

# GARRITY, GRAHAM, MURPHY, GAROFALO & FLINN

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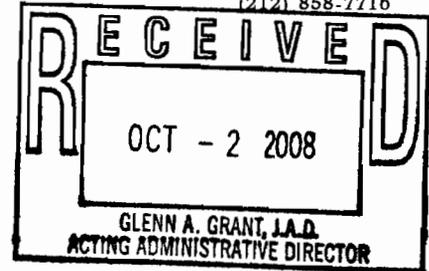
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September 29, 2008



## LAWYERS SERVICE

Honorable Philip S. Carchman, J.A.D.  
Acting Administrative Director of New Jersey Courts  
Administrative Office of the Courts  
Hughes Justice Complex  
25 W. Market Street  
P.O. Box 037  
Trenton, NJ 08625-0037

**CIVIL PRACTICE DIV.**

OCT 02 2008

**RECEIVED**

Re: Application for Mass Tort Designation  
152 Plaintiffs vs. Bristol-Myers Squibb, et al.  
Middlesex County Superior Court  
Our File No: 994.20880-TDF

Dear Judge Carchman:

Please accept this letter Brief in reply to the Opposition served by counsel for Bristol-Myers Squibb to Mass Tort Designation.

BMS concludes that the cases do not require Mass Tort Designation because the cases are already being centrally managed. However, the assignment of these cases to one judge is less than is required in order to move these cases through to conclusion efficiently and without inconsistency. Moreover, merely because the assigned judge already is taking some of the measures appropriate to the management of these cases is no reason to withhold the designation that would formally implement those powers as well as to offer him the use of other measures to manage the litigation. Similarly, merely because plaintiffs' attorneys already have attempted to undertake discovery in a "coordinated" fashion is no reason to withhold the Court's imprimatur for doing so as to all cases.

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To be sure, the individuality of these cases will be found in the plaintiffs' proofs of injury and each plaintiff will be required to present his or her evidence of the proximate cause between the acts alleged to have been committed and omitted by BMS and his or her injuries. However the acts and omissions to which linkage will be required will be the same for each of the claims. If the cases are mass tort managed, the facts uncovered in the discovery taken should be available to all cases. If the cases are mass tort managed, the expert opinions elicited from the various medical and toxicological specialties based on those facts will not vary in the generality as to the effects of exposure to chemicals for periods of time and in the manners established during discovery. What will vary and will probably require individuation will be the proof that the particular plaintiff was exposed in particular ways and suffered particular diseases as a result thereof.

Accordingly, Mass Tort Designation is the appropriate management for the existing and any future such claims.

Respectfully yours,



ELIZABETH H. HAMLIN

EHH:jf

cc: Michael A. Tanenbaum, Esq./Sedgwick, Detert, Moran & Arnold