NOTICE TO THE BAR

MULTICOUNTY LITIGATION (MCL) – PROPOSED CONCLUSION OF PROPECIA® LITIGATION CENTRALIZED MANAGEMENT AND HANDLING AS MCL

By Order of March 7, 2012, the Supreme Court designated all New Jersey state court Propecia® litigation for centralized management and assignment to Middlesex County Superior Court for handling by the then mass tort judge in that vicinage. By subsequent orders dated March 29, 2017, July 24, 2017, and January 25, 2021, the Court reassigned the Propecia® litigation to the designated Multicounty Litigation (MCL) judge based on changes in that judicial assignment. The litigation is presently assigned to Superior Court Judge Bruce Kaplan. Judge Kaplan has reported to the Administrative Director of the Courts that all active Propecia® cases have been resolved and that centralized management of that litigation and its handling as MCL should therefore be concluded.

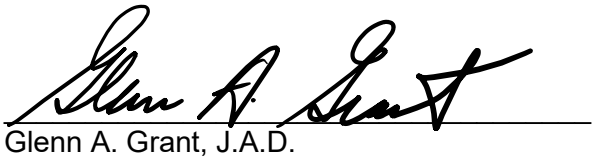
Accordingly, pursuant to the provisions of Court Rule 4:38A and Directive #02-19, "Multicounty Litigation Guidelines and Criteria for Designation (Revised)," this Notice is to advise of the proposed conclusion of the centralized management of the New Jersey state-court Propecia® litigation and its handling as Multicounty Litigation.

Anyone wishing to comment on or object to this application should provide such comments or objections in writing, with relevant supporting documentation, by **June 14, 2021** to:

Hon. Glenn A. Grant
Acting Administrative Director of the Courts
Attention: Proposed Conclusion of Propecia® MCL
Hughes Justice Complex, P.O. Box 037
Trenton, New Jersey 08625-0037

Comments/objections may also be sent by email to Comments.mailbox@njcourts.gov.

A copy of the Judge Kaplan's report and recommendation is posted with this Notice on the Judiciary website at www.njcourts.gov in the Multicounty Litigation Information Center (http://www.njcourts.gov/attorneys/mcl/index.html).



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: May 14, 2021

IN RE PROPECIA® LITIGATION	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY CASE NO. 623 CIVIL ACTION **REPORT AND RECOMMENDATION TO TERMINATE CENTRALIZED MANAGEMENT AND REMOVE MASS TORT DESIGNATION PURSUANT TO DIRECTIVE #02-19 AND R. 4:38A.**

TO: The Honorable Glenn A. Grant, J.A.D., Acting Administrative Director,

The purpose of this Report is to request that the centralized management of the In Re Propecia® litigation be terminated from the Middlesex County Vicinage.

Around October 2011, the Hon. Glenn A. Grant, J.A.D. submitted an application to the Supreme Court of New Jersey requesting designation of all New Jersey state-court litigation involving the drug Propecia as a mass tort. A Notice to the Bar was sent and requested comments on this application; in 2012, after considering the application and the comments received, the New Jersey Supreme Court determined not to designate the Propecia litigation as a mass tort/multi-county litigation, but rather decided to assign it to the Middlesex Vicinage for centralized case management by Judge Jessica R. Mayer, who was a Superior Court Judge in Middlesex County at the time.

Upon Judge Mayer's appointment to the Appellate Division in June 2017, the New Jersey Supreme Court temporarily reassigned all non-asbestos multicounty litigation matters to the Honorable James F. Hyland, J.S.C., including the centralized management of Propecia. On June 18, 2017, the New Jersey Supreme Court made the temporary reassignments to the Honorable James F. Hyland, J.S.C. permanent. Upon Judge Hyland's retirement, in January 2021, all mass tort matters in Middlesex County were reassigned to the Honorable Bruce J. Kaplan, J.S.C.

As of July 2020, counsel for Defendants, Merck & Co., Inc., and Merck Sharp & Dohme Corp. ("Merck"), concluded that centralized management of the In Re Propecia® litigation was no longer

appropriate given that there were no more pending cases in this litigation.[1] After this information was brought to the Court's attention, the Court thoroughly reviewed the Propecia docket and determined that there are in fact no more active cases remaining. As a result thereof, this Report is being written to request that the In re Propecia litigation now be decentralized.

A. Background

Propecia, also known by its active ingredient Finasteride, is a drug used for the treatment of male pattern hair loss on the vertex and the anterior mid-scalp area.[2] Male pattern hair loss is a common condition in which men experience thinning of hair on the scalp. Often, this results in a receding hairline and/or balding on the top of the head. The Food and Drug Administration (the "FDA") approved Merck's 1mg dose of Propecia for the treatment of male pattern baldness in 1997.

In June 2011, Merck added a warning to its United States label for Propecia indicating that Propecia may cause a persistence of erectile dysfunction after discontinuation of treatment. Additionally, in July 2011, Merck modified the Patient Insert included with every prescription of Propecia to reflect that side effects from Propecia included less desire for sex, difficulty in achieving an erection, and a decrease in the amount of semen; Merck's Patient Insert indicated that these side effects occurred in less than 2% of men and generally went away in most men who stopped taking Propecia. Ultimately, in April 2012, Merck modified the Propecia label and Patient Insert to disclose the risk of permanent sexual dysfunction and infertility and/or poor seminal quality.

Beginning in 2011, after Merck modified its Propecia Label and Patient Insert, thousands of men sued Merck alleging that their use of Propecia caused them to suffer symptoms of sexual dysfunction and that Merck had failed to warn them of this risk despite knowing that Propecia increased the risk of persistent and permanent side effects. [3]

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[1] In July 2020, Merck had a Motion pending for an award of fees and costs in *Moutfaov v. Merck*, MID-L-2669-12, which was denied by Judge Hyland, J.S.C. on July 31, 2020.

[2] Merck & Co., Inc. and Merck Sharp & Dohme Corp. are the manufacturers of Propecia.

[3] Thousands of cases were filed in federal courts and state courts; most of the state-court actions were filed in New Jersey, where Merck is headquartered. In April 2012, the Judicial Panel on Multidistrict Litigation

B. Current Status of the Litigation

As of December 2020, one (1) active case remained in the New Jersey centralized Propecia litigation. This case was filed in Union County on October 16, 2020 by a pro se plaintiff who resides in Georgia and was thereafter transferred to Middlesex County; counsel for Merck filed a Notice of Removal and the case was subsequently removed to the District Court for the District of New Jersey.

All other cases in this litigation have been dismissed with or without prejudice, or by stipulation. All cases dismissed without prejudice have been dismissed for over six (6) months at a minimum. There are currently zero (0) active cases remaining.

C. Summary of Significant Events

- **March 7, 2012:** Initial Case Management Conference held;
- **June 11, 2014:** Thirty-One cases dismissed without prejudice;
- **March 27, 2015:** Ten cases dismissed without prejudice;
- **December 9, 2015:** Seven cases dismissed without prejudice;
- **February 17, 2016:** Case Management Order 6 established bellwether criteria and set forth a bellwether procedure as well as established "Trial Pool" criteria and permitted case-specific discovery to commence on "Trial Pool" cases;
- **May 9, 2017:** Plaintiffs' counsel in this MCL participated in discussions conducted by the Plaintiffs' Executive Committee in MDL 2331 concerning Plaintiffs' MDL Experts' opinions regarding general causation and were directed to review same and make recommendations to their client(s) regarding whether their case fit within the Experts' opinions;
- **June 18, 2017:** Supreme Court of New Jersey permanently designated Hon. James F. Hyland, J.S.C. as Middlesex County's Mass Tort Judge;
- **January 2, 2018:** At this time, 84 cases had been dismissed without prejudice and the Court Ordered further dismissals with prejudice if plaintiffs were to take no further action in Case Management Order No. 15;

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consolidated federal Propecia lawsuits into a multidistrict litigation ("MDL") in the Eastern District of New York; U.S. District Judge John Gleeson presides over the MDL.

- **March 16, 2018:** Sixty (60) cases dismissed with prejudice;
- **March 29, 2018:** Seventeen (17) cases dismissed with prejudice;
- **April 10, 2018:** Master Settlement Agreement entered into between Defendant and 143 Plaintiffs in this MCL;
- **May 15, 2018:** The Court deemed all pending matters inactive due to a pending Proposed Settlement Agreement in the District Court for the Eastern District of New York and the District of New Jersey also covering Plaintiffs in this MCL and held that, once all cases subject to the Master Settlement Agreement were either resolved, dismissed or plaintiffs had opted out, that counsel was to notify the Court to schedule remaining outstanding issues;
- **October 10, 2018:** Counsel informed the Court that all Plaintiffs had opted into the Master Settlement Agreement with an exception being made for ten (10) Plaintiffs identified in the Court's October 10, 2018 Case Management Order No. 16;
- **2020:** The Court dismissed six (6) remaining cases in the Propecia litigation, bringing the active case count to zero (0) as of December 2020.

D. <u>Conclusion</u>

In light of the fact that there are no active cases remaining in the centralized management of Propecia, it is respectfully recommended that the centralized management of the In Re: Propecia Litigation be terminated.