

## NOTICE TO THE BAR

### **APPLICATION FOR MASS TORT DESIGNATION AND CENTRALIZED MANAGEMENT OF LITIGATION INVOLVING ALLEGED ENVIRONMENTAL CONTAMINATION AT A NEW BRUNSWICK BRISTOL-MYERS SQUIBB SITE**

Pursuant to Rule 4:38A and Administrative Directive #10-07, “Mass Torts – Revised Guidelines and Criteria for Designation,” an application has been made to the Supreme Court, through the Acting Administrative Director of the Courts, for mass tort designation and centralized management in one of the three mass tort sites of all litigation involving alleged environmental contamination at a New Brunswick Bristol-Myers Squibb site.

Anyone wishing to comment on or object to this application should provide such comments or objections in writing, with relevant supporting documentation, to the Acting Administrative Director of the Courts, P.O. Box 037, Trenton, NJ 08625-0037, **by September 15, 2008.**

/s/ Philip S. Carchman

---

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

Dated: August 4, 2008

# GARRITY, GRAHAM, MURPHY, GAROFALO & FLINN

A PROFESSIONAL CORPORATION  
COUNSELLORS AT LAW

Thomas D. Flinn, Esq.  
*NJ and NY Bars*  
Principal

Certified by the Supreme Court of  
New Jersey as a Civil Trial Attorney

Phone Ext. 223  
E-Mail: [tdf@garritygraham.com](mailto:tdf@garritygraham.com)

ONE LACKAWANNA PLAZA, PO BOX 4205  
MONTCLAIR, NJ 07042-8205  
(973) 509-7500  
FAX (973) 509-0414

New York Office  
PMB 46015  
140 BROADWAY  
46<sup>TH</sup> FLOOR  
NEW YORK, NY 10005  
(212) 858-7716

July 30, 2008

VIA LAWYERS SERVICE

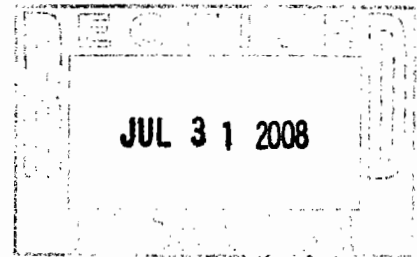
Honorable Philip S. Carchman, J.A.D.  
Acting Administrative Director of New Jersey Courts  
Administrative Office of the Courts  
Hughes Justice Complex  
25 W. Market Street  
P.O. Box 037  
Trenton, NJ 08625-0037

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 consider this correspondence to be an application to the Supreme Court to designate certain cases filed and to be filed in the Superior Court for Middlesex County as "Mass Tort" cases pursuant to *Rule* 4:30A and to assign them to a designated judge for centralized management.

During the last two weeks of May, 2008, this firm filed 106 toxic tort cases against named defendants Bristol-Myers Squibb Company, E.R. Squibb & Sons, Inc. and Bristol-Myers Corporation (and unnamed John Does) on account of long-standing conditions of environmental contamination at and emanating from certain property of Bristol-Myers Squibb ('BMS') in New Brunswick, New Jersey (the "Site"). It is alleged that this contamination affected and continues to affect public lands and then current, current and/or future residential properties. The defendants were served on June 13, 2008 with the Summonses and Complaints in the 106 cases filed to date.



**CIVIL PRACTICE DIV.**

**JUL 31 2008**

**RECEIVED**

July 30, 2008

Page 2

These cases involve large numbers of claimants: 152 including the claims of principal and derivative plaintiffs. The principal plaintiffs allege that they have been and continue to be exposed to toxic and hazardous substances at, around and emanating from the Site, including, but not limited to arsenic and mercury, vinyl chloride, asbestos, and other hazardous compounds. The routes of exposure are alleged to be inhalation, skin contact and ingestion on account of plaintiffs' contact with the fumes and vapors, soil and dust and water in the vicinity of the Site. The plaintiffs' claims fall into five general categories:

1. Personal injury on account of a specific medical disease or condition alleged to be the result of the defendants' environmental torts;
2. *Per quod* claims;
3. Claims for medical monitoring for the occurrence of personal injury;
4. Wrongful death and survivorship claims;
5. Property damage claims;

Many cases present various combinations of the five types of claims and they all present common, recurrent issues of law and fact that are associated with the environmental contamination at and emanating from a single Site.

There is a high degree of commonality of injury and damages among the plaintiffs. All of the principal personal injury claimants allege that the acts and omissions of BMS caused them to be exposed to carcinogenic, genotoxic, immunotoxic, hemotoxic and/or otherwise toxic and hazardous substances at levels and for durations significantly greater than the usual exposure for the general population. Some plaintiffs allege personal injury in the form of diagnosed diseases and medical conditions. All plaintiffs who lived or now live in the vicinity of the site allege that they have been caused to suffer as yet undetected anatomical and/or physiological changes and cellular damage that are not as yet manifest as well as to incur a substantially increased risk of contracting deadly diseases. All principal personal injury plaintiffs allege that the nature and degree of their exposure to toxic substances require special testing and a different medical monitoring regimen than that which would normally be medically recommended for the general population. They allege that, based upon the significance and extent of exposure to these chemicals, the toxicity of the chemicals, the seriousness of the diseases for which they are at risk, the relative increase in the chance of onset of and the value to them of early diagnosis, the defendants are liable to them for the cost of medical surveillance to monitor the current and future effects of exposure.

July 30, 2008

Page 3

All of the principal plaintiffs who own property in the vicinity of the Site allege property damage on account of the cost of and duration required for remediation and the decrease in market value of their property. Other claims are derivative, being the *per quod* claims of spouses and infant children and the wrongful death claims of the heirs and dependents of deceased former residents.

In each of these 106 cases, the common law, statutes, regulations and guidelines applicable to the defendants' conduct will be the same. The facts related to the conduct of BMS in dumping, emitting, releasing and otherwise discharging these contaminants at the Site will be the same. The facts related to the conduct of BMS in any remediation of the contamination will be the same. Under these circumstances, coordinated discovery would be particularly advantageous and economic for all parties.

Centralization will most efficiently advance the processing of these cases through to resolution without increasing the expense or complicating the processing or otherwise prejudicing any parties. In fact, the likelihood of identical proofs as to the facts of contamination and similar proofs as to causation call for centralization in order to facilitate the various economies that arise from stipulations and multiple utilizations of fact witness and expert testimony. Furthermore, because the evidence will be complex, undoubtedly involving voluminous documents and complicated and contested scientific testimony, the kind of specialized expertise and case processing that is developed by a dedicated mass tort judge and staff would ensure the most efficient processing of these cases and would result in the efficient utilization of available judicial resources.

Similarly, mass tort designation would reduce or eliminate the risk of duplicative and inconsistent rulings, orders or judgments if the cases are not managed in a coordinated fashion.

The core allegations of the 106 cases are the same. In each case, the caption identifying the case as a personal injury claim (with or without *per quod* and/or property damage claims) or as a wrongful death claim and the prayers for relief, are attached to a "master complaint" which is identical for all cases. A Personal Injury Complaint and a Wrongful Death Complaint are attached to this letter for the Court's ready reference. It is anticipated that more cases will be filed by this firm and/or other firm/s, making the same or similar allegations. It is also anticipated that one or more class actions will be filed pursuant to New Jersey *Rule* 4:32 for the medical monitoring claims of those persons who have suffered long term exposure to contaminants but have not yet been diagnosed with any particular disease or condition as a result thereof, some of whom also will have property damage claims. Additional claims may be filed on behalf of individuals who own property but did not reside in the vicinity of the Site.

**GARRITY, GRAHAM, MURPHY, GAROFALO & FLINN**

July 30, 2008

Page 4

The following 106 cases are those as to which mass tort designation is sought, together with any later filed cases making the same or similar allegations:

1. L-3780-08: Deborah Anderson and Arthur Anderson (husband)
2. L-3788-08: Carol Barrood and William Barrood (husband)
3. L-3802-08: Edward Barrood
4. L-3790-08: John Barrood
5. L-3804-08: Mary Barrood, deceased, Marie Bowler, Administratrix
6. L-3759-08: William Barrood and Carol Barrood (wife)
7. L-3750-08: Doris Berrian, deceased, Patricia Berrian-Harris, Administratrix
8. L-3755-08: Morris Berrian
9. L-3796-08: Marie Bowler
10. L-3764-08: Jimmie Boyd
11. L-3798-08: Geneva Boykins and Curlie Boykins (husband)
12. L-3806-08: Galena Brantley
13. L-3763-08: Barbara Brooks Walker
14. L-3808-08: Timothy Brown and Monesia Brown (wife)
15. L-3811-08: Joseph Byrd
16. L-3813-08: Derrick Capers
17. L-3815-08: Robin Capers, Helen Capers (wife) and Khadijah Capers (minor child)
18. L-3703-08: Vanessa Wright Cook
19. L-3793-08: David G. Cook
20. L-3801-08: Icy Mae Dudley and John W. Dudley (husband)

GARRITY, GRAHAM, MURPHY, GAROFALO & FLINN

July 30, 2008

Page 5

21. L-3779-08: John W. Dudley and Icy Mae Dudley (wife)
22. L-3791-08: Brenda Suber Allen
23. L-3873-08: James Fontaine and Jean Fontaine (wife)
24. L-3869-08: Jean Fontaine and James Fontaine (husband)
25. L-3867-08: Stephanie Glover
26. L-3866-08: Carrie Green and Lacy Gay (husband)
27. L-3753-08: Raymond Green and Elaine Green (wife)
28. L-3756-08: Delores Luster
29. L-3758-08: David Howard, GAL for Sauwn Howard (child)
30. L-3842-08: Ruth Jackson
31. L-3841-08: Eloise Byrd Jacobs
32. L-3823-08: Johnnie Jacobs
33. L-3824-08: Otis Young and Lucille Young (wife)
34. L-3762-08: Alice M. Brooks
35. L-3795-08: Wilbur Jennings
36. L-3760-08: Beatrice Jones
37. L-3777-08: Renee Lyons, Larry Lyons, Husband, and Aaliyah Lyons and Shaaliyah Lyons (minor children)
38. L-3825-08: Sylemon Jordan
39. L-3767-08: Retha Mae McGee and Robert McGee (husband)
40. L-3769-08: Johnnie S. Miller
41. L-3770-08: Mary Nikovics, deceased, Robert Nikovics, Administrator
42. L-3754-08: Fred Jackson, deceased, Veronica Jackson Davila, Administratrix

GARRITY, GRAHAM, MURPHY, GAROFALO & FLINN

July 30, 2008

Page 6

43. L-3837-08: Shirley White and Raymond White (husband)
44. L-3768-08: Juanita Patton
45. L-3773-08: William Patton
46. L-3820-08: Alfrieda Phillips and Ernest Phillips (husband)
47. L-3817-08: Charles Phipps
48. L-3807-08: Connie Phipps
49. L-3812-08: Corrine Phipps
50. L-3800-08: Alberta Nash
51. L-3818-08: Veadia Pittman
52. L-3868-08: William S. Pittman
53. L-3792-08: Glennie Mae Porter
54. L-3870-08: Will H. Porter Sr.
55. L-3714-08: Josette M. Price
56. L-3874-08: Cheryl Jennings Reese
57. L-3783-08: Will H. Porter, Jr. and Sharon Porter (wife)
58. L-3751-08: Warren Rushing, Sr., deceased, Warren Rushing III, Administrator
59. L-3809-08: Catarina Saia
60. L-3781-08: Joseph Saia
61. L-3775-08: Elmira Scott
62. L-3839-08: Edward Smith and Gabrielle Smith (wife)
63. L-3785-08: Shakera Styles, GAL for Tajgie Styles, Kevin Harrell and Heaven Styles
64. L-3704-08: Berkeley Taylor and Elwood Taylor (husband)
65. L- 3705-08: Elwood Taylor and Berkeley Taylor (wife)

GARRITY, GRAHAM, MURPHY, GAROFALO & FLINN

July 30, 2008

Page 7

66. L-3797-08: Barnett Thompson, Gal for Britni Thompson (child)
67. L-3819-08: Pamela Thompson
68. L-3821-08: Russell Thompson, Jr.
69. L-3710-08: Donald Whitehead
70. L-3706-08: Esther B. Whitehead
71. L-3712-08: Larry Jean Whitehead and Louse Whitehead (wife)
72. L-3840-08: Louise Whitehead and Larry Jean Whitehead (husband)
73. L-3726-08: Herbert Wright
74. L-3761-08: Roosevelt Price, deceased, Fannie Holmes, Administratrix
75. L-3872-08: Vertia Mae Price
76. L-3978-08: Goldie Thomas, Victoria Cruse Abdus Salaam, Administratrix
77. L-3988-08: Carol Thomas Miller
78. L-3826-08: Roselyn Glover
79. L-3966-08: Nicole Fleming
80. L-3983-08: Ann Smith
81. L-3952-08: George Taylor
82. L-3828-08: Michelle Styles and Tracy Styles (husband), GAL for Bria Styles
83. L-3830-08: Monesia Brown and Timothy Brown (husband), GAL for Caitlyn and Noah Brown
84. L-3833-08: Glynda Rushing and Warren Rushing III (husband)
85. L-3989-08: Lawrence Jennings, deceased, Edna Jennings, Administratrix
86. L-3787-08: Cindy Johnson and Larry Johnson (husband)
87. L-3782-08: Nina Bugnikos



GARRITY, GRAHAM, MURPHY, GAROFALO & FLINN

July 30, 2008

Page 8

- 88. L-3857-08: Cumi Mandeville
- 89. L-3816-08: John W. Mandeville, III and Thelma Mandeville (wife)
- 90. L-3844-08: Kenneth Pittman
- 91. L-3822-08: Betty Downs and John Downs (husband)
- 92. L-3975-08: John Downs and Bettie Downs (wife)
- 93. L-3985-08: Halyer, Bobbie Lee
- 94. L-3984-08: Annie Ree Hunter
- 95. L-3976-08: Lacerine SUBER, deceased, Brenda Suber Allen, Administratrix.
- 96. L-3987-08: James Fleming, deceased, Rosa Mae Fleming, Administratrix.
- 97. L-3967-08: Michelle Abrams
- 98. L-3986-08: Dennis Garrison
- 99. L-3951-08: Annie R. Hunter
- 100. L-4160-08: Eleanor M. Ruffin, deceased, Christopher Ruffin, Administrator
- 101. L-4155-08: Minnie Gibson and Lester Gibson (husband)
- 102. L-4159-08: Catherine Egan and James R. Egan (husband)
- 103. L-4158-08: Anthony Celona and Mary Celona (wife)
- 104. L-4448-08: Hover Celey, deceased, Debora Celey, Administratrix
- 105. L-4454-08: Tony Nail and Janie Nail (wife)
- 106. L-4452-08: Concetta D'Andrea, Indiv. and GAL Christina M.L. D'Andrea, Daughter

Pursuant to this Court's guidelines, a copy of this correspondence is being mailed to the counsel for defendants, who are thereby notified that this 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. Attached to this correspondence is my certification of mailing.

GARRITY, GRAHAM, MURPHY, GAROFALO & FLINN

July 30, 2008

Page 9

It is understood that, after the Administrative Director of the Courts has complied this application and any comments or objections received, he will forward the documents to the Supreme Court for its review and determination.

Respectfully,

/by  Esq.  
THOMAS D. FLINN

TDF:ehh

cc: Michael Tanenbaum, Esq.  
James Keale, Esq.  
Michelle Perone, Esq.