

SUPERIOR COURT OF NEW JERSEY



CHAMBERS OF
BRYAN D. GARRUTO
JUDGE

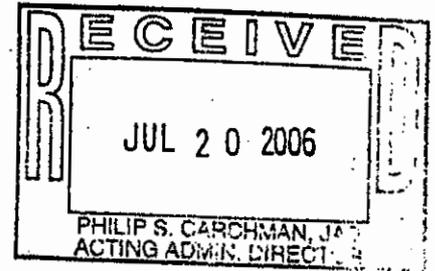
MIDDLESEX COUNTY COURT HOUSE
P.O. BOX 064
NEW BRUNSWICK, NEW JERSEY 08903 - 0664

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CIVIL PRACTICE

July 14, 2006



The Honorable Philip S. Carchman, J.A.D.
Acting Administrative Director of the Courts
Richard J. Hughes Justice Complex
PO Box 037
Trenton, New Jersey 08625-0037

RE: APPLICATION TO DESIGNATE ORTHO EVRA AS A MASS TORT

Dear Judge Carchman:

Pursuant to R. 4:38A and AOC Directive #11-03 Mass Torts -- Guidelines and Criteria for Designation, please accept this letter as a request to designate all litigation involving Ortho Evra matters as a mass tort to be venued in Middlesex County, and assigned to me for centralized management. In accordance with the Guidelines, by a copy of this Application, notice is given to the plaintiffs' counsel who have filed cases in Middlesex County alleging Ortho Evra-related injuries,¹ and to the attorneys who have entered an appearance in these matters.²

¹ Levin, Fishbein, Sedran & Berman
Parker, Waichman, LLP
Finklestein & Partners LLP
Douglas & London, PC
Meyerson & O'Neill

While an Application to designate all Ortho Evra litigation as a mass tort and assign it for centralized management was previously made by the law firm of Parker & Waichman, the Supreme Court denied the Application, having determined that the Ortho Evra litigation did not at the time (November 2005) meet the criteria for designation as a mass tort. It is respectfully submitted that circumstances have changed sufficiently to warrant a mass tort designation and centralization in Middlesex County as the Ortho Evra matters meet the mass tort criteria, and would benefit from such a designation.

BACKGROUND

Ortho Evra is a transdermal prescription contraceptive patch designed to prevent pregnancy. Ortho Evra was designed, developed, manufactured, tested, packaged, promoted, marketed, distributed, labeled and/or sold by defendants Ortho McNeil Pharmaceutical, Inc., and Johnson & Johnson Pharmaceutical Research and Development, L.L.C., subsidiaries of defendant Johnson & Johnson. It is alleged that this first and only transdermal contraceptive patch on the market in the United States causes blood clots, pulmonary emboli, deep vein thrombosis, strokes, heart attacks and/or death. Since Ortho Evra became available in the United States in March 2002, millions of prescriptions have been written.³

Seeger, Weiss, LLP

Weitz & Luxenberg, PC

Wilentz, Goldman & Spitzer

² Drinker, Biddle & Reath, LLP

³ According to Food and Drug Administration information, more than 8 million prescriptions were dispensed in 2003 and more than 10 million in 2004.

There are currently 35 Ortho Evra cases pending in Middlesex County. Based upon available information, Ortho Evra cases have also been filed and are pending in Hudson, Atlantic, Camden, Essex, and Cape May counties. Additional Ortho Evra cases continue to be filed in this county. Given that the Ortho Evra patch is currently on the market and that millions of prescriptions have been written for the patch since it first came on the market in 2002, it is very likely that additional cases will be filed. Various plaintiffs' counsel have advised this court that Ortho Evra usage cases will continue to be filed in counties across the state. Additional numerous cases are currently pending in federal court, consolidated under *In re Ortho Evra Products Liability Litigation* before Judge Katz in the Northern District of Ohio.

APPLICATION OF MASS TORT CRITERIA

In determining whether designation as a mass tort is warranted, the following factors must be considered:

- Do the cases possess all or many of the characteristics of a mass tort;
 - The litigation involves a large number of claims and parties associated with a single product: prescription transdermal birth control patch. Currently, 35 claims are pending in Middlesex County, and cases continue to be filed. At this time, complaints have been filed by eight law firms (with additional law firms involved as co-counsel.) Based on observations of filings at

this time and information obtained from several plaintiffs' counsel, additional cases are waiting to be filed (estimated to be at least in excess of 100). It is reasonable to expect the filing of additional claims given that the Ortho Evra patch is a widely prescribed form of birth control with millions of prescriptions having been written.

- The litigation involves a large number of similar claims resulting from a single product – a prescription transdermal contraceptive patch – with common, recurrent issues of law and fact relating to both damages and liability.
- There is geographic dispersment of the parties. Claims are pending in at least six New Jersey counties. Defendants have their principal places of business in New Jersey and many plaintiffs are out-of-state.
- The injuries among the plaintiffs are similar. It is alleged that the Ortho Evra birth control patch caused similar injuries to the plaintiffs ranging from blood clots to pulmonary emboli, deep vein thrombosis, strokes, heart attacks and, in some instances, death.
- The strengths and weaknesses of the causation and liability aspects of the cases are related to and depend upon the outcome

of the trial of similar cases. Centralization of these cases in one county before one judge will aid in settlement discussions with the potential of a global settlement.

- There will be a degree of remoteness between the court and the actual decision-makers in this litigation with decisions having to pass through layers of local, regional, national, general and/or house counsel.
- Is there a risk that centralization may unreasonably delay the progress, increase the expense, or complicate the processing of any action, or otherwise prejudice a party; and whether centralized management is fair and convenient to the parties, witnesses and counsel;
 - Centralization will facilitate the efficient management of the litigation and should pose no unreasonable delay since the Middlesex cases are in their early stages.⁴
 - Centralized management would be fair and convenient to the parties, witnesses and counsel since New Brunswick is in central New Jersey and is easily accessible. Defendant Johnson & Johnson has its principal place of business in Middlesex County. Since many of the plaintiffs are out-of-state, the

⁴ While it is my understanding that the Hudson County cases are at a more advanced stage, eleven of the twelve matters have already settled. Given this progression of the Hudson County cases, there is a potential for settlement of the final Hudson County matter pending at this time while this Application is being considered by the Supreme Court.

choice of Middlesex as the designated county for these cases should not matter to the plaintiffs. Furthermore, accommodations are readily available for the out of state participants.

- Is there a risk of duplicative and inconsistent rulings, orders or judgments if the cases are not managed in a coordinated fashion; and whether coordinated discovery would be advantageous;
 - The litigation involves a number of similar claims resulting from the usage of a single product - the Ortho Evra contraceptive patch - with common, recurrent issues of law and fact relating to both damages and liability. As such, decentralized handling by an independent judiciary may result in inconsistent rulings. Moreover, the possibility of inconsistent rulings may ultimately hinder the discovery process, and foster forum shopping.
- Do the cases require specialized expertise and case processing as provided by the dedicated mass tort judge and staff; and
 - These cases would benefit from the specialized expertise and case processing of the mass tort staff in Middlesex County, including but not limited to, Special Master Agatha N.

Dzikiewicz, Esq., law clerks with specialized knowledge, and the mass tort clerk's office.

- Would centralization result in the efficient utilization of judicial resources and the facilities and personnel of the court.
 - Judicial resources would be efficiently utilized by having one Judge in the state coordinating management and disposition of the cases with the assistance of a Special Master. Centralization would save the unnecessary expenditure of judicial resources that would be expended if numerous state courts were made to rule on the same procedural and substantive issues. The federal judiciary has also centralized related matters before Judge Katz in the Northern District of Ohio in order to address similar concerns of judicial efficiency. Coordination between the federal judiciary and a single point of contact in New Jersey would result in a more efficient exchange of information and efficient resolution of this litigation.

CONCLUSION

This request to designate all current and future Ortho Evra cases as a mass tort for centralized management in Middlesex County is being made as a result of an analysis of

the Complaints filed thus far. The analysis reveals that these cases meet the criteria for mass tort designation, and would benefit from such a designation.

Respectfully submitted,



HON. BRYAN D. GARRUTO, J.S.C.

BDG/lj

cc: Hon. Robert A. Longhi, AJSC
Hon. Yolanda Ciccone, PJSC
Gregory Edwards, TCA
Joseph Lynch, CDM
Michelle V. Perone, Esq., Chief, Civil Programs
Agatha N. Dzikiewicz, Esq., Special Master
Susan M. Sharko, Esq. (Drinker, Biddle & Reath, LLP)
Michael Weinkowitz, Esq. (Levin, Fishbein, Sedran & Berman)
Jerrold S. Parker, Esq. (Parker, Waichman, LLP)
Kenneth Fromson, Esq. (Finklestein & Partners LLP)
Michael A. London, Esq. (Douglas & London, PC)
Jack Meyerson, Esq. (Meyerson & O'Neill)
Christopher Seeger, Esq. (Seeger, Weiss, LLP)
Ellen Relkin, Esq. (Weitz & Luxenberg, PC)
Lynne Kizis, Esq. (Wilentz, Goldman & Spitzer)

DRAFT

SUPREME COURT OF NEW JERSEY

On application made pursuant to Rule 4:38A and the Mass Tort Guidelines promulgated by Directive #11-03 in accordance with that Rule, it is hereby ORDERED that all pending and future actions seeking damages or other relief arising out of alleged injuries from the use of the Ortho Evra birth control patch are designated as a mass tort for centralized case management purposes; and

It is FURTHER ORDERED that any and all such complaints that have been filed in the various counties and that are under or are awaiting case management and/or discovery shall be transferred from the county of venue to Superior Court, Law Division, Middlesex County (Vicinage No. 8), and assigned for management purposes to the Honorable Bryan D. Garruto; and

It is FURTHER ORDERED that venue in all existing Ortho Evra birth control patch cases is transferred to Middlesex County; and that, pursuant to N.J.Const. (1947), Art. VI, sec. 2, par. 3, the provisions of Rule 4:3-2 governing venue in the Superior Court are supplemented and relaxed so that all future such complaints, no matter where they might be venued, shall be filed in Middlesex County and assigned to Judge Garruto for management; and

It is FURTHER ORDERED that Judge Garruto shall oversee all management and trial issues for such cases and may, in his discretion, return such cases to the original county of venue for disposition; and

It is FURTHER ORDERED that no Special Master may be appointed in this litigation without the express approval of the Chief Justice.

For the Court,

Deborah T. Poritz

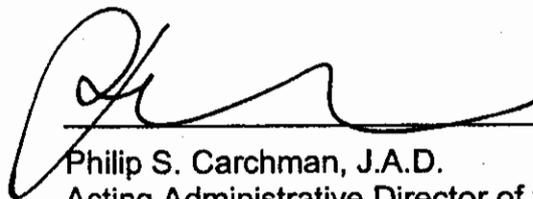
Dated: October 10, 2006

NOTICE TO THE BAR

MASS TORTS – APPLICATION TO DESIGNATE ORTHO EVRA BIRTH CONTROL PATCH LITIGATION

Pursuant to Rule 4:38A and the Mass Tort Guidelines (Directive # 11-03), the Supreme Court, through the Administrative Director of the Courts, has received an application for the designation of all litigation in the New Jersey state courts involving the Ortho Evra birth control patch as a mass tort for centralized management in Middlesex County. A copy of that application is posted on the Judiciary's Internet Mass Tort Info Center at www.judiciary.state.nj.us/mass-tort/index.htm.

Anyone wishing either to comment on or to object to this application should provide such comments or objections in writing, with relevant supporting documentation, to Hon. Philip S. Carchman, Acting Administrative Director of the Courts, P. O. Box 037, Trenton, NJ 08625-0037, by September 1, 2006.



Philip S. Carchman, J.A.D.
Acting Administrative Director of the Courts

Dated: July 27, 2006

RULE 4:38A. Centralized Management of Mass Torts

The Supreme Court may designate a case or category of cases as a mass tort to receive centralized management in accordance with criteria and procedures promulgated by the Administrative Director of the Courts upon approval by the Court. Promulgation of the criteria and procedures will include posting in the Mass Tort Information Center on the Judiciary's Internet website (www.judiciary.state.nj.us).

Note: Adopted October 23, 2003 to be effective immediately.

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

RICHARD J. WILLIAMS, J.A.D.
ADMINISTRATIVE DIRECTOR OF THE COURTS



RICHARD J. HUGHES JUSTICE COMPLEX
PO BOX 037
TRENTON, NEW JERSEY 08625-0037
(609) 984-0275
FAX: (609) 292-3320

DIRECTIVE # 11-03

Questions or comments may
be directed to 609-292-8470

TO: ASSIGNMENT JUDGES
CIVIL PRESIDING JUDGES

FROM: RICHARD J. WILLIAMS *RJW*

SUBJ: MASS TORTS – GUIDELINES AND CRITERIA FOR DESIGNATION

DATE: OCTOBER 27, 2003

Pursuant to Rule 4:38A ("Centralized Management of Mass Torts"), the Supreme Court has approved the attached "Mass Tort Guidelines" for promulgation by Administrative Directive. These guidelines, which are effective immediately, set forth (1) criteria to be considered in determining whether a category of cases should be designated a mass tort, and (2) a procedure for interested attorneys to have input into the process.

R.J.W.

JFC/LMJ
Attachment

cc: Hon. Deborah T. Poritz, Chief Justice
Hon. Marina Corodermus, J.S.C.
Hon. Carol E. Higbee, J.S.C.
Hon. Charles J. Walsh, J.S.C.
Trial Court Administrators
Civil Division Managers
Theodore J. Fetter, Deputy Admin. Director
Stephen W. Townsend, Supreme Court Clerk
John P. McCarthy, Jr., Director
Jane F. Castner, Assistant Director
Michelle V. Perone, Chief
Steven D. Bonville, Special Assistant

MASS TORT GUIDELINES

Procedure for Requesting Designation of a Case as a Mass Tort for Centralized Management

The Assignment Judge of any vicinage or an attorney involved in a case or cases that may constitute a mass tort may apply to the Supreme Court, through the Administrative Director of the Courts, to have the case(s) classified as a mass tort, and assigned to a designated judge for centralized management. The Assignment Judge or attorney making such an application must give notice to all parties then involved in the case(s), advising that the application has been made and that a Notice to the Bar will appear in the legal newspapers and in the Mass Tort Information Center on the Judiciary's Internet website providing information on where and within what time period comments on and objections to the application may be made.

The Administrative Director of the Courts will present the application, along with a compilation of any comments and objections received, to the Supreme Court for its review and determination.

If the Supreme Court determines that the case(s) should be classified as a mass tort and assigned to a designated judge for centralized management and, in that judge's discretion, trial, an appropriate Order will be entered. The Order will be sent to all Assignment Judges and Civil Presiding Judges, will be published in the legal newspapers, and will be posted in the Mass Tort Information Center on the Judiciary's Internet website.

Criteria to be Applied in Determining Whether Designation as a Mass Tort is Warranted

In determining whether designation as a mass tort is warranted, the following factors, among others, will be considered:

- whether the case(s) possess(es) the following characteristics:
 - it involves large numbers of parties;

- it involves many claims with common, recurrent issues of law and fact that are associated with a single product, mass disaster, or complex environmental or toxic tort;
 - there is geographical dispersment of parties;
 - there is a high degree of commonality of injury or damages among plaintiffs;
 - there is a value interdependence between different claims, that is, the perceived strength or weakness of the causation and liability aspects of the case(s) are often dependent upon the success or failure of similar lawsuits in other jurisdictions; and
 - there is a degree of remoteness between the court and actual decision-makers in the litigation, that is, even the simplest of decisions may be required to pass through layers of local, regional, national, general and house counsel.
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- whether there is a risk that centralization may unreasonably delay the progress, increase the expense, or complicate the processing of any action, or otherwise prejudice a party;
 - whether centralized management is fair and convenient to the parties, witnesses and counsel;
 - whether there is a risk of duplicative and inconsistent rulings, orders or judgments if the cases are not managed in a coordinated fashion;
 - whether coordinated discovery would be advantageous;
 - whether the cases require specialized expertise and case processing as provided by the dedicated mass tort judge and staff;
 - whether centralization would result in the efficient utilization of judicial resources and the facilities and personnel of the court;
 - whether issues of insurance, limits on assets and potential bankruptcy can be best addressed in coordinated proceedings; and

- whether there are related matters pending in Federal court or in other state courts that require coordination with a single New Jersey judge.

Choice of Site for Centralized Management

Issues 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. This decision will be made by the Supreme Court.

Subsequent Related Actions

The initial Order of the Supreme Court denominating a particular category of cases as a mass tort and referring those cases to a particular county for centralized management may specify that subsequent related actions are to be transferred from the counties in which they are filed to the designated mass tort county and judge without further application to the Supreme Court.

Severance

The mass tort judge may thereafter review the cases designated as a mass tort and assigned for centralized management, and may sever and return to the original county(ies) of venue any that no longer warrant centralization.

Termination of Centralized Management

When the mass tort judge determines that centralized management is no longer necessary or appropriate under the circumstances, he or she will send a written report to the Administrative Director, with copies to the Assignment Judge, Civil Presiding Judge, Trial Court Administrator and Civil Division Manager of his or her vicinage. The report shall provide details of matters resolved as well as the particulars concerning any unresolved matters being returned to their original county(ies) of venue. This report will be presented to the Supreme Court for review.

[As approved by the Supreme Court pursuant to Rule 4:38A, October 2003.]