

[Another Reason To Like Twlqbal](#)

Friday, July 01, 2011

Not that we need any, but the recent decision in McFarland v. APP Pharmaceuticals LLC, [slip op.](#), 2011 WL 2413797 (W.D. Wash. June 13, 2011), is another reason to like Twlqbal.

The wife plaintiff was administered an anticoagulant drug and, lo and behold, her “platelet counts dropped dramatically.” 2011 WL 2413797, at *1. Unfortunately, that was not a good thing – not at all – and she lost a leg.

She sued.

Boy did she sue.

Specifically, plaintiffs “asserted their claims against 18 named defendants and 75 fictitious defendants.” Id.

Not only that, plaintiffs blithely alleged that each and every one of these 93 defendants made the drug that caused the injury. Id. The complaint did “not specifically identify which, if any, of the defendants manufactured or was otherwise responsible for the product.” Id. at *2.

“Plaintiff fails to allege that her injury was caused by any specific defendant’s product. Instead, she alleges that all of the 93 defendants “manufactured, supplied and/or sold” all of the doses she received, and that all of those administrations caused her injury.”

Id.

Fortunately, after Twlqbal, defendants don’t have to take the kind of scattershot pleading lying down. As the court stated in McFarland, such “vague and broad allegations fail to meet the plausibility standard” imposed by Twlqbal. 2011 WL 2413797, at *2.

Plaintiffs’ response was essentially, “if we can do it a little; we can do it a lot.” They relied upon a couple of other cases involving the same drug from New Jersey, where courts had held that “you all made the stuff” allegations were plausible when asserted against three different manufacturers. Id. The drug is a generic product and those courts supposed it was possible that different manufacturers’

products were used.

We'd take issue with that, but regardless, what might be "plausible" with three defendants, isn't nearly as plausible with 93:

"[A]lleging that 93 defendants all manufactured, distributed, and/or sold all of the products that caused all of plaintiff's injuries is not plausible. In addition, plaintiff's allegations are internally inconsistent. The complaint alleges that "each" of the defendants manufactured the heparin that caused her injuries, but also alleges that each of the 93 defendants "separately manufactured, marketed, distributed, wholesaled, and/or sold" heparin. The inconsistencies between those allegations, which are not pled in the alternative, further highlight the implausibility of plaintiff's allegations."

McFarland, 2011 WL 2413797, at *3.

Basically, the plaintiffs in McFarland didn't want to do even the most basic spadework of identifying the correct defendants before bringing suit, so they threw in the kitchen sink in the hope that the defendants would end up having to spend the time and effort to figure things out. Fortunately, Twlqbal gives our side a chance to stop this sort of funny business and require the plaintiffs to do what they should be doing under Fed. R. Civ. P. 11, but all too often don't.