UNPUBLISHED

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
BIG STONE GAP DIVISION

CHARLES G. EWING,	)	
	)	
Plaintiff,	)	Case No. 2:02CV00150
	)	
v.	)	**OPINION AND ORDER**
	)	
PURDUE PHARMA, L.P., ET AL.,	)	By: James P. Jones
	)	United States District Judge
Defendants.	)	

Charles G. Ewing, Pro Se Plaintiff; James W. Elliott, Jr. and Steven R. Minor, Elliot Lawson & Pomrenke, Bristol, Virginia, for Defendants Abbott Laboratories and Abbott Laboratories, Inc.

In this action by the plaintiff alleging various claims involving the drug OxyContin, I grant summary judgment in favor of defendants Abbott Laboratories and Abbott Laboratories, Inc. ("Abbott").[1]

Charles G. Ewing was originally one of four plaintiffs in the case of *Charles Brummett, et al. v. Purdue Pharma, et al.*, Case No. 2:02CV0054. The complaint in that case alleged consumer protection act violations, false advertising, product liability, negligence, and breach of warranty claims involving the manufacture and

[1] I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

promotion of OxyContin, a pain medication. On August 8, 2002, Abbott filed a motion for summary judgment asserting that while Abbott had provided promotional assistance in marketing OxyContin, it had not promoted OxyContin to any of the plaintiffs' treating physicians and thus had no causal connection to the plaintiffs' alleged injuries. Before that summary judgment motion was decided, plaintiffs' counsel filed a motion to withdraw as counsel to Ewing on grounds of a conflict of interest. Following a hearing on September 19, 2002, I granted that motion, and severed the claims of Ewing from the other *Brummett* plaintiffs.[2] On January 2, 2003, the plaintiffs in *Brummett* agreed to dismiss Abbott with prejudice. Abbott now seeks summary judgment in its favor in Ewing's separate case.

Summary judgment is appropriate only if there are no material facts in dispute and the moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett,* 477 U.S. 317, 322 (1986). All reasonable inferences are "viewed in the light most favorable to the party opposing the motion." *Matsushita Elec. Ind. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 587 (1986). Although the moving party must provide more than a conclusory statement that there are no genuine issues of material fact to support a motion for summary judgment, it "'need not produce

[2] I also stayed Ewing's case for sixty days to allow him the opportunity to get a new attorney, but he has been unable to do so.

evidence, but simply can argue that there is an absence of evidence by which the nonmovant can prove his case.'" *Cray Communications, Inc. v. Novatel Comp. Sys., Inc.*, 33 F.3d 390, 393-94 (4th Cir. 1994) (quoting 10A Charles Alan Wright, et al., *Federal Practice and Procedure* § 2720, at 10 (2d ed. Supp. 1994)); *see also Celotex*, 477 U.S. at 325 ("[T]he burden on the moving party may be discharged by 'showing'—that is, pointing out to the district court—that there is an absence of evidence to support the nonmoving party's case. "). Once the moving party has met its burden, "the nonmoving party must come forward with 'specific facts showing that there is a *genuine issue for trial.*'" *Matsushita*, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The nonmoving party's evidence must be probative, not merely colorable, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986), cannot be "conclusory statements . . . without specific evidentiary support," *Causey v. Balog*, 162 F.3d 795, 801-02 (4th Cir. 1998), cannot be hearsay, *Evans v. Techs. Applications & Serv. Co.*, 80 F.3d 954, 962 (4th Cir. 1996), and must "contain admissible evidence and be based on personal knowledge." *Id.*

Ewing testified in his deposition that the only OxyContin tablets he had ever taken were obtained by prescriptions from Dr. Richard Norton or Dr. Deborah Barton. (Ewing Dep. at 40, 44.) Abbott did not promote OxyContin to either of these

physicians.[3] Ewing never received a pamphlet about OxyContin from anyone, including his physicians and pharmacists, that was distributed by Abbott (*id*. at 124, 130), nor has he seen television commercials or other advertisements about OxyContin that were distributed by Abbott. (*Id.* at 125-26.) Ewing does not know of any connection between himself and Abbott, nor why he is suing Abbott. (*Id.* at 164.)

Similar to the *Brummett* case, there are no facts connecting Abbott to Ewing's alleged injuries. Although Abbott has distributed promotional materials about OxyContin via physicians, Abbott did not distribute such materials to Ewing's doctors, and Ewing admits that he did not receive such materials. Finding no basis for liability against Abbott, the motion for summary judgment will be granted.[4]

For the reasons stated above, it is **ORDERED** that the Renewed Motion for Summary Judgment of Defendants Abbott Laboratories and Abbott Laboratories, Inc. [Doc. No. 4] is granted and judgment is entered in favor of said defendants as to all

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[3] Abbott's Motion for Summary Judgment in the *Brummett* case contained an affidavit from Nicole Mow Ad-Nassar, General Manager of Abbott Pain Care. She indicated that she is responsible for Abbott's co-promotional activities with respect to OxyContin and that Abbott representatives did not call, promote, or present information about OxyContin to Dr. Norton or Dr. Barton. (*Brummett* Doc. 35, Ex. A.)

[4] This opinion and order in no way affects Ewing's claims against the remaining defendants.

claims asserted against said defendants and they are hereby dismissed as parties to this action.

ENTER: April 10, 2003

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United States District Judge