

of preemption. Defendants have raised preemption in a variety of manners and Plaintiff will respond accordingly.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for the parties, that as set forth in the paragraphs below, that certain claims of Plaintiff's *Short Form Complaint* (Dkt. No. 28) in the above-captioned case are hereby dismissed with prejudice against all Defendants, each party to bear its own costs, as follows:

1. The parties stipulate that as to *Count I*, Plaintiff shall not litigate a traditional strict liability claim and instead shall limit *Count I* to a claim for strict liability as it has been modified and incorporated into the Alabama Extended Manufacturer's Liability Doctrine (AEMLD). As to *Count I*, Plaintiff will only ask for jury charges under the AEMLD.

2. The parties stipulate that *Counts II, III and VIII* presenting claims asserted in warranty shall be dismissed with prejudice.

3. The parties stipulate that under *Count XIII*, Plaintiffs shall not seek punitive damages under any warranty theory of law. Because the Court has ruled (Doc. Nos. 41, 42) that all of Plaintiff's claims will be governed by Alabama law, including a claim for wrongful death, the parties further stipulate that Plaintiff will not seek punitive damages except as provided by the Alabama Wrongful Death Act. Plaintiffs do not waive the right to claim entitlement to punitive damages pursuant to Alabama's Wrongful Death Act, subject to a ruling by the Court on Defendants' *Motion for Summary Judgment on Plaintiffs' Claim Under the Alabama Wrongful Death Act* [Dkt. No. 45].

4. The parties stipulate that the Counts in Plaintiff's Short Form Complaint that assert Claims in negligence shall not claim an independent cause of action for negligent marketing. Plaintiff does not, by this stipulation, agree that she is precluded from presenting evidence that

Defendants engaged in negligent conduct in the marketing of their products. Defendants do not, by this stipulation, agree that such evidence is admissible. Both sides reserve all arguments with respect to what evidence is admissible, if any, concerning marketing of Tylenol.

5. The parties stipulate that *Count X* presenting a claim under the Alabama Deceptive Trade Practices Act shall be dismissed with prejudice.

6. The parties stipulate that *Count XVI* asserting a Survival Action claim shall be dismissed with prejudice.

7. For the avoidance of doubt, all other claims and Counts in the *Short Form Complaint* remain active and are not dismissed subject to substantive rulings to be made by the Court.

STIPULATED AND AGREED TO BY:

Dated: June 17, 2015

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Dated: June 17, 2015

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*Attorneys for Defendants McNEIL-PPC, Inc.,
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SO ORDERED THIS, 17th DAY OF June, 2015,

BY THE COURT:



LAWRENCE F. STENGEL, J.