

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

<b>IN RE: PROPULSID</b>	:	<b>MDL NO. 1355</b>
<b>PRODUCTS LIABILITY LITIGATION</b>	:	<b>SECTION "L"</b>
.....	:	<b>JUDGE FALLON</b>

**THIS DOCUMENT RELATES TO CIVIL ACTION NO. 00-2788**

**ORDER & REASONS**

Before the Court is the motion of defendant Rite Aid of West Virginia, Inc. ("Rite Aid") in consolidated civil action No. 00-2788 captioned *Virdell Banks v. Johnson & Johnson, Janssen Pharmaceutica, Inc., and Rite Aid of West Virginia, Inc.* In its motion, Rite Aid seeks dismissal of all claims asserted against it pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. For reasons set forth below, the motion is GRANTED.

***I. Background***

This litigation concerns the alleged harmful side-effects of the prescription drug Propulsid which was developed, manufactured, and distributed by Johnson & Johnson, Co. and its wholly owned subsidiary, Janssen Pharmaceutica, Inc. In this consolidated case plaintiff has named as defendants

both the manufacturers of the drug as well as Rite Aid of West Virginia, Inc., whose pharmacies allegedly sold Propulsid to the plaintiff.

This case was initially filed on June 28, 2000 in the Circuit Court of Mingo County, West Virginia. Johnson & Johnson and Janssen removed this action to federal court in West Virginia with the consent of Rite Aid. While the case was pending there, it was consolidated before this court with *In re Propulsid Products Liability Litigation* MDL-1335 on September 14, 2000.

In his complaint, plaintiff alleges that the prescription drug Propulsid carries the risk of serious side effects including heart rhythm disorders, such as ventricular tachycardia, ventricular fibrillation, torsades de point and QT prolongation. Plaintiff contends that they have suffered physical and emotional damages from their use of the drug and assert numerous theories of liability against Johnson & Johnson and Janssen (the only named defendants in these parts of the complaint) including strict liability, breach of warranty, breach of implied warranty, deceptive practices, negligence, malicious conduct, and medical monitoring. The defendant pharmacies are mentioned by name only in the jurisdictional and venue statements and again in the prayer for relief. Plaintiff provides no basis for relief against defendant Rite Aid. In fact, the complaint in Paragraph 34 states that only "The conduct of [Johnson & Johnson] set forth above is a legal cause of the harm sustained by the Plaintiff." Defendant, Rite Aid, now brings this motion under Rule 12(b)(6) to dismiss for failure to state a cause of action.

## **II. Analysis**

The Federal Rules of Civil Procedure permit a defendant to seek dismissal of a complaint based on the "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). When

