

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

IN RE CELEXA AND LEXAPRO ) MDL DOCKET NO. 1736  
PRODUCTS LIABILITY LITIGATION ) ALL CASES

**MEMORANDUM AND ORDER**

Plaintiffs move for an extension of time or a stay of defendants' motion to dismiss based upon federal preemption. Plaintiffs contend that they need to conduct discovery before they are able to adequately respond to the pending motion.

I will deny defendants' motion to dismiss without prejudice. The United States Supreme Court has granted certiorari in Levine v. Wyeth, No. 2004-384, --- A.2d ----, 2006 WL 3041078 (Vt., Oct. 27, 2006), cert. granted, 552 U.S. ----, 128 S.Ct. 1118, 169 L.Ed.2d 845, 2008 WL 161474 (2008), to consider the following issue:

Whether the prescription drug labeling judgments imposed on manufacturers by the Food and Drug Administration ('FDA') pursuant to FDA's comprehensive safety and efficacy authority under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 et seq., preempt state law product liability claims premised on the theory that different labeling judgments were necessary to make drugs reasonably safe for use. Pet. for Cert. in Wyeth v. Levine, O.T.2007, No. 06-1249, p. I.

Riegel v. Medtronic, Inc., 128 S.Ct. 999, 1019 n.16 (Feb. 20, 2008).<sup>1</sup> Because I find that the plaintiffs are entitled to conduct discovery on the preemption issue before filing a response to the motion and the Supreme Court is scheduled to decide the Levine case this term, I will deny the motion without prejudice to being re-filed following discovery, if appropriate.

Accordingly,

**IT IS HEREBY ORDERED** that defendants' motion to dismiss [#336] is denied without prejudice.

**IT IS FURTHER ORDERED** that plaintiffs' motion for extension of time [#342] is denied as moot.



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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 24th day of July, 2008.

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<sup>1</sup>The defendants cite to the FDA's amicus curiae briefs from Levine as evidence in support of their motion to dismiss.