IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 92-1819
Summary Calendar

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THOMAS LATIMER, ET UX,
CAROL LATIMER,

Plaintiffs-Appellants,

versus

SMITHKLINE & FRENCH LABORATORIES,
a division of SMITHKLINE BECKMAN
CORP., ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the
Northern District of Texas
CA3 88 2272 H

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March 29, 1993

Before GARWOOD, JONES and EMILIO M. GARZA, Circuit Judges.[*]

PER CURIAM:

Plaintiffs-appellants Thomas Latimer and wife Carol Latimer (the Latimers) appeal the district court's denial of six motions that they filed December 13, 1991, the motions in essence seeking relief under Fed. R. Civ. P. 60(b) with respect to the district

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

court's December 6, 1989, judgment against them in their personal injury, products liability suit against defendants-appellees. The December 6, 1989, judgment in favor of the defendants-appellees was based on the district court's order granting their motions for summary judgment. The Latimers filed a timely motion to set aside the December 6, 1989, judgment, and that motion was denied by the district court on January 17, 1990. The Latimers then appealed to this Court, which on December 14, 1990, affirmed the district court's judgment in all respects. *Latimer v. Smithkline & French Laboratories, et al.,* 919 F.2d 301 (5th Cir. 1990). Our mandate of affirmance was filed in the district court January 9, 1991.

We affirm the district court's denial of Rule 60(b) relief. The December 13, 1991, motions were filed more than a year after the district court's judgment that they attacked, and accordingly relief under Rule 60(b)(1), (2), and (3) was barred. *Gulf Coast Building & Supply Co. v. International Brotherhood*, 460 F.2d 105, 108 (5th Cir. 1972). Rule 60(b)(4) was not applicable because the Latimers do not claim, and there is no suggestion, that the judgment is void. Similarly, it is evident that Rule 60(b)(5) is not implicated. The Latimers rely on Rule 60(b)(6). Where coverage of a claim is available under any one or more of subdivisions (1) through (5) of Rule 60(b), relief may not be afforded under Rule 60(b)(6). *Gulf Coast Building & Supply Co*. at 108. The Latimers assert that the judgment was procured by fraud on the court. However, it is evident that the Latimers' claims do not even remotely approach the standards of fraud on the court

under Rule 60(b)(6). *See Wilson v. Johns-Manville Sales Corporation*, 873 F.2d 869 (5th Cir. 1989).

Indeed, it is evident that even if the Latimers' motions had been timely they would have been wholly without merit. The motions are grounded on the absurd notion that the general denial that was filed by defendant Smithkline & French Laboratories in the state court prior to removal was in effect fraudulent because an October 1991 **Wall Street Journal** article purported to quote a Smithkline doctor, who had been designated as a Smithkline expert in this case, as saying that Tagamet [the Smithkline product involved in this case] inhibits the metabolism of Diazinon [a chemical manufactured by one of the other defendants]. It was the theory of the Latimers' case that Thomas Latimer had been exposed to Diazinon while he was taking Tagamet, and that the Tagamet inhibited the Diazinon from passing through his liver, causing it to remain in his body longer than normal and thus creating an artificially high and harmful exposure level. However, summary judgment was not granted for the defendants on the basis that Tagamet did not have, or was not shown to have had, such an effect on Diazinon. Rather, the summary judgment was granted, and affirmed by this Court, on the assumption, at least *arguendo*, that Tagamet *did* have such an adverse interactive effect with Diazinon, but that the Latimers could not recover because there was no showing that Thomas Latimer had been exposed to Diazinon within a recent period before his symptoms, and thus there was no showing of a causal relationship between his complained of symptoms and either Tagamet or Diazinon.

The same lack of exposure to the chemical SevinSQas to which Tagamet allegedly could have a similar effectSQwas also noted. The Latimers argue that there was evidence of sufficiently recent exposure, but this is simply rearguing the prior appeal, which they may not do.

The Latimers' appeal is entirely frivolous, and double costs are awarded to defendants-appellees under Fed. R. App. P. 38. The Latimers are warned that repeated conduct of this nature will incur more severe sanctions.

AFFIRMED
DOUBLE COSTS UNDER RULE 38