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 IN RE: DIET DRUG LITIGATION }  
 VENUED IN BERGEN COUNTY }  
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SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION – BERGEN COUNTY

DOCKET NO. BER-L-3379-04

OPINION

**SUPERIOR COURT BERGEN COUNTY  
FILED**

JAN 27 2006

DECIDED: JANUARY 27, 2006

*WILSON, J.S.C.*



**DEPUTY CLERK**

This matter arises out of Plaintiffs' claim for damages alleged to have incurred from the manufacture, sale, distribution and/or use of the diet drug Pfen-fen. The Plaintiffs' current motion to the Court seeks to reinstate cases which they previously dismissed as settled matters, by paying a single filing fee with the Clerk of the Court. After hearing oral argument on both sides, reading all the relevant papers submitted by the parties, and on good cause the motion is hereby DENIED.

There is no precedent that this Court is aware of to permit numerous cases to be restored after a voluntary dismissal by paying only a single filing fee. Such a precedent would adversely impact the administration of litigation and unfairly depreciates the importance of each plaintiff and their cause of action. The Court will not take it upon itself to create new precedent in disregard to the Court Rules. The Court cannot find another county within the state that has permitted such a practice in direct contravention to the standard procedures in litigation. To do so would unduly burden the courts. The result of such a ruling would permanently impact future mass tort litigation in the state, by removing such litigation from the

confines of the Court Rules. Ultimately, the amount of litigation and motion practice would exponentially increase.

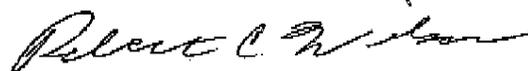
The Court can not order such a waiver of fees pursuant to an Omnibus Motion, under R. 1:1-2. That rule in essence permits the Court to adopt any rule that, although not a Court Rule, aids in furtherance of judicial economy, cost, and similar considerations. An Omnibus motion is inappropriate in litigation where the case has been voluntarily dismissed. An Omnibus motion may only be utilized in cases that are stayed by higher Courts or by operation of law, as in essence they were never truly dismissed, merely stayed. The cases that Plaintiffs' counsel are moving to restore, by counsel's own admission, were voluntarily dismissed. The Court does not have before it an Order which designates any of these dismissals as stays, as Plaintiffs' counsel asserts was the Honorable Charles Walsh's intent. Had Judge Walsh desired to stay these matters he could have adjourned any trial date he had set. In fact, the only evidence that is offered to support this interpretation of the dismissals is an *ex parte* communication in the form of an electronic-mail to Judge Walsh's law clerk from one of the movants. While this Court finds no evidence that Judge Walsh intended to waive fees to reinstate these matters, we note that no Superior Court Judge has that enumerated right.

In contrast, however, the transcripts produced on the record illustrate that the Court's intentions were quite disparate from counsel's understanding. Judge Walsh opined on February 18, 2005:

"I thought I made it clear to everybody...that I intended to dismiss the cases, and I am going to dismiss them. So if anything goes wrong, you folks are going to be spending a few dollars to restore the cases."

The record demonstrates that the Court did not intend to waive a filing fee for each individual case in favor of one all-inclusive fee. In fact, at the time of Judge Walsh's death, counsel believed that Judge Walsh was contemplating converting the dismissals of these cases into dismissals with prejudice; not in restoring them. As defense counsel represented on the record at the October 8, 2005 hearing, "...the assumption was that...after 150 days those [orders] would turn into dismissals with prejudice."

In conclusion, the Plaintiffs' are required to pay a filing fee for each individual case sought to be restored to the active calendar. The Court finds no reason to abandon established Court Rules and practices in this litigation. The Court finds no such authority to permit it to do so. As such, the Plaintiffs' motion is hereby DENIED. An appropriate form of Order has been attached.

  
HON. ROBERT C. WILSON