

# NOTICE TO THE BAR

## **MASS TORTS – GADOLINIUM-BASED DIAGNOSTIC CONTRAST AGENTS**

A previous notice advised of the application made to the Supreme Court for designation of all New Jersey state court litigation involving the gadolinium-based diagnostic contrast agents as a mass tort and assignment of that litigation for coordinated and centralized management to Judge Jamie D. Happas in Middlesex County. That application was submitted pursuant to *Rule* 4:38A and the Revised Mass Tort Guidelines as promulgated by Directive #10-07 and was published for comment. The Court received several comments regarding the application. This notice is to advise that the Supreme Court, after considering the application and all comments, has designated all state court litigation involving the gadolinium-based diagnostic contrast agents as a mass tort and has assigned it to Judge Happas for centralized management. Published with this notice are the Supreme Court's April 8, 2008 Order as well as Judge Happas' April 8, 2008 Case Management Order. Both Orders are also posted in the Mass Tort Information Center in the Judiciary's Internet web site ([www.njcourtsonline.com](http://www.njcourtsonline.com)).

Questions concerning this matter may be directed to Michelle V. Perone, Esq., Chief, Civil Court Programs, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; telephone (609) 984-5431; email address [michelle.perone@judiciary.state.nj.us](mailto:michelle.perone@judiciary.state.nj.us).

/s/ Philip S. Carchman

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

Dated: April 11, 2008

## **SUPREME COURT OF NEW JERSEY**

On application made pursuant to Rule 4:38A and the Mass Tort Guidelines promulgated by Directive #10-07 in accordance with that Rule, it is hereby ORDERED that all pending and future New Jersey state court actions seeking damages or other relief arising out of the injection of gadolinium-based contrast agents, 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 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 and assigned to the Superior Court Judge Jamie D. Happas, with the assistance of Special Master Agatha N. Dzikiewicz, 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 venued, shall be filed in Middlesex County and assigned to Judge Happas; and

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

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

For the Court,

/s/ Stuart Rabner

Chief Justice

Dated: April 8, 2008

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY

**CASE NO. 279**

**CIVIL ACTION**

**CASE MANAGEMENT ORDER I**

**IN RE: GADOLINIUM-BASED CONTRAST  
AGENTS LITIGATION**

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**APPLICABLE TO ALL CASES**

**It appearing** that all Gadolinium-Based Contrast Agents cases are centralized for management in Middlesex County by Order of the Supreme Court of New Jersey, dated April 8, 2008;

**And it further** appearing that an equitable, economic and expedient resolution of these cases require an orderly management plan for this litigation; and therefore

**IT IS ON THIS 10th day of APRIL, 2008, ORDERED** as follows:

**I. GENERAL APPLICABILITY**

1. This Order applies to all cases filed in or transferred to Middlesex County pursuant to the Supreme Court Order of April 8, 2008. The cases are centralized to avoid duplication and to prevent conflicts. These actions are not consolidated. Each case will retain its own docket number.
2. The civil “Best Practices” system for Mass Tort track IV will govern these cases.
3. All court files shall be transferred from the original vicinage of venue to the Middlesex County Mass Tort Clerk’s Office as soon as practicable.
4. All orders by transferor Courts imposing dates for pleadings or discovery are vacated.
5. Orders and notices common to the entire litigation may be available on the Judiciary web page for Mass Tort Litigation, which may be accessed at [www.judiciary.state.nj.us/mass-tort/index.htm](http://www.judiciary.state.nj.us/mass-tort/index.htm).

**II. CAPTIONS, PLEADINGS & SERVICE**

1. All parties are to file individual complaints with the Mass Tort Clerk’s Office, Superior Court of New Jersey, Middlesex County Courthouse, 56 Paterson Street, Tower Wing 2<sup>nd</sup> Floor, New Brunswick, New Jersey 08903. The Case Information Statement accompanying the pleadings shall identify the case code as 279.

2. Each complaint is limited to one plaintiff or a related household of plaintiffs. No plaintiff may use the caption “In Re Gadolinium-Based Contrast Agents Litigation” on an individual complaint.
3. All pleadings, motion papers, and correspondence shall add the letters MT after the docket number indicating Mass Tort and under the caption Civil Action shall include the title of this litigation, “In Re Gadolinium-Based Contrast Agents Litigation.” All pleadings shall include the case code 279.
4. Middlesex County shall maintain a master docket and case file captioned “In Re Gadolinium-Based Contrast Agents Litigation.” All Case Management Orders, Scheduling Orders, or other documents filed therein are deemed filed and docketed in each individual case.

### **III. PRELIMINARY MATTERS**

1. Each party shall preserve all documents and other records containing information potentially relevant to this litigation. Each party shall also preserve any physical evidence or potential evidence and shall not conduct any tests on physical evidence without notifying opposing counsel. Unless opposing counsel stipulate to the test, no test shall be conducted without obtaining the Court’s permission.
2. Computerized data shall not be erased under existing programs until opposing counsel have been notified of all existing programs and a court order has been obtained.

### **IV. ATTORNEYS**

1. Counsel are expected to act in a courteous, professional manner during the conduct of this litigation. Counsel should be prepared at all court conferences to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation. Each attorney should make a good faith effort to resolve disputes out of Court and in an expeditious manner.
2. Counsel for plaintiff(s) shall provide to the Court an official service list updated every 60 days. The list must contain the case names, docket numbers and the dates entered on the first page. For each party, counsel must be identified by name, firm name, address, telephone number, fax number and e-mail address. From these lists, the Court will maintain on the mass tort website an official counsel list for purposes of facilitating service.
3. Counsel lists are not to be appended to any Court submission. The counsel list shall be incorporated by reference on all certificates of service, all pleadings, all motions, all correspondence. The reference should be to all counsel on the list as found on the mass tort website.
4. Multiple Counsel: Where a party is represented by more than one counsel of record, that party shall designate the name and address of the single New Jersey counsel to be the recipient of all notices, communications and pleadings. The designated New Jersey counsel will be responsible for notifying co-counsel of all such matters.

## **V. CONFERENCE PROCEDURES**

1. The Court will conduct monthly scheduling and case management conferences to assess the progress regarding the matters scheduled herein. Reasonable notice of all such conferences will be provided to all counsel of record.
2. Counsel are encouraged to advise Special Master Agatha N. Dzikiewicz at least one week prior to the case management conference of any items that should be added to the agenda.
3. Transcripts: At the parties' request, all conferences or parts thereof will be recorded. Any party desiring a transcript may order one directly from the Middlesex County Transcription Department. Counsel may also provide a private reporter. In any proceeding in which a transcript is ordered, either from the Court or a private reporter, counsel shall ensure that one copy of the transcript is also sent to the Court. In case of a discrepancy in a transcript, the transcription by the county will constitute the official record.
4. Appearances: Counsel appearing at each case management conference must sign an attendance sheet, be familiar with the issues to be discussed and not schedule other matters for the date of the conference. Counsel may appear by telephone. Arrangements shall be made through liaison counsel. A list of all attorneys attending via telephone shall be e-mailed or faxed to the Judge's and Special Master's secretaries one day before any court conference.
5. Compliance: All counsel are required to comply with the provisions of each case management order whether or not he or she was in attendance at the conference giving rise to the Order.

## **VI. MOTIONS**

1. Filing Requirement: All motions are to be filed with the Mass Tort Clerk's Office, Superior Court of New Jersey, Middlesex County Courthouse, 56 Paterson Street, Tower Wing 2<sup>nd</sup> Floor, New Brunswick, New Jersey 08903. All motion papers must include a return date, scheduled on a non-motion Friday.
2. Any motion that is applicable to more than one case shall be noted on the first page by listing each docket number or if all, the notation "applicable to all cases," with a filing fee for each docket.
3. Copies: Counsel shall file an original and one copy of each Notice of Motion, supporting documents and proposed form of Order with the Mass Tort Clerk's Office, along with a self-addressed envelope with sufficient postage for the return of the signed Order. One additional copy of these papers along with a self-addressed envelope with sufficient postage may be supplied if a request is made for a return of that copy marked "filed". The courtesy copies for the Judge should be submitted with the filing papers directly to the Middlesex County Mass Tort Clerk's Office by noon on the due date.

4. Form of orders: A proposed form of Order shall be submitted for all motions and a stamped self-addressed envelope must be included.
5. Captions: Captions on motions are the same as on all other pleadings and require the MT for Mass Tort after the docket number, the designation “In Re Gadolinium-Based Agents Litigation,” and case code 279.
6. All dispositive and *in limine* motions as well as Kemp and Lopez hearings shall be scheduled by the Court during management conferences.
7. Choice of Law: Each defendant may file an Amended Answer to add a specific choice of law defense with a list of all affected cases attached by June 13, 2008. The timing of filing choice of law motions will be set by the Court at the appropriate time for each case or consolidated group of cases during a monthly Case Management Conference.
8. No discovery motions shall be filed without prior notice to the court during either the monthly case management conference, or if exigent, by telephone conference with the Special Master.
9. *Pro Hac Vice* Admissions:

Counsel shall use the *pro hac vice* application form posted on the judiciary’s website at [www.judiciary.state.nj.us/mass-tort/index.htm](http://www.judiciary.state.nj.us/mass-tort/index.htm).

Any attorney seeking admission *pro hac vice* shall make a formal motion for admission returnable before Judge Happas on a non-motion Friday. Motions for admission *pro hac vice* may be made on short notice with the Special Master’s permission and on notice to all parties. A motion must be made on the applicant’s behalf by a fully licensed member of the New Jersey Bar, in each individual docket, utilizing the approved form of motion, along with supporting Certification and/or Affidavit. Motions for the admission of counsel *pro hac vice* shall be decided on the papers submitted unless opposition to the motion is filed or the court otherwise directs. A motion filing fee shall be paid for each individual docket.

#### **Required Representations for *Pro Hac Vice* Admission**

The attorney seeking admission *pro hac vice* must warrant the representations set forth below to be true:

- a) Counsel seeking *pro hac vice* admission has a long-standing relationship with the client on whose behalf they wish to appear and the client has requested their participation in the litigation as attorneys *pro hac vice*.
- b) Counsel seeking *pro hac vice* admission is associated with New Jersey counsel of record.
- c) Counsel seeking *pro hac vice* admission has reviewed the New Jersey Rules of Court and agrees to comply with said Rules, including all disciplinary rules.

- d) Counsel seeking *pro hac vice* admission represent they are a member in good standing of the bar of the highest court of the state where counsel practices, that no disciplinary proceedings are pending against them in any jurisdiction and no discipline has previously been imposed against them in any jurisdiction, and that counsel understand their continuing obligation to advise the court of any disciplinary proceedings.
- e) Counsel representing plaintiffs who seek *pro hac vice* admission must certify that all retainer agreements with clients in the subject litigation do not, and in the future will not, violate any of the contingency fee provisions found in the Rules Governing the Courts of New Jersey for the current year.
- f) Counsel seeking *pro hac vice* admission to represent a corporate defendant must certify as to his or her prior involvement with that corporation or its related entities, including the capacity in which he or she was involved. Further, the attorney must include in the Affidavit a statement of his or her good faith belief that he or she was not involved with policy or management decisions which would require him or her to be called as a witness in any matter before the Court.

#### **Conditions of Pro Hac Vice Admission**

The following conditions shall apply to the admission *pro hac vice* of any attorney in these matters:

- a) Counsel admitted *pro hac vice* shall abide by the New Jersey Rules of Court, including all disciplinary rules of the Courts of the State of New Jersey, Rule 1:20-1(b), Rule 1:28-2, and Rule 1:28 B-1(e).
- b) Counsel admitted *pro hac vice* shall consent to the appointment of the Clerk of the Supreme Court of New Jersey as an agent upon whom service of process may be made for all actions against their firm that may arise out of their participation in this matter.
- c) *Pro hac vice* counsel must be accompanied by a member of the New Jersey Bar at all proceedings.
- d) Discovery, motions, trial and any other court proceedings will not be adjourned due to the inability of *pro hac vice* counsel to be in attendance.
- e) Counsel admitted *pro hac vice* shall not be designated as trial counsel pursuant to Rule 4:25-4.
- f) All pleadings, briefs and other papers filed with the court shall be signed by an attorney of record authorized to practice in this State, who shall be held responsible for them, the conduct of the cause and the admitted attorney.

- g) Counsel admitted *pro hac vice* must notify the Court immediately of any matter affecting their standing at the Bar of any State in which they are admitted or of any other jurisdiction.
- h) Counsel admitted *pro hac vice* must within ten (10) days of the entry of the order for admission, pay the fees required by Rule 1:20-1(b), Rule 1:28-2 and Rule 1:28 B-1(e) and submit affidavits of compliance within fifteen (15) days thereafter. During the pendency of these matters counsel admitted *pro hac vice* shall continue to comply with Rules 1:20-1(b), 1:28-2 and 1:28 B-1(e) on an annual basis and shall submit affidavits of compliance within thirty (30) days of such compliance.
- i) Any admission *pro hac vice* shall be automatically terminated for failure to make the required annual payment to the Ethics Financial Committee, the New Jersey Lawyer's Fund for Client Protection, and the Lawyers Assistance Fund upon appropriate notification from the Administrative Office of the Courts that the annual payment has not been made. Proof of such payment, after filing proof of the initial payment, shall be made no later than February 1 of each year.
- j) Noncompliance with any of the requirements of *pro hac vice* admission shall constitute grounds for removal.
- k) A copy of the order granting *pro hac vice* admission shall be served on all parties within seven (7) days of its entry.

## **VII. CASE MANAGEMENT CONFERENCE**

The Honorable Jamie D. Happas will hold an in-person initial case management conference on May 13, 2008 @ 10 a.m. at Middlesex County Courthouse, Courtroom 401, 56 Paterson Street, New Brunswick, New Jersey. A tentative agenda is appended as Attachment 1. Counsel are encouraged to advise Special Master Agatha N. Dzikiewicz at least one week prior to the case management conference of any items that should be added to the agenda.

/s/ Jamie D. Happas

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JAMIE D. HAPPAS, J.S.C.



## **ATTACHMENT 1**

### **AGENDA FOR CONFERENCE SCHEDULED ON May 13, 2008**

1. Status of Discovery
2. Status of Motions
3. Status of Settlement Efforts and Mediation
4. Selection of Liaison Counsel
5. Discovery Plan
6. Miscellaneous