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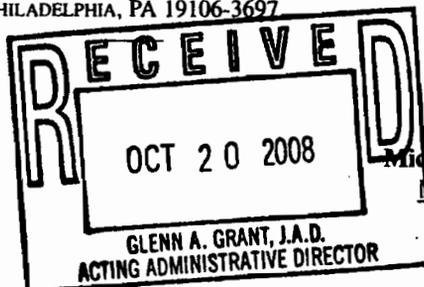
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October 17, 2008

Via Federal Express

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Richard J. Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037

RE: Supplemental Response of Plaintiffs to Application for Centralized Management of Cases Involving Digitek®

Dear Judge Grant:

This letter is to supplement the Plaintiffs' response to the Actavis and Mylan defendants' application for centralized management of cases involving the drug Digitek®. This supplement is necessary because of recent developments occurring after October 15, 2008 when the Plaintiffs submitted their response to the Defendants' application.

Today Pfizer, Inc. announced that it has resolved substantially all of the personal injury cases, consumer fraud cases and state attorneys general claims involving Bextra/Celebrex. (*Pfizer Press Release*, October 17, 2008 attached as Exhibit "A"). As you are well aware, the Bextra/Celebrex mass tort is centralized in Atlantic County along with two other mass torts, Accutane and Vioxx. Many of the Vioxx cases have, or will be dismissed pursuant to a settlement announced on November 9, 2007. Plaintiffs respectfully suggest that when considering the available judicial resources, the Atlantic County Superior Court is the best choice for mass tort centralization in light of the settlements in Vioxx and now Bextra/Celebrex.

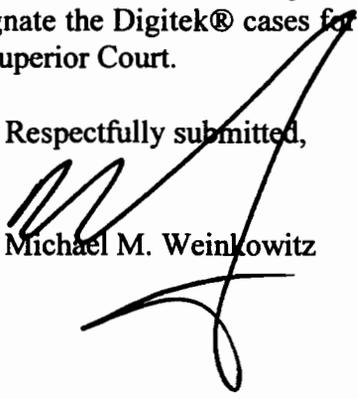
Hon. Glenn A. Grant, J.A.D.

October 17, 2008

Page 2 of 2

In light of the foregoing, and for all the reasons set forth in Plaintiffs' prior response, Plaintiffs respectfully request that the Supreme Court designate the Digitek® cases for mass tort treatment and central management in the Atlantic County Superior Court.

Respectfully submitted,


Michael M. Weinkowitz

/ams

Encl.

cc: Michelle V. Perone, Esquire Chief Civil Court Programs
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EXHIBIT "A"

October 17, 2008 08:00 AM Eastern Daylight Time 

Pfizer Reaches Agreements in Principle to Resolve Litigation Involving Its NSAID Pain Medications

\$894 Million Settlements To Resolve Personal Injury Cases, Consumer Fraud Cases and State Attorneys General Claims

NEW YORK—(BUSINESS WIRE)—Pfizer Inc announced today that it has reached agreements in principle to resolve substantially all of the personal injury cases, consumer fraud cases and state attorneys general claims involving its non-steroidal anti-inflammatory (NSAID) pain medication Bextra, which Pfizer voluntarily withdrew from the U.S. market in 2005. Additionally, following key court rulings in favor of Celebrex, claims regarding Celebrex, an effective pain treatment for millions of patients, will also be resolved as part of the settlement.

"We are pleased by the favorable rulings we have achieved in this litigation and believe that now is the right time to resolve these matters," said Amy W. Schulman, senior vice president and general counsel of Pfizer. "Inevitably, litigation can be distracting and putting these matters behind us helps our shareholders and, most importantly, patients and doctors."

"Pfizer stands by the safety and efficacy profile of Celebrex. It is one of the most rigorously- and continuously-studied drugs in the world, as evidenced by its approval and use in 111 countries during the past 10 years across several different pain indications," said Joseph M. Feczko, chief medical officer for Pfizer. "We believe that putting these matters substantially behind us should better enable physicians to consider Celebrex purely on the strength of its clinical data, and its ability to meet the diverse needs of patients in pain."

Key Rulings in Favor of Celebrex Set Stage for Personal Injury Settlements

Today's announcement follows favorable rulings in which federal and New York state court judges overseeing a majority of the personal injury cases ruled that the plaintiffs' lawyers failed to present reliable scientific evidence to prove Celebrex can cause heart attacks or strokes at its most commonly prescribed dose. These rulings would have likely limited the scope of these cases had the litigation continued. By settling these matters now, the parties are minimizing the future cost and disruption inevitably associated with litigation.

These rulings within the past year are consistent with the conclusion reached by the U.S. Food and Drug Administration (FDA) in 2005 that, based on the available data, the benefits of Celebrex outweigh its risks for appropriate patients at approved doses. The FDA requires that all prescription NSAIDs carry the same cardiovascular boxed warnings.

Settlements Resolve Substantial Litigation

The personal injury settlements will resolve more than 90 percent of the known personal injury claims brought by law firms representing persons who allege that Pfizer's NSAID pain medications were the cause of a heart attack, stroke or other injury. Pfizer will work to finalize agreements with each of the law firms with which it has agreements in principle before the end of the year.

Pfizer also has reached an agreement in principle to settle payor class action consumer fraud cases involving Bextra and Celebrex in which plaintiffs allege economic loss relating to the promotion of these medications. The settlement will resolve these cases on a nationwide basis and is subject to approval by the appropriate courts.

In addition, Pfizer has reached agreements in principle to resolve claims brought by 33 states and the District of Columbia, primarily relating to alleged Bextra promotional practices. Under these settlements, Pfizer will make a total payment of \$60 million to the states and adopt compliance measures that complement policies and procedures previously established by the company.

Pfizer has insurance coverage for a portion of the personal injury settlements and is seeking to recover payments to which it believes it is entitled from its insurance carriers.

Pfizer will reflect these significant, non-recurring items as a third quarter pre-tax charge of \$894 million (\$640 million after-tax) to reported earnings. The charge includes amounts of (i) \$745 million applicable to personal injury claims, which Pfizer believes will be sufficient to resolve the remaining pending personal injury claims, (ii) \$60 million applicable to state attorneys general settlements and (iii) \$89 million applicable to consumer fraud class action claims.

"The agreements in principle that we are announcing today enable us to focus on what is core to our business – providing innovative medicines to treat patients suffering from some of the world's most widespread and debilitating diseases," Ms. Schulman said.

About Pfizer Inc

Founded in 1849, Pfizer is the world's largest research-based pharmaceutical company taking new approaches to better health. We discover, develop, manufacture and deliver quality, safe and effective prescription medicines to treat and help prevent disease for both people and animals. We also partner with healthcare providers, governments and local communities around the world to expand access to our medicines and to provide better quality health care and health system support. At Pfizer, more than 80,000 colleagues in more than 90 countries work every day to help people stay happier and healthier longer and to reduce the human and economic burden of disease worldwide.

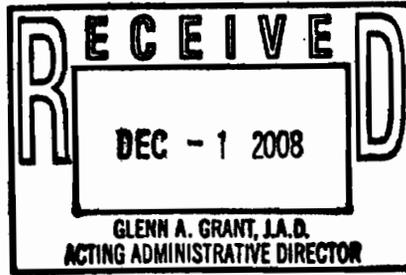
Contacts

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Permalink: <http://mediaroom.pfizer.com/news/pfizer/20081017005371/en>

 Business Wire

November 28, 2008



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Via Federal Express

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CIVIL PRACTICE DIV.

DEC 01 2008

RECEIVED

Re: Response of Actavis Inc. to Plaintiffs' Application for Mass Tort Designation and Centralized Management of Cases Involving Digitek[®] in Atlantic County, New Jersey

Dear Judge Grant:

On behalf of Actavis Inc. ("Actavis"), Harris Beach PLLC and Tucker Ellis & West LLP submit this letter in further support of its Application for Centralization of all litigation relating to the purchase and ingestion of Digitek®, and in opposition to plaintiffs' Request for Mass Tort Designation of Cases Involving Digitek in Atlantic County, New Jersey, dated October 20, 2008.¹

Actavis Totowa LLC, a wholly owned subsidiary of Actavis Inc., manufactured, packaged and labeled Digitek®, a version of the generic prescription pharmaceutical digoxin. Mylan Inc. distributed it on the wholesale level through certain subsidiary entities, all of which are named in most or all of the individual pending cases filed in Atlantic County since the April

¹ Although a handful of additional cases may have been filed, defendants have not been served with process or reviewed those complaints. A list of the twenty-one Superior Court actions in which one or more defendants have received process is attached as Exhibit A.

25, 2008 Digitek® recall.² All appearing defendants joined in the original Application and join in this letter opposing plaintiffs' application.

I. CENTRALIZATION IN ATLANTIC COUNTY IS UNFAIR AND IMPROPER UNDER THE CIRCUMSTANCES

As defendants have argued previously, this litigation satisfies all essential criteria set forth in the guidelines of the Administrative Director's Directive #10-07 (Oct. 25, 2007). The cases thus meet all requirements for centralized case management in the most appropriate Superior Court vicinage, the home county of Morristown-based Actavis Inc., Morris County. Plaintiffs' request for centralization in Atlantic County is improper and fundamentally unfair to defendants and fails to conform to these requirements. "Mass tort" designation is similarly unwarranted.

The *New Jersey Mass Tort (Non-Asbestos) Resource Book* (3d Ed., Nov. 2007) advises that, "[i]ssues of fairness, geographical location of parties and attorneys, and the existing civil and mass tort caseload in the vicinage will be considered in determining to which vicinage a particular mass tort will be assigned for centralized management." *Id.* at 3. Plaintiffs' arguments for selection of Atlantic County fail under each of these essential criteria. The plaintiffs' requests should be denied.

A. Plaintiffs' Request for Centralization in Atlantic County is Fundamentally Unfair to Defendants and their Counsel

Contrary to plaintiffs' assertions, defendants have argued from the start that Atlantic County is an inappropriate venue. None of the defendants were served with process in Atlantic County and none have any regular presence there. Of the twenty-one complaints served to date, only four allege to have been brought on behalf of New Jersey residents or decedents, none of whom have any apparent connection to Atlantic County. Indeed, and in violation of R. 1:4-1(a),

² As required by R. 4:3-3, defendants continue to timely apply to the Atlantic County Assignment Judge, Hon. Valerie Armstrong, for a change of venue in each individual case. On or about October 23, 2008, Atlantic County Civil Presiding Judge Carol E. Higbee entered an order denying all then-pending venue motions "without prejudice" and granting a protective order staying all discovery obligations in contemplation of Supreme Court action on the centralization application.

all of these pleadings are devoid of a residence address, a fact that speaks volumes given that if even a single plaintiff had lived within the county, it would certainly have been trumpeted in support of plaintiffs' improperly selected venue.

Plaintiffs incorrectly argue that defendants have not previously objected to the unfairness of venue in Atlantic County. Defendants, in fact, have complained of the improperly selected venue at every stage, in every individual pleading, motion and letter to Your Honor. Yet plaintiffs do not address their own blithe disregard for the venue rules. Plaintiffs' unwillingness to play by the rules and attempt to drag defendants into an improper venue is the epitome of unfairness. It undermines the scheme laid out by the Rules of Court, the enforcement of which New Jersey litigants expect.

The venue clearly does not satisfy the requirements of R. 4:3-2. Plaintiffs argue that defendants "do not deny that they do substantial business throughout the state," implying that defendants' products must have been widely-distributed to, and sold from, pharmacies within Atlantic County. Yet defendants have denied, and continue to deny, that they regularly transact business within Atlantic County. Plaintiffs have not met their burden to support their selected venue. They have not pointed to a single Digitek® tablet crossing into the county or been able to turn up a solitary plaintiff consumer from within the county.³ Under ordinary circumstances, the Court should not be concerned if, out of twenty-one cases, none of the litigants come from one or another of the state's twenty-one counties. These circumstances, however, are not ordinary.

In selecting Atlantic County, plaintiffs ignored the venue rules and overtly forum-shopped their way into a vicinage they perceive as friendly. In so doing, they have intentionally usurped the Supreme Court's role in assigning deserving cases for centralized management. Nonetheless, plaintiffs argue that their de facto centralization should be validated and that, in the supposed interest of efficient handling, the cases "are already before" that court and should remain in an unquestionably improper venue. Tolerating this action, and permitting filers to

³ In fact, of the four plaintiffs alleging New Jersey residences, one hails from Union County and one from Essex. The other two do not further specify in their complaints.

ignore both the letter and spirit of the Rules, would condone the practice and encourage the filing of cases that do not belong in our courts.

Forum-shopping places an unnecessary and unfair burden on the courts of this state, as well as upon citizens forced to defend against the claims of out-of-state plaintiffs in arbitrarily selected venues having no connection to the litigation. If it is not already, New Jersey would become a forum for claimants from anywhere in the country, comfortable in their ability to haul any citizen into their selected courtroom, without justification or regard to fairness or convenience. A more unfair situation is hard to conceive.

B. Atlantic County is Inappropriate for Centralization in Light of the Geographical Location of Parties and Attorneys

Plaintiffs' request for centralization in Atlantic County ignores the simple truth that none of the parties or their attorneys are physically located in or near Atlantic County. Actavis and its counsel are in northern New Jersey and in Ohio, and it contemplates production of current and former employees for deposition in northern New Jersey. Other defendants and their counsel are located in Ohio, West Virginia, Illinois and western Pennsylvania. Not surprisingly, New Jersey counsel for some plaintiffs are located in northern New Jersey and none of the plaintiffs' counsel maintain an office closer than Cherry Hill, an hour's drive away. In light of these facts, and that none of the plaintiffs' come from within the county, plaintiffs cannot credibly argue that Atlantic County is just as convenient to parties and their counsel as Morristown. From the points of view of transportation ease and convenience, the plain truth is that Morristown or another northern New Jersey venue would be vastly superior for all parties and counsel and simply makes the most sense.

C. The Existing Mass Tort Caseload Militates in Favor of Morris County

As argued below, the history of this litigation and the unique circumstances involved indicate that this litigation should not be designated and assigned to a "mass tort" judge. While all involved would benefit from a jurist experienced with complex litigation, such a judge need not necessarily come from the small pool so designated for mass torts. The relatively small

numbers of cases filed to this point do not require a dedicated mass torts office and would not unreasonably burden the court's back offices. Coordinated handling by an experienced judge, assisted by experienced counsel, would alleviate the impact of any difficulties encountered. Given that mass tort designation is inappropriate for this litigation, and that Morris County is the most appropriate vicinage under the venue rules, defendants urge that this litigation be assigned to an appropriate judge in Morris County.

Arguing that the third of the three factors is the most important, plaintiffs assert that Atlantic County is a superior venue because of the reduced caseloads resulting from the recent settlement of *Vioxx* and *Bextra/Celebrex* litigation. However, should the Court determine that handling by a "mass tort" judge is required, Judge Harris's current caseload, as compared with that of Judge Higbee, appears far more amenable to the addition of this litigation. Two pharmaceutical litigations are presently centralized before Judge Harris. Only one of these, *Depo-Provera*, is designated as a "mass tort." In that litigation, Judge Harris has dismissed all but three of the 159 pending cases on *forum non conveniens* grounds. The *Zelnorm* litigation, recently centralized and assigned to Judge Harris -- but not designated a "mass tort" -- involved only fourteen cases when centralized.

Judge Higbee, on the other hand, has recently been assigned to handle two much larger cases, both designated as "mass torts." The high-profile *Fosamax* litigation, which she had personally requested, centralized approximately 45 cases. The *Bristol-Myers Squibb Environmental* toxic tort litigation reputedly involves over 100 individual filings. She also continues to oversee the still-active *Accutane* cases and the remnants of *Vioxx* and *Bextra/Celebrex*. Clearly, among the mass tort judges, assignment to Judge Harris is a better choice.

Even better, however, is Morris County. According to the October 2008 caseload statistics made available by Administrative Office of the Courts, the mass tort caseload in Bergen County is approximately 81 cases. The caseload before Judge Higbee is 1,677, even after resolution of approximately 2,300 *Vioxx* and *Bextra/Celebrex* cases. Morris County, on the other hand, has no active mass tort office for comparison, but maintains only 3,695 total civil cases, of

which only 627 (17%) qualify as "backlog," as compared to Atlantic's 5,534 total (31% backlog) and 8,736 total in Bergen (11% backlog). Morris thus has roughly the same backlog as Bergen and has been moving cases more quickly than Atlantic County.

II. THE SMALL NUMBER OF CASES IN NEW JERSEY SHOULD BE CENTRALIZED WITHOUT "MASS TORT" DESIGNATION

In late August, when Actavis initially applied for centralization, eleven individual cases were pending in New Jersey Superior Court; by mid-October, plaintiffs requested "mass tort" designation for twenty pending cases. As of this date, plaintiffs are proceeding in only twenty-one individual actions. Despite representations from plaintiffs' counsel that "many more cases will be filed in New Jersey in the coming weeks" and that possibly "hundreds" of cases were to be filed - large numbers of cases have not materialized in New Jersey.

Designating this litigation a "mass tort" makes little sense in view of this small number of cases. Internet and other media advertising by attorneys has drawn much attention to the recall, as have news articles relating to FDA and Department of Justice action. Yet the pace of filings has indeed dropped off. This apparent slowdown strongly supports defendants' view that very few cases exist with facts sufficient to support these lawsuits.

Rule 4:38A, creating "Centralized Management of Mass Torts," was adopted in response to then-pending massive litigations involving large numbers of claims arising from mass disaster, exposure to a product or environmental contamination. Designation of individual cases as a "mass tort" is and always has been discretionary, not mandatory. According to the Mass Tort (Non-Asbestos) Resource Book, in order for litigation involving a single product to be defined as a "mass tort," there must be "large numbers of claims." The examples provided - diet drugs, tobacco, Norplant, breast implants, Propulsid, Rezulin, PPA and latex - illustrate the magnitude of the litigation contemplated by this designation. These litigations involved hundreds and thousands of individual cases and multiple defendants with differing and conflicting interests. They dwarf that contemplated herein, both in size and complexity.

While there is clearly no strict rule or number of cases that must be involved before the term “mass tort” applies, other more recent case treatment by the Supreme Court supports the view that mass tort designation is not appropriate. For instance, the *Zelnorm* litigation comprised only fourteen cases at the time it was centralized before Judge Harris in Bergen County without “mass tort” designation. *Fosamax*, on the other hand, involved about 45 cases when designated as a mass tort, double the number herein.

We are likely seeing the tail end of Digitek® filings. The window on filings will soon close. Since all product sent to market was recalled in April 2008, and none has shipped since before that time, it is highly unlikely that any additional plaintiffs will emerge despite the time remaining under the statute of limitations. Given that a well-publicized product recall generally triggers massive filings, and that only a handful of Digitek® cases have been filed to date, there is no credible basis for plaintiffs’ prediction of hundreds of more cases.⁴ We have not seen a number of filings to rationalize a “mass tort” designation.

The small number of pending lawsuits involving Digitek® reflects several factors. First, digitalis is a relatively old medication and its indications, safety profile and potential side effects are well-known. Second, the population in which the medicine is indicated largely includes individuals with generally poor health and a myriad of risk factors. The alleged potential side effects and non-specific symptoms that may suggest digitalis toxicity – “nausea, vomiting, diarrhea, dizziness, confusion, loss of appetite, low blood pressure, cardiac instability and irregular pulse, heart palpitations and bradycardia” – are symptoms relatively common to the patient population in which the medication is indicated. Such relatively common symptoms or conditions very likely had little or nothing to do with a supposed overdose of digitalis. They have many other likely causes, and may even have been caused by appropriate doses of digitalis or other medications.

⁴ This reflects an apparent overall trend as the MDL forges ahead. For instance, lead plaintiffs’ counsel in the West Virginia state court litigation was questioned at a November 19, 2008 status conference by a skeptical judge about statements in the pleadings that there might ultimately be thousands of cases filed in state court. Counsel admitted on the record that of the many potential cases, there were “very few good ones,” and acknowledged in open court that he was no longer interested in pursuing the state court litigation.

Third, given that Digitek® is one generic version of a widely prescribed pharmaceutical, and that only a limited number of lots are alleged to have been defective, identification of the precise product, dosage and lot number will be critical to proving plaintiffs' allegations. The difficulty of meeting that threshold product identification burden is likely reflected in the small number of cases on file. Fourth, there exists little scientific basis for assertions that digitalis toxicity may result from the short-term ingestion of the "double thick" tablets and the supposed double doses ingested by plaintiffs. And any symptoms or conditions resulting from an overdose of digitalis would likely resolve within a short time with no lasting negative effects.

Finally, despite the allegations and widespread "toxic overdose" horror stories, no "double thick" tablets have turned up anywhere in New Jersey or elsewhere. To date, no such existing tablets have been confirmed. Defendants are unaware of any evidence of defectively manufactured Digitek® actually being released into the market.

III. FORUM NON CONVENIENS DISMISSALS ARE WARRANTED

As previously noted in the original application for centralization, because most plaintiffs are out-of-state residents and all operative events - prescription, dispensing and ingestion of Digitek®, and diagnosis and treatment of alleged injuries - took place in the plaintiffs' or decedents' home states, all but four of the pending cases are subject to dismissal under the doctrine of *forum non conveniens*. It is clearly premature to designate a litigation as a "mass tort" where only four of the pending cases may legitimately have been brought in this state. All other cases are subject to dismissal on *forum non conveniens* grounds.

CONCLUSION

In short, these twenty-one cases seek legal and equitable relief, including injunctions, as well as compensation for past and future medical treatment and punitive damages under New Jersey's Consumer Fraud, Product Liability and Punitive Damages Acts. While these cases will benefit from coordination by a sufficiently experienced Superior Court judge, affixing the misnomer of a "mass tort" is unnecessary. Such a designation would only encourage the filing of additional lawsuits by less cautious and less discriminating counsel eager to participate but

less knowledgeable in the process. Defendants, therefore, urge that the litigation be centralized and assigned for handling by a sufficiently experienced judge in Morris County. Even if this litigation does warrant "mass tort" treatment, assignment to Judge Harris in Bergen County is the only sensible alternative.

For the reasons set forth above, Actavis respectfully submits that a "mass tort" designation for Digitek® cases in New Jersey is unwarranted under Rule 4:38A and the Mass Tort Guidelines. Indeed, these cases -- for the most apparent reason that there are only twenty-one -- do not meet the criteria for such a designation. These cases are best handled through centralized coordination in Morris County without a "mass tort" designation.

Respectfully submitted,

HARRIS BEACH PLLC

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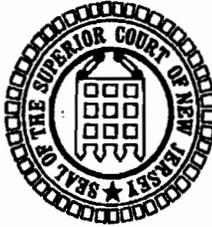
Plaintiffs' Counsel

EXHIBIT A

Plaintiff Last Name	Plaintiff First Name	Superior Court Docket Number	Plaintiff State of Residence (from Complaint)
Agathos	Valerie	ATL L-003044-08	MASSACHUSETTS
Bellamy	Dona	ATL L-002781-08	INDIANA
Bradway	Marlene	ATL L-002784-08	WISCONSIN
Bratcher	Jerry	ATL L-002786-08	KENTUCKY
Duran	Gerald	ATL L-003209-08	KANSAS
Estapp	Regina	ATL L-002707-08	PENNSYLVANIA
Fricker	Ronald	ATL L-028224-08	NEW JERSEY
Hergert	Joyce	ATL L-002787-08	ARIZONA
Hoover	Bertina	ATL L-002782-08	PENNSYLVANIA
Koproski	Jeffrey	ATL L-003209-08	CONNECTICUT
Mariam	Philip	ATL L-002783-08	MISSOURI
McAnly	Jeanette	ATL L-002785-08	KENTUCKY
Merola	Anna	ATL L-002314-08	PENNSYLVANIA
Nufrio	Marie	ATL L-003345-08	NEW JERSEY (Essex Co.)
Paler	Heather	ATL L-003028-08	NEW YORK
Ramsey	Carl	ATL L-003047-08	NORTH CAROLINA
Russo	Dean	ATL L-003045-08	NEW JERSEY (Union Co.)
Steadman	Casie	ATL L-003030-08	TEXAS
Stevens	Priscilla	ATL L-003029-08	VIRGINIA
Williams	Roy	ATL L-003027-08	ILLINOIS
Wilson	Dorothy	ATL L-002727-08	NEW JERSEY

Superior Court of New Jersey

Jonathan N. Harris
Judge



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December 4, 2008

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RE: APPLICATION FOR MASS TORT DESIGNATION AND
CENTRALIZED MANAGEMENT OF Digitek® LITIGATION
-and-
APPLICATION FOR CENTRALIZED MANAGEMENT OF NuvaRing® LITIGATION
WITHOUT MASS TORT DESIGNATION

Dear Judge Grant:

I write regarding the above applications, which are pending for consideration by the Supreme Court under Rule 4:38A. In light of the December 1, 2008 deadline for comments, I apologize for my tardy observations.

My remarks should not be viewed as endorsing or opposing the applications for single-judge management. Rather, I write to recommend that if centralized management is approved for either or both matters, the resultant litigation should be designated a mass tort. My reasons for this nomenclature are four-fold.

First, as I understand the separate applications, there are already well-developed centralized multi-district actions in the federal system. All pending NuvaRing® cases and all future NuvaRing® lawsuits filed in the federal court system are centralized for discovery purposes in the Eastern District of Missouri before Judge Rodney W. Sippel, in the case captioned In re: NuvaRing Products Liability Litigation, MDL No. 1964. All pending Digitek® cases and all future Digitek® lawsuits filed in the federal court system are centralized for discovery purposes in the Southern District of West Virginia before Judge Joseph R. Goodwin, in the case captioned In Re: Digitek Products Liability Litigation, MDL No. 1968. Generally, where coordination between state and federal courts is appropriate, the New Jersey rubric "mass tort litigation" makes it easier to attract the MDL judge's attention and facilitate communication.

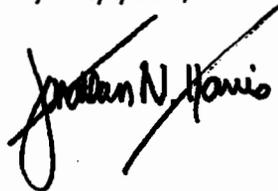
Second, fidelity to Rule 4:38A, which is entitled "Centralized Management of Mass Torts," is deserving of respect, if for no other reason than to ensure consistency and predictability in its application. Moreover, the centralized management techniques of the judge and court staff are not appreciably different whether the litigation is called a mass tort or not. Once there are ten or more docketed actions, the means of addressing the cases become remarkably similar, even if hundreds of cases are later added on. Accordingly, the naming convention should be consistent throughout without regard to the particularized concerns of one party or the other. If the litigation qualifies under Rule 4:38A, then it should be called a mass tort; if it does not qualify, it should not enjoy the privileges of the Rule. On the other hand, perhaps the language of the Rule should be amended so that centralized management is available for cases other than just mass torts. (I say this knowing, of course, that the Supreme Court recently assigned the Bergen vicinage the centralized management of the Zelnorm® litigation without mass tort designation.) Perhaps the label could be "Multi-Vicinage Litigation," instead of the current taxonomy.

Third, cases deserving of treatment under Rule 4:38A should take advantage of the highly effective Mass Tort Information Center accessed from the home page of the Judiciary's internet website. See <http://www.judiciary.state.nj.us> (last accessed on December 4, 2008). This centralized resource is of great utility to the bench, bar, and the public, but if centralized litigation is not categorized as a mass tort, e.g., the Zelnorm® litigation, its information is found elsewhere on the web in a less accessible location. See <http://www.judiciary.state.nj.us/bergen/zelnorm/index.htm> (last accessed on December 4, 2008).

Lastly, designation of these cases as mass torts is, among other things, a recognition of the complexity that comes with their management. This puts special burdens on the extraordinarily talented and dedicated members of the mass tort teams in the Civil Division Managers' offices, and it is reflected by appropriate consideration in the statistical analyses of the vicinages. Without the mass tort label, mere centralized litigation loses some intangible institutional respect that may be perceived negatively by staff members who invest the same effort whether the case is designated a mass tort or not. Since the mass tort teams are so identified, I believe that they deserve the recognition of managing *mass torts*, not just centralized litigation matters.

"What we "name" things matters, language matters." Lewis v. Harris, 188 N.J. 415, 467 (Portiz, C.J., concurring and dissenting). Please consider, if the decision is made for centralized management of either of these applications, that it matters a lot to call the cases what they are, mass torts.

Very truly yours,



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