

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SHAQUIL BYRD,

Plaintiff,

v.

1:14-CV-0820
(GTS/DJS)

JANSSEN PHARM., INC.; and JOHNSON
& JOHNSON,

Defendants.

APPEARANCES:

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JEFFREY J. HUGHES, ESQ.

GLENN T. SUDDABY, Chief United States District Judge

DECISION and ORDER

Currently before the Court, in this products liability action filed by Shaquil Byrd (“Plaintiff”) against Janssen Pharmaceuticals, Inc. (“Janssen”), and Johnson & Johnson (“Defendants”), is Defendants’ motion for judgment as a matter of law pursuant to Fed. R. Civ. P. 50 or, in the alternative, for a new trial pursuant to Fed. R. Civ. P. 59. (Dkt. No. 199.) For the reasons set forth below, Defendants’ motion is granted.

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I. RELEVANT BACKGROUND

A. Relevant Procedural History

Generally, following the issuance of the Court's Decision and Order of March 7, 2017, two claims of Plaintiff's Amended Complaint survived Defendants' motion for summary judgment: (1) Plaintiff's claim that Defendants were negligent in designing, manufacturing, and selling Risperdal as well as in failing to properly warn the general public of the risks and dangers of Risperdal; and (2) Plaintiff's claim that Defendants are strictly liable for the injuries caused by (a) Risperdal's defective condition, (b) the failure to give appropriate warnings regarding the drug's dangers and adverse effects, and (c) their misleading representations regarding the risk of gynecomastia and hyperprolactinemia in adolescent patients. (Dkt. No. 108, at 70.)

The trial on these two claims commenced on September 18, 2017. (Dkt. No. 163.) At the conclusion of the trial on September 27, 2017, the jury reached a verdict against Plaintiff with regard to his negligent design claim but in favor of him with regard to his failure-to-work claim, awarding him \$500,000 for past and/or present pain and suffering and \$500,000 in future pain and suffering; and Judgment was entered accordingly. (Dkt. Nos. 179, 180.) On October 25, 2017, Defendants filed the current motion for judgment a matter of law pursuant to Fed. R. Civ. P. 50 or, in the alternative, for a new trial pursuant to Fed. R. Civ. P. 59. (Dkt. No. 199.) Plaintiff has opposed this motion. (Dkt. No. 204, 205.)

Because this Decision and Order is intended primarily for the review of the parties, who have (in their memoranda of law) demonstrated an accurate understanding of the remainder of the relevant procedural history of this action, the Court will not summarize the remainder of that procedural history in detail in this Decision and Order.

B. Parties' Briefing on Defendants' Motion Generally

Generally, in their motion, Defendants assert the following arguments: (1) as a threshold matter, Defendant Janssen is entitled to judgment as a matter of law because (a) Plaintiff's failure-to-warn claim is preempted by federal law, (b) Plaintiff failed to introduce sufficient evidence of proximate and medical causation, and (c) Plaintiff cannot establish that Defendant Johnson & Johnson is liable; and (2) in the alternative, Defendant Janssen is entitled to a new trial because (a) the jury's verdict is against the weight of the evidence, (b) the conduct of Plaintiff's counsel warrants a new trial, and (c) Plaintiff's award is excessive (warranting either remittitur or a new trial). (Dkt. No. 199, Attach. 1.)

Generally, in opposition to Defendants' motion, Plaintiff asserts the following arguments: (1) Defendants are not entitled to judgment as a matter of law because (a) their preemption arguments are meritless, unavailing and frivolous, (b) their arguments regarding causation are similarly unavailing and (c) Defendant Johnson & Johnson is liable just as Defendant Janssen is liable; and (2) there is no legal basis warranting a new trial because (a) the verdict is supported by compelling evidence, (b) there is no evidence of prejudice against Defendants created by the actions of Plaintiff's counsel, and (c) Plaintiff's award is not excessive but is comparable to awards in identical cases. (Dkt. No. 205.)

Generally, in reply, Defendants repeat the arguments asserted in their memorandum of law-in chief, albeit modified to reply to Plaintiff's responses. (Dkt. No. 206.)

II. GOVERNING LEGAL STANDARDS

A. Legal Standard Governing Motions for Judgment Notwithstanding the Verdict Pursuant to Fed. R. Civ. P. 50(b)

Rule 50(b) of the Federal Rules of Civil Procedure provides as follows, in pertinent part:

If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged—the movant may file a *renewed* motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59.

Fed. R. Civ. P. 50(b) (emphasis added).

As a result, a prerequisite for a motion for a post-trial motion for a judgment as a matter of law (also known as a motion for judgment notwithstanding the verdict) is a pre-verdict motion for judgment as a matter of law. *See* Fed. R. Civ. P. 50 Advisory Committee Note (1963) (“A motion for judgment notwithstanding the verdict will not lie unless it was preceded by a motion for a judgment as a matter of law made at the close of all the evidence.”) (emphasis added); Fed. R. Civ. P. 50 Advisory Committee Note (1991) (“A post-trial motion for judgment can be granted only on grounds advanced in the pre-verdict motion.”); *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 486, n.5, 128 S. Ct. 2605 (2008) (“A motion under Rule 50(b) is not allowed unless the movant sought relief on similar grounds under Rule 50(a) before the case was submitted to the jury.”).

Such a post-trial motion may be granted by a district court where doing so is necessary to prevent “manifest injustice.” *Kirsch v. Fleet Street, Ltd.*, 148 F.3d 149, 164 (2d Cir. 1998) (“As to any issue on which proper Rule 50 motions were not made, [a judgment as a matter of law]

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