

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

CHRISTY COUVILLIER, ET AL

\* CIVIL NO. 10-1383

VERSUS

\* JUDGE DOHERTY

ALLERGAN INC., ET AL.

\* MAGISTRATE JUDGE HILL

REPORT AND RECOMMENDATION ON MOTION TO DISMISS

Pending before the undersigned for Report and Recommendation is the Motion to Dismiss Petition and First Supplemental and Amended Complaint filed by defendants, Allergan, Inc. and Inamed Corporation, on December 28, 2010 [rec. doc. 20]. Plaintiffs have filed a response indicating that the U.S. Supreme Court's decision in *Riegel v. Medtronic*, 552 U.S. 312, 128 S.Ct. 999, 169 L.Ed.2d (2008), cited by defendants, is likely dispositive of this case. [rec. doc. 25].

Defendants argue that plaintiffs' state law products liability claims related to the Allergan silicone gel-filled breast implants, which are Class III medical devices subject to Food and Drug Administration regulation and approval, are preempted under *Riegel*. District court cases decided subsequently have specifically applied the *Riegel* preemption doctrine to silicone breast implants. *Dorsey v. Allergan, Inc.*, 2009 WL 703290 (M.D. Tenn. March 11, 2009); *Williams v. Allergan U.S.A., Inc.*, 2009 WL 3294873 (D. Ariz. October 14, 2009).


Without specifically quoting at length from those cases, suffice it to say that the undersigned agrees with the reasoning of those courts, and adopts it here.

Based on the foregoing, and considering the lack of opposition, it is my recommendation that the motion to dismiss be **GRANTED**, and that this action be **DISMISSED** with prejudice.

Under the provisions of 28 U.S.C. § 636(b)(1)(C) and F. R. Civ. Proc. 72(b), parties aggrieved by this recommendation have fourteen (14) business days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy thereof. Counsel are directed to furnish a courtesy copy of any objections or responses to the District Judge at the time of filing.

**FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FACTUAL FINDINGS AND/OR THE PROPOSED LEGAL CONCLUSIONS REFLECTED IN THIS REPORT AND RECOMMENDATION WITHIN FOURTEEN (14) DAYS FOLLOWING THE DATE OF ITS SERVICE, OR WITHIN THE TIME FRAME AUTHORIZED BY FED.R.CIV.P. 6(b), SHALL BAR AN AGGRIEVED PARTY FROM ATTACKING THE FACTUAL FINDINGS OR THE LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT COURT, EXCEPT UPON GROUNDS OF PLAIN ERROR. *DOUGLASS V. UNITED SERVICES AUTOMOBILE ASSOCIATION*, 79 F.3D 1415 (5TH CIR. 1996).**

Signed this 19<sup>th</sup> day of January, 2011, at Lafayette, Louisiana.

  
C. MICHAEL HILL  
UNITED STATES MAGISTRATE JUDGE

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FEB 9 2011 UNITED STATES DISTRICT COURT

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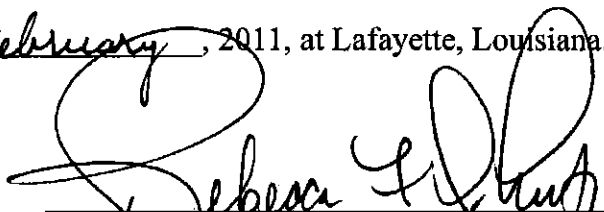
CHRISTY COUVILLIER, ET AL \* CIVIL ACTION NO. 10-1383  
VERSUS \* JUDGE DOHERTY  
ALLERGAN INC., ET AL. \* MAGISTRATE JUDGE HILL

JUDGMENT

This matter was referred to United States Magistrate Judge C. Michael Hill for Report and Recommendation. After an independent review of the record, and noting the absence of any objections, this Court concludes that the Report and Recommendation of the Magistrate Judge is correct and adopts the findings and conclusions therein as its own.

**IT IS ORDERED** that Motion to Dismiss Petition and First Supplemental and Amended Complaint filed by defendants, Allergan, Inc. and Inamed Corporation [rec. doc. 20], is **GRANTED**, and this action is **DISMISSED WITH PREJUDICE**.

Signed this 9 day of February, 2011, at Lafayette, Louisiana.

  
REBECCA F. DOHERTY  
UNITED STATES DISTRICT JUDGE

COPY SENT  
DATE 2/9/11  
BY [Signature]  
TO RFP  
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