

May 21, 2003

Charles R. Fulbruge III
Clerk

**UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT**

No. 02-41381

In Re: NORPLANT CONTRACEPTIVE PRODUCTS LIABILITY
LITIGATION

CHERYL WHITE; ET AL.,

Plaintiffs,

VALORIE WHATLEY,

Plaintiff-Appellant,

versus

WYETH LABORATORIES INC.; AMERICAN HOME
PRODUCTS CORPORATION,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
Nos. 1:97-CV-7369; 1:94-MD-1038

Before DAVIS, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Valorie Whatley appeals the district court's summary judgment dismissal of her claims regarding the prescription contraceptive Norplant in this multidistrict products liability action. *See In re Norplant Contraceptive Prods. Liab. Litig.*, 215 F. Supp. 2d 795 (E.D. Tenn. 2002). Under Tennessee law, which governs Whatley's claims, "the manufacturer of an unavoidably unsafe prescription drug can discharge its duty to warn by providing the physician with adequate warnings of the risks associated with the use of its drug." *Pittman v. Upjohn Co.*, 890 S.W.2d 425, 429 (Tenn. 1994). Whatley contends that the district court erred in concluding that her claims were barred by Tennessee's learned intermediary doctrine. She argues that Norplant is a prescription contraceptive *device*, not a prescription *drug*, and therefore the district court should have certified the question to the Supreme Court of Tennessee. Finding no merit in Whatley's arguments, we AFFIRM.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.