

April 18, 2008

VIA FEDERAL EXPRESS

Hon. Philip S. Carchman, J.A.D.
Administrative Director of the Courts
Hughes Justice Complex
25 W. Market Street
P.O. Box 037
Trenton, New Jersey 08625

CIVIL PRACTICE DIV.

APR 21 2008

RECEIVED**Re: Application for Transfer for Centralized Management**

Dear Judge Carchman:

Gibbons P.C. and Faegre & Benson LLP represent Novartis Pharmaceuticals Corporation (NPC) in eight (8) individual cases pending in New Jersey Superior Court alleging injuries from the ingestion of the prescription pharmaceutical Zelnorm®. Plaintiffs seek, *inter alia*, compensatory and punitive damages for failure to warn under the New Jersey Product Liability Act. At present, four (4) cases are pending in Hudson County, two (2) in Middlesex County and one each in Essex and Atlantic Counties. None of the Plaintiffs in these actions reside in New Jersey. Eight different plaintiff's law firms have appeared and only one has appeared on behalf of more than two plaintiffs. To avoid duplicate discovery and inconsistent rulings, NPC believes that these cases would benefit from coordination by a single New Jersey Superior Court judge experienced in handling complex pharmaceutical litigation. Accordingly, NPC writes to request transfer of these eight (8) cases, as well as any subsequently filed cases, to Judge Jonathan N. Harris, Bergen County, for centralized management.

BACKGROUND

NPC, a Delaware Corporation with its principal place of business in East Hanover, New Jersey, marketed Zelnorm in the United States from July 2002 to March 30, 2007. Zelnorm was approved by the FDA for two indications: (1) the short term treatment of **women with irritable bowel syndrome (IBS)** whose primary bowel symptom is constipation (2002); and (2) the treatment of patients less than 65 years of age with chronic idiopathic constipation (2004). NPC suspended marketing of Zelnorm in the United States effective March 30, 2007 at the request of the FDA. Since that time, in addition to the eight cases currently pending in New Jersey Superior Court, five additional cases were filed in Hudson County. NPC removed these five cases and they presently are pending in New Jersey federal court before the Honorable Dickinson

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R. Debevoise.¹ Three cases are pending in federal court in Louisiana. There is no multi-district litigation (MDL).

**COORDINATION WILL ELIMINATE DUPLICATIVE DISCOVERY AND
INCONSISTENT RULINGS AND PROMOTE JUDICIAL ECONOMY**

Written discovery has been served against NPC in the first-filed Zelnorm case, Wingate, consisting of eighty-five (85) individual requests for production and twenty-five (25) individual interrogatories. Plaintiffs also issued multiple Rule 4:14-2, or "corporate representative" deposition notices demanding testimony on corporate structure, marketing, sales training, regulatory and other topics. NPC has begun and is continuing to produce witnesses for deposition in response to these notices. As is common in such litigation, and in light of the number of firms representing the various plaintiffs, NPC anticipates additional voluminous discovery demands will be served by plaintiffs in Wingate, as well as in each of the additional seven actions. NPC also anticipates it will be served with duplicative demands to depose its current and former employees in each of these cases. Coordination of these voluminous requests by a single experienced jurist is necessary to avoid duplicative and burdensome discovery, and to avoid potentially inconsistent rulings among the multiple state court judges presently assigned to these cases. Indeed, coordination also will further judicial economy. Although no MDL exists, informal state-federal coordination with Judge Debevoise also would be beneficial for the same reasons.

In addition, as noted above, all of the plaintiffs in these cases are residents of states other than New Jersey. As all of the operative facts -- prescription and ingestion of Zelnorm and alleged injuries -- appear to have taken place in the plaintiffs' home states. Accordingly, NPC will seek dismissal of each of these cases based on the doctrine of forum non-conveniens.² NPC respectfully submits that to avoid inconsistent rulings, these motions should be decided by a single judge.

**A SINGLE JUDGE SHOULD ASSESS WHETHER A STAY IS WARRANTED
PENDING THE U.S. SUPREME COURT'S PREEMPTION DECISION IN LEVINE**

This summer, the United States Supreme Court will decide if state law failure to warn claims involving FDA-approved pharmaceuticals are preempted by federal law in Wyeth v. Levine. The Supreme Court's upcoming decision in Levine calls into question whether the

¹ The five removed cases bore the following New Jersey Superior Court docket numbers: Sullivan v. NPC, HUD-L-908-08; Martin v. NPC, HUD-L-1645-08; Medlin v. NPC, HUD-L-1646-08; Welch v. NPC, HUD-L-1647-08; and Richard v. NPC, HUD-L-1648-08.

² NPC expressly reserves its right as to all available affirmative defenses. Moreover, by this application NPC does not waive its right to seek forum non conveniens dismissals in any of the eight individual cases. Finally, nothing herein should be construed as supportive of or a basis for certification of a class action, which would be improper under any set of applicable laws or rules.

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Zelnorm litigation, now in its infancy, will proceed to adjudication on the merits. In light of Levine, NPC may seek to stay each of these cases. NPC respectfully submits that whether a stay is warranted under these circumstances should be addressed by a single judge experienced in complex litigation.

VENUE IN NORTHERN NEW JERSEY IS APPROPRIATE

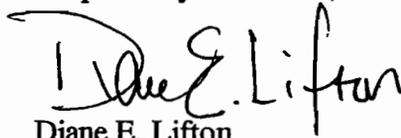
Because the majority of cases are pending in Northern New Jersey, assignment to a vicinage and judge in Northern New Jersey with an amenable docket makes eminent sense. NPC respectfully submits that Judge Jonathan N. Harris, Bergen County, is the logical choice for this assignment. Judge Harris is experienced in the management of complex litigation. He also is familiar with the core issues that arise in pharmaceutical litigation from his current assignments managing pharmaceutical and toxic tort litigations.

Following entry of an order transferring the pending Zelnorm cases to Judge Harris, NPC respectfully requests that any subsequent related actions, if any, be transferred to Judge Harris without further application to Your Honor and the New Jersey Supreme Court.

CONCLUSION

For the reasons set forth above -- the need to coordinate discovery, to avoid inconsistent rulings, and to assess the appropriateness of a stay in light of the impending U.S. Supreme Court presumption decision -- NPC respectfully submits that centralized management is warranted. By this application, NPC specifically does NOT seek mass tort designation pursuant to Rule 4:38A and the Mass Tort Guidelines (Directive # 11-03). Indeed, these cases -- for the most apparent reasons that there are only eight (8) and no federal MDL -- do not meet the criteria for such a designation and NPC would object to any such application. NPC further notes that the negative connotation of the term "mass tort" implies, by its title, that the product at issue has been pre-determined to be defective. Accordingly, for this additional reason NPC would object vigorously to any such designation.

Respectfully submitted,



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