effectiveness warnings to plaintiffs, to the class members, and to their doctors.

11. Defendants owed a duty to plaintiffs, the class members and their doctors to restrict the use of Neurontin if defendants were on notice that Neurontin was used indiscriminately or in any manner inconsistent with the appropriate safety and effectiveness warnings.

12. Defendants violated the duty owed to plaintiffs, the class members and their doctors, and were negligent in the following particulars:

- a. Promoting and marketing Neurontin to doctors, for unapproved uses;
- b. Failing to warn, upon promotion and marketing of Neurontin, of the negative side effects Neurontin has on patients;
- c. Failing to disclose the unlawfulness of promoting Neurontin for unapproved uses.

d. Failing to adequately investigate and study the safety usefulness of Neurontin for unapproved uses before advertising, marketing and promoting it for unapproved uses.

e. Failing to take reasonable steps to restrict the use of Neurontin.

13. As a direct and proximate result of defendants= conduct, plaintiffs and the class members have suffered actual damages including, without limitation, the amounts which they spent for Neurontin.

WHEREFORE, plaintiffs respectfully request this Court to grant the relief requested in Count VI of this Complaint.

COUNT III
NEGLIGENCE PER SE

14. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

15. Defendants= acts and omissions, as set forth above, violated the Federal Food, Drug and Cosmetic Act, 21 U.S.C. '301 et seq.

16. As a direct and proximate result of Defendants= conduct, plaintiffs and the class members have suffered actual damages including, without limitation, the amounts which they spent for Neurontin.

WHEREFORE, plaintiffs respectfully request this Court to grant the relief requested in Count VI of this Complaint.

COUNT IV
BREACH OF EXPRESS WARRANTY

17. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.
18. The different forms of Neurontin (capsules, tablets and oral solution) were Agoods@ under Article II of the Uniform Commercial Code, 13 Pa. C.S.A. ' 1101 et seq.
19. Plaintiffs and the class members were Abuyers@ in that they contracted for and purchased goods manufactured by the defendants.
20. Defendants were Amerchants@ in that they deal in goods of the kind purchased by plaintiffs and the class members.
21. Defendants were Asellers@ in that they sold or contracted to sell goods.
22. Plaintiffs and the class members received express warranties from defendants, through the class members' doctors, through MES= publications and through the written materials included with the purchased Neurontin, that Neurontin was safe, effective, fit and proper for its intended use. These express warranties significantly exaggerated the safety and effectiveness of Neurontin. Plaintiffs do not presently have possession of the written warranties; however, plaintiffs reasonably expect that those materials will be located during discovery proceedings in this action.
23. The goods were not in their warranted condition.
24. Plaintiffs and the class members are entitled to incidental and consequential damages, as appropriate, under Article II of the Uniform Commercial Code, 13 Pa. C.S.A. ' 2719 (b).
25. As a direct and proximate result of defendants= conduct, plaintiffs and the class members have suffered actual damages including, without limitation, the amounts

which they spent for Neurontin.

WHEREFORE, plaintiffs respectfully request this Court to grant the relief requested in Count VI of this Complaint.

COUNT V
UNFAIR TRADE PRACTICES
AND CONSUMER PROTECTION LAW

26. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

27. At all times relevant to this action, defendants were engaged in trade and commerce, as defined by 73 P.S. ' 201-2.

28. Plaintiffs, and all class members, purchased Neurontin primarily for personal, family or household purposes.

29. By the foregoing acts and omissions, defendants violated the provisions of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. ' 201-1 et seq., and specifically 73 P.S. ' 201-3 of the Law, by committing one or more of the following unfair or deceptive acts or practices, as defined by 73 P.S. ' 201-2:

a. Causing likelihood of confusion to patients as to the approval and/or efficacy of Neurontin for unapproved uses by marketing and promoting it to doctors and patients for such uses, thereby causing the doctors to prescribe it for their patients;

b. Representing that Neurontin had approval, characteristics, uses and/or benefits that it does not have by marketing and promoting it to doctors and patients for unapproved uses, thereby causing the doctors to prescribe it for their patients;

c. Failing to comply with the terms of the warranties given to patients who purchased Neurontin because the product was not in its warranted condition, was not merchantable and was not fit for its particular purpose and/or for its ordinary use.

30. The damages to plaintiffs and the class members were a direct and proximate result of defendants= foregoing conduct.

31. Pursuant to 73 P.S. ' 201-9.2 (a), each plaintiff and each class member is entitled to his/her actual damages, or \$100.00, whichever is greater.

32. Pursuant to 73 P.S. ' 201-9.2 (a), this Court may, in its discretion, award each plaintiff and each class member up to three times his/her actual damages, or \$100.00, whichever is greater, and may provide such additional relief as this Court deems necessary and proper, including attorneys= fees.

WHEREFORE, plaintiffs respectfully request this Court to grant the relief requested in Count VI of this Complaint.

COUNT VI
PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request this Court to grant plaintiffs and the class members the following relief:

(a) To order that this action may proceed as a class action, in which plaintiffs acts as the class representatives and their counsel acts as class counsel.

(b) To award to plaintiffs and the class members the actual sum spent by each individual to purchase Neurontin.

(c) Under Count V, to enter a declaratory judgment that defendants have violated the provisions of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. '201-1 et seq.; that the economic loss sustained by plaintiffs and the class members is the direct and proximate result of such violation; that defendants are liable, jointly and severally, for three times the actual damages which each plaintiff and each class member may prove, or \$100.00, whichever sum is greater for each plaintiff and each class member.

(d) To appoint one or more arbitrators to resolve any disputes as to the amounts due to class members, the expenses relating to the arbitrators to be borne by defendants.

(e) To order defendants to pay the reasonable attorneys' fees of plaintiffs and the class members, in addition to all other relief awarded to plaintiffs and the class members.

(f) To award plaintiffs and the class members costs of this action, together with pre-and post-judgment interest.

RESPECTFULLY SUBMITTED:

/s/ J.K. Weston

Andrew B. Sacks

John K. Weston

Julie C. Parker