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May 13, 2010

Honorable Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Hughes Justice Complex
Post Office Box 037
Trenton, N.J. 08625-0037

Re: Application for Centralized
Management of Reglan Litigation

Dear Honorable Judge Grant:

Please accept this letter in support of the Application of the Honorable Eugene J. Cody, Jr., Essex County, P.J.C.V., seeking centralized management of all litigation involving Reglan/Metoclopramide cases which are currently pending in the Superior Court, as well as those which will be filed in the future.

PRELIMINARY STATEMENT

This application pertains to numerous cases pending in the Superior Court, as well as many others yet to be filed, involving the use of the drug metoclopramide (referred to by the common brand name Reglan), a prokinetic drug which increases muscle contractions in the upper digestive tract, thereby increasing the rate the stomach empties its contents into the intestines. While many issues exist regarding the manner in which this drug was marketed to physicians, metoclopramide is intended for the treatment of gastroesophageal reflux disease (GERD) where the use of other medications have failed to bring relief. It has never been approved for long term use, use by children/infants or to promote lactation in mothers who breast feed.

According to the FDA, while metoclopramide has been sold in the United States for over 30 years, there continues to be over 2 million people using the medication, many for long term treatment. In February 2009, the FDA issued a boxed warning on all products containing metoclopramide, the strongest form of medical alert to the public. The warning specifically highlights the risk of using the drug for more than 90 days due to the development of Tardive Dyskinesia. The condition is extremely serious and is incurable, causing involuntary, repetitive movements in facial muscles, limbs, fingers, toes, hips and

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May 14, 2010

VIA LAWYERS SERVICE

Honorable Glenn A. Grant, J.A.D.
Administrative Director of Courts
Hughes Justice Complex
Post Office Box 037
Trenton, New Jersey 08625-0037

Re: Application for Centralized Management of Reglan® Litigation

Dear Judge Grant:

Please accept this letter, submitted on behalf of PLIVA, Inc., in opposition to Judge Codey's Application for Centralized Management of Reglan Litigation, dated March 16, 2010. According to Judge Codey's Application, cases involving Reglan have been filed on a weekly basis in Essex County and the AOC was told by a plaintiffs' attorney that it is estimated that the lawsuits filed by the same law firms representing the plaintiffs in those cases will reach between 75 and 100. The Application also indicates that the main defendant is a New Jersey domiciliary, (referring to Wyeth), and that a significant potential exists for additional cases to be filed in New Jersey.

Background Facts Regarding Reglan/Metoclopramide

Reglan is the brand-name of a pharmaceutical product containing the active ingredient metoclopramide. Reglan was approved by the Federal Food and Drug Administration ("FDA") in December 1980, as short-term (4 to 12 weeks) therapy for adults with symptomatic, documented gastroesophageal reflux who fail to respond to conventional therapy. It also is indicated for the relief of symptoms associated with acute and recurrent diabetic gastric stasis. In March 1985, FDA required that the label be updated to include a warning regarding the risk of tardive dyskinesia. As a result, the labeling for metoclopramide products has for many years included a specific warning related to the development of tardive dyskinesia.

In addition to the name-brand product Reglan, generic versions of metoclopramide have been manufactured and marketed by a number of companies over the years. Currently, approximately twelve companies manufacture and distribute the various dosage forms of metoclopramide. PLIVA, Inc. manufactured and distributed generic metoclopramide from

February 1988 through December 23, 2008, at which time it sold its abbreviated new drug application and ceased production of the drug.

Background Facts Regarding Litigation Involving Reglan/Metoclopramide

Litigation involving metoclopramide and the alleged risk of tardive dyskinesia or other movement disorders dates back two decades. Since the first case, additional cases have been filed, but lawsuits involving metoclopramide never have reached exponential proportions. Furthermore, plaintiffs historically often have named a number of metoclopramide manufacturers as defendants in their complaints. However, often many of the defendants, including Wyeth and other manufacturers of the branded product, Reglan, are dismissed based on lack of product identification. As a result, there is no single "main defendant" in the cases.

Early in 2009, following a change to metoclopramide labeling mandated by FDA, plaintiffs in a handful of metoclopramide cases pending in federal courts filed a motion under 28 U.S.C. [illegible] the Judicial Panel on Multidistrict Litigation ("JPML") to establish a multi-district litigation and transfer the pending cases in federal courts for coordinated and consolidated pre-trial proceedings and argued that FDA's action would result in the filing of a significant number of new cases. Following briefing on the plaintiffs' motion and a hearing before the JPML, the motion was denied.

In its order, dated June 3, 2009, the JPML concluded that centralization would not "serve the convenience of the parties and witnesses or further the just and efficient conduct" of the litigation. The JPML's conclusion was based, in part, on the fact that the cases did not involve any single common defendant, and that some entities were named in only one or two actions. In addition, the JPML noted that the actions were at varying stages in the litigation process, with some actions substantially advanced, having been commenced two to three years earlier. Finally, the JPML took note of the lengthy history of metoclopramide litigation and the fact that a significant amount of the common discovery already had taken place. As a result, the JPML determined that any remaining common questions of fact among the actions were not sufficiently complex and/or numerous to justify centralization in an MDL proceeding. In denying the request for centralization, the JPML noted that alternatives to transfer existed that could minimize whatever possibilities there might be of duplicative discovery and/or inconsistent pretrial rulings.

The situation involving metoclopramide litigation has not changed significantly since the JPML issued its order one year ago. Although additional cases have been filed throughout the country, in a majority of the cases there is no single, common defendant. As has been true throughout the history of metoclopramide litigation, many defendants named in the original complaint are ultimately dismissed because the plaintiff never took the defendants' product. In addition, the majority of the cases have been filed by only a few law firms.

New Jersey Cases Naming PLIVA, Inc. as a Defendant

PLIVA, Inc. is not aware of the number of metoclopramide cases that have been filed in New Jersey courts, but does know it has been served in only seven lawsuits, one of which has been dismissed. Upon information and belief, less than twenty five metoclopramide cases are pending in New Jersey. One case in which PLIVA, Inc. is named was filed in September, 2008 (Kohles v. Wyeth, Inc., et al.). The fact discovery deadline is June 1 and the case currently is set for trial in December of this year. Although the plaintiff's original complaint in that case named Wyeth, Inc. PLIVA, Inc., and Schwarz Pharma, Inc. only PLIVA Inc. remains a defendant because, as is too often the case, plaintiff named the other entities as defendants notwithstanding that plaintiff never took the product manufactured and marketed by those entities.

Four other actions against PLIVA, Inc. were filed and served this year. Those actions all involve citizens of states other than New Jersey and name different combination of defendants. While all the complaints name Wyeth, Inc. and Schwarz Pharma, Inc. as defendants, in addition to PLIVA, Inc., the other named defendants differ from case to case. Finally, PLIVA, Inc. also is aware of four other cases that have been filed naming it as a defendant, but PLIVA, Inc. has not been served in those actions.

Although Wyeth, Inc. and Schwarz Pharma, Inc. are named in almost all lawsuits involving the pharmaceutical product Reglan/metoclopramide, in many cases the companies are subsequently dismissed as the plaintiff never took the product manufactured and marketed by those companies. Recently, plaintiffs have been adding Alaven Pharmaceuticals LLC as a defendant, but Alaven did not manufacture or market the product at the relevant times. Upon information and belief, Alaven purchased the New Drug Application ("NDA") for the 5mg and 10 mg versions of metoclopramide tablets in February 2008 from Schwarz.

Centralized Management Is Not Warranted

Litigation involving metoclopramide will not benefit from centralized management. The fact that the cases likely will not involve common defendants alone weighs against centralization because there will be few, if any, common questions. The issues in the lawsuits pertain to individual defendants, not the litigation as a whole. The defendants are distinct pharmaceutical companies. They did not act collectively. What one defendant knew, did not know, did, or did not do is irrelevant to the other defendants. The absence of common questions is particularly acute in this litigation where each plaintiff might be interested in only one or two defendants.

Furthermore, the criteria set out in Directive #7.09 for designating the lawsuits involving Reglan/metoclopramide as a mass tort are not met because the cases do not possess the following characteristics:

1. The cases do not involve a large numbers of parties.

Centralized management of the New Jersey Reglan/metoclopramide cases is not appropriate given the number of pending lawsuits. Currently there are six active metoclopramide cases naming PLIVA, Inc. The plaintiffs in each case allege causes of action against different combinations of name-brand and generic manufacturer defendants.

Furthermore, the cases do not involve a large number of plaintiffs' firms. The plaintiffs in the actions filed against PLIVA are represented either by the law firm of D'Arcy, Johnson, Day (1 case) or by the law firm of Rheingold, Valet, Rheingold, Shkolnik & McCartney LLP (4 cases).

2. The cases do not involve many claims with common, recurrent issues of law and fact that are associated with a single product.

The questions in these cases do not possess the factual commonality necessary to warrant centralization before a single judge. For instance, the following questions are not susceptible to "common" answers because no two plaintiffs are the same or have the same medical history.

- Whether the plaintiff took metoclopramide;
- Identification of the particular products used, including which defendant manufactured each;
- The dosage or form of metoclopramide taken by each plaintiff, if any;
- The period of use of metoclopramide, if any;
- The frequency of use of metoclopramide, if any;
- Other medications taken by the plaintiff in the past and at the time of the alleged ingestion of metoclopramide;
- The knowledge of plaintiff's prescribing physician as to potential risks and benefits of metoclopramide;
- The risk/benefit analysis performed by plaintiff's prescribing physician;
- The extent to which each plaintiff's prescribing physician read, relied upon, and/or followed the warnings on the label;
- The warnings and instructions provided by each prescribing physician to each plaintiff;
- Whether plaintiff reviewed, read, or received any written information about metoclopramide;

- The knowledge and understanding of each plaintiff as to the risks and benefits of metoclopramide;
- The plaintiff's personal and family medical history;
- Plaintiff's medical conditions at the time of ingestion;
- The medical history provided by each plaintiff to his or her health care provider;
- The extent to which each plaintiff read, relied upon, and/or followed the instructions given;
- The symptoms, if any, manifested by each plaintiff;
- When each plaintiff suspected or reasonably should have suspected the alleged association between symptoms of injury and use of a particular product;
- The entire range of possible causes of injury to each plaintiff;
- The sensitivity of each plaintiff to the product taken;
- The nature and extent of any damages suffered;
- The potential treatments available and recommended for each plaintiff; and
- The likelihood of future damages, and their probable nature and extent.

Every case will involve the threshold question of product identification to determine which manufacturer's product allegedly was dispensed to and taken by the plaintiff. The lack of consistency of the named defendants adds to the individual nature of the cases. In addition, because the causation inquiry will include each plaintiff's medical history and personal risk factors, causation does not provide a common question in these cases.

The variations in law to be applied also weigh against centralization. The plaintiffs in the actions in which PLIVA, Inc. has been served are from five different states, with only one being a New Jersey resident. The other states are Kansas, Tennessee, Ohio, and New York. As the plaintiffs were prescribed and allegedly took Reglan/metoclopramide in their home states, the laws of those states may apply to various issues in their cases. See Rowe v. Hoffman-La Roche Inc., 189 N.J. 615 (2007) (applying Michigan law to bar non-New Jersey resident's failure to warn claims against pharmaceutical manufacturer). As the substantive law that will apply to each plaintiff's claims varies, coordination will not advance any of the cases.

3. A high degree of commonality of injury or damages among plaintiffs is not present.

A high degree of commonality of injury or damages among plaintiffs is not present. Although each plaintiff alleges that he or she developed tardive dyskinesia from use of

Reglan/metoclopramide, the damages for each plaintiff will differ depending on various factors and the law applicable in that case. In addition, although each plaintiff has characterized his/her injury as tardive dyskinesia, each plaintiff's individual symptoms and/or injuries may differ. Due to the nature of the various claims and injuries asserted, each action, by necessity, will focus primarily on plaintiff-specific issues; e.g., product identification, dosage ingested, period and frequency of use, and individual medical histories and risk factors for movement disorders.

4. There is no value interdependence between different claims.

There is no value interdependence between the different claims, because the few Reglan/metoclopramide cases filed in New Jersey do not have common factual or legal issues. Each case will involve predominantly individual issues and the causation and liability issues in each case are not dependent upon the success or failure of similar lawsuits.

5. There is not a degree of remoteness between the court and actual decision-makers in the litigation.

PLIVA, Inc. is incorporated in New Jersey and has its principal place of business in Woodcliff Lake, Bergen County, New Jersey. With today's technology, the location of out-of-state national counsel should not factor into the determination regarding centralization.

6. Centralization will cause an unreasonable delay in the progress, increase the expense, and complicate the processing of all actions, and will prejudice the parties.

Centralization of the Reglan/metoclopramide litigation would be prejudicial to the parties. Not only are all but one of the cases that have been served on PLIVA, Inc. by out-of-state plaintiffs, but also each involves different defendants. In one case, PLIVA is the only remaining defendant. Any issues related to other defendants in actions in which PLIVA is not a defendant will not affect the actions against PLIVA and will serve only to delay the progress of those suits in which PLIVA is a served-defendant. In addition, PLIVA has no interest in the fact discovery in those cases to which it is not a party.

Furthermore, because the majority of the plaintiffs who have named and served PLIVA, Inc. are from states other than New Jersey, fact discovery in these cases will occur predominantly in other states—i.e., the states in which the plaintiff resides, was prescribed the product, and allegedly ingested the product. The plaintiff's physicians will not be located in New Jersey. The plaintiff's family and friends will not be located in New Jersey. The plaintiff's injuries will not have occurred in New Jersey.

Centralized management would serve only to complicate and unreasonably delay the discovery process, and likely increase expenses for the pending cases.

7. Centralized management would be neither fair nor convenient to the parties, witnesses, and counsel.

Centralized management would be neither fair nor convenient to the parties or witnesses in the pending New Jersey cases against PLIVA, Inc. The majority of witnesses are located out-of-state. Furthermore each case will involve a unique set of facts and circumstances related to the individual plaintiff.

Centralization of the Reglan/metoclopramide lawsuits well may result in increased numbers of out-of-state plaintiffs filing in a jurisdiction with little to no connection to the claims in the lawsuits. The location of a corporate defendant's principal place of business in the state does not equate to significant factual information being located in the state. Furthermore, suits filed by out-of-state plaintiffs place defendants in the untenable position of being unable to obtain live testimony at any trials as the key fact witnesses will be outside the subpoena power of the courts.

8. Any risk of duplicative and inconsistent rulings, orders, or judgments if the cases are not managed in a coordinated fashion is minimal.

The risk of duplicative and inconsistent rulings, orders, or judgments if the cases are not managed in a coordinated fashion is minimal. As the plaintiffs who have filed lawsuits against PLIVA all are from different states, any rulings on key issues in any one case likely will not be applicable to the other cases. Furthermore, rulings on key issues in cases in which PLIVA is not a named defendant should not impact or apply to those cases in which PLIVA is a defendant. Cases involving alleged injuries from use of Reglan/metoclopramide have been filed in courts around the country for many years without coordinated proceedings, and inconsistent rulings have not been encountered.

9. Coordinated discovery would not be advantageous.

The only discovery that would pertain to more than one case would be discovery from the corporate defendants. However, as the lawsuits do not involve the same set of corporate defendants, coordination of discovery would have little to no benefit. Furthermore, as the number of plaintiffs' law firms involved are relatively few, once plaintiffs' counsel has the pertinent discovery from a corporate defendant in one lawsuit, it will have the discovery for the other lawsuits involving that corporate defendant. As a result, centralization is unnecessary to ensure convenient, coordinated, and efficient litigation. Furthermore, the cases can be effectively managed by the presiding judges and cooperative efforts of the parties. In fact, the

parties already have cooperated and coordinated discovery in many Reglan/metoclopramide cases pending across the country.

10. The cases do not require specialized expertise or case processing as provided by the dedicated mass tort judge and staff.

PLIVA, Inc. does not believe that specialized case processing and a dedicated staff is required for the Reglan/metoclopramide lawsuits.

11. Centralization would not result in the efficient utilization of judicial resources or the facilities and personnel of the court.

The pending actions that have been filed in New Jersey predominantly are by out-of-state plaintiffs who chose to file suit in New Jersey rather than the more convenient, cost-effective venue of their home state. As a result, rather than promote the efficient use of New Jersey's judicial time and resources, the lawsuits will tax New Jersey courts even further, requiring them to expend their time and resources to manage lawsuits with little connection to their state.

12. PLIVA, Inc. is not aware of any issues regarding insurance, limits on assets, or potential bankruptcy that can be best addressed in coordinated proceedings.

13. There are related matters pending in federal court and in other state courts, but they do not require coordination with a single New Jersey judge.

Similar federal and state court litigation is pending in other jurisdictions. In many of those cases, discovery is in advanced stages. In others, discovery has been completed and dispositive motions have been filed. In yet others, the cases are set for trial this year. As a result, coordination by a single New Jersey judge is not necessary.

If the Court Decides Centralization Is Warranted,
Bergen County Is Most Appropriate Venue

According to the Court's Directive "issues of fairness, geographical location of parties and attorneys, and the existing civil and mass tort caseload in the vicinage will be considered in determining to which vicinage a particular mass tort will be assigned for centralized management." PLIVA, Inc. is a New Jersey corporation. In the pending New Jersey state court Reglan/metoclopramide actions against PLIVA, the various named co-defendants also are located in northern New Jersey, or are from out-of-state. Should the court determine centralization is appropriate, assignment for coordination in Bergen County best satisfies the criteria in the Court's Directive.

Centralization in Bergen County would undoubtedly be fair because the parties, and counsel are largely from northern New Jersey and/or out-of-state. Also, Bergen County is convenient to New Jersey's only major airport, Newark-Liberty. The Bergen County courthouse is located approximately twenty miles from Newark-Liberty Airport. Bergen County also currently has the lowest centralized case management backlog and case load.

If the court determines that centralization is warranted, following entry of an order transferring the pending Reglan/metoclopramide cases to Bergen County, PLIVA, Inc. respectfully requests that other subsequently filed, related actions be transferred for centralized management without further application.

Conclusion

Defendant PLIVA, Inc. respectfully submits that the Reglan/metoclopramide lawsuits should not be centrally managed. However, if the court determines centralized management is warranted, PLIVA respectfully requests such centralization in Bergen County, and without mass tort designation.

Very truly yours,

Anita Hotchkiss, Esq.

cc: Paul D. Rheingold, Esq. (via first-class mail)
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May 14, 2010

VIA OVERNIGHT MAIL

Civil Practice Division
MAY 17 2010
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MAY 17 2010
GLENN A. GRANT, J.A.D.
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Hon. Glenn A. Grant, J.A.D.
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25 W. Market Street
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Trenton, New Jersey 08625

Re: Actavis Elizabeth LLC's Response to Application for Centralized Management of Litigation Involving Reglan® (Without Mass Tort Designation)

Dear Judge Grant:

On behalf of Actavis Elizabeth LLC ("Actavis"), Harris Beach PLLC and Tucker Ellis & West LLP submit the following opposition to the centralization of all pending and future actions in New Jersey relating to claims arising from the purchase and ingestion of Reglan®. The cases on file do not satisfy the essential criteria set forth in the Revised Mass Tort Guidelines as promulgated by Directive #7-09 and thus do not meet the requirements for central case management.

Actavis is named as a defendant in nineteen (19) pending New Jersey cases that allege injury from Reglan® ingestion.[1] None of the pending actions involve plaintiffs who are New Jersey residents, and all nineteen are therefore subject to dismissal on *forum non conveniens* grounds.[2] The instant Reglan® cases do not satisfy the criteria set by the Court for centralized management. First, the nineteen cases do not involve a large number of parties or claims.

[1] A list of the known New Jersey state court actions involving Actavis is set forth in Exhibit A. To Actavis' knowledge, there were possibly two other metoclopramide cases filed in Essex County, as well as three in Morris County and one each in Ocean and Atlantic Counties, which do not name Actavis as a defendant.

[2] Actavis expressly reserves its rights with respect to all available affirmative defenses. Moreover, by this application, Actavis does not waive the right to argue *forum non conveniens* or to seek a change of venue in any appropriate individual case filed or yet to be filed. Finally, nothing herein should be construed as

Second, the common issues of fact or law requirement is not met because: (1) each plaintiff ingested one or more forms of the drug, during different periods, in differing doses, for different medical indications; (2) there is no consistency of named defendants across the cases; (3) the causation inquiry turns on each individual's unique medical history; and (4) plaintiffs' claims are likely governed by at least the laws in eleven different jurisdictions. Third, it has not been established that mass tort coordination would be more convenient and promote the just and efficient conduct of the cases. Discovery and pretrial proceedings can, and previously have been, easily coordinated through cooperation of the parties, protective orders permitting the sharing of discovery across cases and case management orders in individual cases, rendering centralization unnecessary. Finally, the number of pending cases does not rise to the level of a mass-tort.

Should the Court determine that these cases be centralized, despite Actavis' strenuous objections, Bergen County would be the most appropriate venue. Given the geographical location of the pending cases, and the physical location of party witnesses and documents, the interests of fairness indicates that assignment to the Honorable Brian R. Martinotti, J.S.C. is most appropriate.

I. BACKGROUND

Reglan® is a prescription pharmaceutical indicated for treatment of, among other things, certain gastrointestinal disorders. Reglan® is also available in a generic formulation sold under its chemical name, metoclopramide. Metoclopramide is indicated as short-term (4 to 12 weeks) therapy for adults with symptomatic, gastroesophageal reflux who fail to respond to conventional therapy. It is also indicated for the relief of symptoms associated with acute and recurrent diabetic gastroparesis. Metoclopramide is available in a variety of dosages and forms, including oral tablet form (both regular and orally disintegrating tablets), syrup and injectable formulations. These different forms are indicated for different types of patient settings.

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supportive of or a basis for certification of a class action, which would be improper under any set of applicable laws or rules.

Reglan® was initially approved by the U.S. Food and Drug Administration in 1980. Over time, Reglan®'s labeling has been revised to reflect new information, as it became available. Although the accompanying package insert for Reglan® includes a warning of the risk of tardive dyskinesia with long-term or high-dose metoclopramide use, there have nonetheless been a smattering of failure to warn cases filed against the brand and generic metoclopramide manufacturers over the past two decades.

Plaintiffs generally allege to have sustained tardive dyskinesia and/or other unspecified personal injuries and economic damages through their purchase and ingestion of Reglan®/metoclopramide which was not accompanied by adequate warnings. Plaintiffs seek, *inter alia*, equitable relief, compensatory and punitive damages under the New Jersey Consumer Fraud, Product Liability and Punitive Damages Acts.

II. REQUIRED CRITERIA FOR CENTRALIZATION ARE NOT SATISFIED

Centralized treatment of only nineteen cases is not warranted where there is no consistent identity of parties and the particular circumstances surrounding each product, plaintiff, and defendant will predominate. Centrally managed proceedings will likely increase expenses, unnecessarily complicate discovery that would otherwise follow a normal track, and ultimately delay resolution of cases that individual courts could handle more efficiently.

Consideration of the factors set out in Directive #7-09 militates that the pending cases should not be transferred and centralized. The following criteria for centralization, set forth in Directive #7-09, are not substantially satisfied:

A. Whether the cases possess the following characteristics:

1. *[The litigation] involves large numbers of parties.*

Centralized management of the New Jersey Reglan® cases is not appropriate given that there are an insufficient number of suits filed to serve the purposes of centralization. Currently there are nineteen active metoclopramide cases filed in Essex County, New Jersey naming Actavis Elizabeth LLC. Plaintiffs in each of these cases allege causes of action

against differing combinations of brand and generic manufacturer defendants.

Moreover, all of the pending cases against Actavis involve out-of-state plaintiffs with no connection to New Jersey. Actavis anticipates moving to dismiss the non-residents' claims on *forum non conveniens* grounds. Assuming these motions are granted, there would be no cases involving Actavis pending in New Jersey.

Nor do these cases involve a large number of plaintiffs' firms. All of the complaints naming Actavis were filed by two law firms: Oshman & Mirisola LLP and Rheingold, Valet, Rheingold, Scholnick & McCartney LLP.

2. *It involves many claims with common, recurrent issues of law and fact that are associated with a single product.*

Centralization is also not appropriate because individual factual and legal issues predominate and outweigh any issues these cases have in common. In each complaint, there is a primary plaintiff, alleging injury or damage due to the alleged purchase and/or ingestion of Reglan®/metoclopramide and sometimes there is a second, spousal plaintiff alleging loss of consortium. These cases will be dominated by individual fact issues, such as dosage ingested, period of frequency of use, effect of other medications simultaneously ingested, the medical literature, state-of-the-art, package inserts, labeling, then in effect individual knowledge and understanding of the risks and benefits of metoclopramide, each plaintiff's personal and family medical history, medical histories provided by individual plaintiffs to his or her healthcare provider, the extent to which each plaintiff read, relied upon, and/or followed the instructions given, individual symptoms manifested, if any, when each plaintiff suspected or reasonably should have suspected the alleged association between symptoms and use of a particular product, specific causation, the nature and extent of any damages suffered, the potential treatments available, and the likelihood of future damages and their probable nature and extent. These questions are not susceptible to "common" answers because no two plaintiffs are the same—not even those who appear to have tardive dyskinesia.

Further, the pending cases require resolution of the threshold issue of product identification to determine whether a brand or generic product was dispensed and ingested. As previously stated, there is no consistent identity of parties; some plaintiffs assert claims against the name brand and one generic, some against the name brand and several generics; and some against generics only. There are unique combinations of fifteen different named defendants in these cases. Given that individual issues

dominate the causation inquiry, causation does not provide a common question in these cases.

Moreover, centralization is not warranted because the pending cases implicate irreconcilable variations in state law that must be adjudicated on a plaintiff-by-plaintiff basis.[3] The plaintiffs here are from eleven different states: Alabama, Arizona, Florida, Mississippi, Missouri, New York, Pennsylvania, Tennessee, Texas, Virginia, and Vermont. The claims of each plaintiff who was prescribed and ingested Reglan® in their home state, and sustained alleged injury in their home state, likely should be decided under the law of the plaintiff's home state. *See Rowe v. Hoffman-La Roche Inc.*, 189 N.J. 615 (2007) (applying Michigan law to bar non-New Jersey resident's failure to warn claims against pharmaceutical manufacturer). Thus, the substantive law applicable to each plaintiff's claims varies, such that coordinated treatment reaps little gain.

3. *There is geographical dispersement of parties.*

The current plaintiffs are domiciled throughout the country, and of the pending cases against Actavis, none reside in New Jersey. The fact that the plaintiffs are from eleven different jurisdictions does not satisfy the mass tort criteria of "geographical disbursement." This factor typically addresses cases filed throughout the state of New Jersey that would benefit from centralized management in one location. Here, the parties are not disbursed throughout New Jersey (all of the cases against Actavis are filed in Essex County); they are disbursed throughout the United States.

To the extent out-of-state residents seek the benefits of centralized management of pre-trial proceedings, the United States Judicial Panel on Multidistrict Litigation ("J.P.M.L."), has already ruled on that application and denied such transfer. *See In re: Reglan/Metoclopramide Products Liability Litigation*, 622 F.Supp.2d 1380 (J.P.M.L. 2009) (Order Denying Transfer). The J.P.M.L. held that while the actions pending across the United States shared some factual issues, transfer should be denied primarily because there is no single common defendant in any case. *Id.* at 1381.

[3] Under New Jersey's choice of law principles, for each plaintiff, the Court must identify which jurisdictions' law(s) could apply, determine whether there is a conflict between those law(s) and New Jersey law, and, if so, decide which state has the greater governmental interest in resolving the specific issue in dispute. *See, e.g., Rowe v. Hoffman-La Roche Inc.*, 189 N.J. 615 (2007).

4. *There is a high degree of commonality of injury or damages among plaintiffs.*

There is no high degree of commonality of injury or damages among plaintiffs. Each complaint pleads that plaintiff suffered tardive dyskinesia as well as other unspecified economic and personal injuries and varying categories of damages, including compensatory damages for present and future physical, emotional, and economic injuries, interest, costs, and attorneys' fees; punitive damages; equitable relief; and, in some cases, seeks medical monitoring for potential future physical ailments. As previously stated, given the nature of the various claims and injuries asserted, each action will by necessity focus primarily on plaintiff-specific issues, *e.g.*, product identification, dosage ingested, period and frequency of use, individual medical histories.

5. *There is a value interdependence between different claims.*

There is no value interdependence between the different claims, because the few Reglan® cases filed in New Jersey lack a high degree of common factual or legal issues. Instead, each of the pending cases, as discussed above, will turn on individual issues. The strengths or weaknesses of the causation or liability aspects of these cases are not dependent upon the success or failure of similar lawsuits.

6. *There is a degree of remoteness between the court and actual decision-makers in the litigation.*

Actavis' corporate presence in the state is in northern New Jersey. Many of the other named defendants are also located in northern New Jersey. Harris Beach PLLC, local counsel for Actavis, as well as local counsel for the co-defendants and plaintiffs are located in northern New Jersey. Modern-day advances in technology and communication have made the location of out-of-state national counsel and several other parties a non-determinative factor. As such, there is little concern of remoteness between the attorneys and the Court and it should not factor into the Court's decision regarding centralization.

7. *Whether there is a risk that centralization may unreasonably delay the progress, increase the expense, or complicate the processing of any action, or otherwise prejudice a party.*

Unwarranted centralization of the Reglan® litigation would be prejudicial to Actavis. All of the pending New Jersey cases against Actavis were filed by non-residents. It is likely that (1) the physicians who discussed Reglan® with plaintiffs and prescribed it for them are located in plaintiffs'

home states, not New Jersey; (2) plaintiffs were prescribed and ingested Reglan® in their home states; (3) plaintiffs allegedly suffered damages due to their ingestion of Reglan® in their home states; (4) plaintiffs obtained medical care for their alleged injuries in their home states; and (5) witnesses with knowledge of plaintiffs' alleged ingestion and injuries will be located in plaintiffs' home states. Centralized management therefore would complicate the processing, unreasonably delay progress, and increase expenses for the pending cases.

8. *Whether centralized management is fair and convenient to the parties, witnesses and counsel.*

Centralized management would not be fair and convenient to the parties and witnesses in the pending New Jersey cases against Actavis. As discussed above, the majority of witnesses are going to be located out of state and the cases will be driven by the unique set of facts and circumstances surrounding each individual plaintiff.

Furthermore, centralization in New Jersey will only lead to more forum shopping by out of state plaintiffs and is guaranteed to bring more out of state claims to New Jersey, along with the continuing problems of inability to obtain testimony and evidence from other states for these claims and the burdens of travel and additional litigation expense for parties, witnesses and counsel. New Jersey's mass tort program was not designed to be a mini-MDL for plaintiffs across the country.

9. *Whether there is a risk of duplicative and inconsistent rulings, orders or judgments if the cases are not managed in a coordinated fashion.*

There is minimal risk of duplicative and inconsistent rulings, orders or judgments if the cases are not managed in a coordinated fashion. Rulings on key issues are unlikely to apply generally to all cases given the nineteen plaintiffs are from eleven different jurisdictions. Furthermore, there are Reglan® cases pending in federal courts across the country, with no coordinated proceedings. In fact, there has never been any discovery dispute in any federal court in which Actavis was a defendant. Actavis has little concern regarding the potential for inconsistent rulings on discovery disputes.

10. *Whether coordinated discovery would be advantageous.*

Centralization is unnecessary to ensure convenient, coordinated, and efficient litigation, because these cases readily can be effectively managed by the presiding judges and anticipated cooperative efforts of the parties.

Vehicles for coordinated discovery already are in place in the Reglan® cases pending across the country.

11. *Whether the cases require specialized expertise and case processing as provided by the dedicated mass tort judge and staff.*

Actavis does not believe that specialized case processing and a dedicated staff is required. The pending cases are straightforward pharmaceutical products liability matters to which matters that any judge of the New Jersey's experienced bench could handle.

12. *Whether centralization would result in the efficient utilization of judicial resources and the facilities and personnel of the court.*

As previously noted, none of the pending Reglan® actions in New Jersey involve plaintiffs who are residents of New Jersey. These non-resident plaintiffs chose to file their actions in New Jersey even though they could pursue the same remedies (more conveniently and cost-effectively) in their home states in an effort to create a mini-MDL after the JPML denied a coordinated multidistrict proceeding. The ultimate result is that New Jersey's judicial time and resources will be unnecessarily depleted by these foreign plaintiffs. Accordingly, centralization will not promote the efficient use of New Jersey's judicial time and resources.

13. *Whether issues of insurance, limits on assets and potential bankruptcy can be best addressed in coordinated proceedings.*

Actavis is not presently aware of any issues of insurance, limits on assets or potential bankruptcy that could affect these proceedings.

14. *Whether there are related matters pending in federal court or in other state courts that require coordination with a single New Jersey judge.*

As indicated above, there is similar federal and state court litigation pending in other jurisdictions. Discovery in those proceedings are very advanced; in fact several of the cases are scheduled for trial this year. As such, coordination by a single New Jersey judge is not necessary and would only serve to encourage out-of-state plaintiffs to file new cases in New Jersey.

III. SHOULD THE COURT DECIDE CENTRALIZATION IS WARRANTED BERGEN COUNTY IS MOST APPROPRIATE VENUE

Actavis Elizabeth LLC is a Delaware limited liability company with its principal place of business in Elizabeth, New Jersey. In the pending New Jersey state court Reglan® actions against Actavis (all filed in Essex County in northern New Jersey), the various named co-defendants are all also located in northern New Jersey (Bergen, Morris, Union counties), or are from out-of-state. Should the court determine centralization is appropriate here, assignment for coordination in Bergen County before the Honorable Brian R. Martinotti, J.S.C., would be fair, equitable and most efficient. Centralization in Bergen County would undoubtedly be fair because the parties and counsel are largely from northern New Jersey and/or out-of-state. Also, Bergen County is convenient to New Jersey's only major airport, Newark-Liberty. The Bergen courthouse is located approximately twenty miles from Newark-Liberty Airport.

Judge Martinotti is designated as a "mass tort" judge in Bergen County and is experienced at managing complex products liability and toxic torts litigation. He is familiar with the core issues that arise in pharmaceutical litigation from his management of the Digitek®, NuvaRing®, Yaz® and Zelnorm® litigations. If the court determines that centralization is warranted, following entry of an order transferring the pending Reglan®/metoclopramide cases to Bergen County, Actavis respectfully requests that other subsequently filed related actions be transferred for centralized management without further application.

CONCLUSION

For the reasons set forth above, defendant Actavis Elizabeth LLC respectfully submits that these cases should not be centrally managed. However, if the court determines centralized management is warranted, Actavis Elizabeth LLC respectfully requests such centralization in Bergen County, before Judge Martinotti, and without mass tort designation.

REQUIRED NOTIFICATION

Pursuant to Directive #7-09, all involved parties are hereby notified that this response will be sent by the Administrative Director to all Assignment Judges and Civil Presiding Judges, and will be published by the Administrative Director as a Notice to the Bar 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.

Respectfully submitted,

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296070.2

Metoclopramide Cases Filed and Served Upon Defendant Actavis Elizabeth LLC as of 05/14/2010

Case Name	Docket Number	Plaintiff Counsel	Plaintiff Residence
Arruda, Alexander	L-003805-10	Oshman & Mirisola, LLP	New York (Madison)
Broome, Frances	L-003255-10	Rheingold, Valet & Rheingold	Tennessee (Louisville)
Chatfield, Rita	L-003779-10	Oshman & Mirisola, LLP	Texas (Tarrant)
Clein, Lanette	L-002389-10	Oshman & Mirisola, LLP	Alabama (Montgomery)
Davis, Billy Gene	L-003207-10	Oshman & Mirisola, LLP	Missouri (Polk)
Davis, Willie-Nell	L-002967-10	Oshman & Mirisola, LLP	Tennessee (Shelby)
Harris, Patricia	L-003790-10	Oshman & Mirisola, LLP	Pennsylvania (Philadelphia)
Harrison, Panfila	L-003803-10	Oshman & Mirisola, LLP	Texas (Harris)
Hubert, Lucy P.	L-002355-10	Oshman & Mirisola, LLP	Alabama (Madison)
Johnson, Nellie	L-002391-10	Oshman & Mirisola, LLP	Texas (Galveston)
Krystof, Mindy	L-003210-10	Oshman & Mirisola, LLP	Florida (St. Lucie)
Loenig, Ernest	L-002356-10	Oshman & Mirisola, LLP	Florida (Brevard)
Milton, Will	L-002968-10	Oshman & Mirisola, LLP	Tennessee (Knox)
Mouradian, Patricia	L-003208-10	Oshman & Mirisola, LLP	Arizona (Gila)
O'Keefe, Karen	L-001785-10	Rheingold, Valet & Rheingold	Virginia (Hampton)
Peno, Elizabeth	L-002334-10	Oshman & Mirisola, LLP	Vermont (Addison)
Rikard, David	L-002333-10	Oshman & Mirisola, LLP	Mississippi (DeSoto)
Taylor, Dianne	L-003326-10	Rheingold, Valet & Rheingold	Tennessee (Madison)
Willeby, Kimberly	L-002335-10	Oshman & Mirisola, LLP	Tennessee (Davidson)

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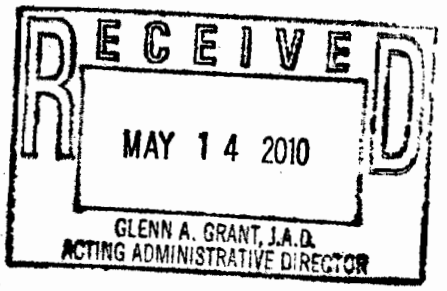
May 13, 2010



Via Lawyers Service

Honorable Glenn A. Grant, J.A.D.
Administrative Director of the Courts
Hughes Justice Complex
Post Office Box 037
Trenton, New Jersey 08625-0037

Re: *Application for Centralized Management of Reglan® Litigation*

Dear Judge Grant:

Pursuant to the March 22, 2010 Notice to the Bar, I write on behalf of Wyeth LLC, Schwarz Pharma, Inc., and Alaven Pharmaceutical LLC (the "Brand Name Defendants"), in opposition to the application for centralized management of the Reglan® Litigation. As outlined in more detail below, the facts do not support centralized management of these cases.

Background

A. The Medicine and the Parties

Reglan®, and its generic equivalent metoclopramide, is a prescription drug used to treat, among other things, gastroesophageal reflux disease and diabetic gastroparesis. Reglan® was initially approved by the FDA in 1979 and brought to market by A.H. Robins Co. In 1989, as a result of its acquisition of A.H. Robins, American Home Products Corporation (later known as Wyeth) became the NDA holder for Reglan® tablets, syrup, and injectable. At a later time, Wyeth's unincorporated

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division, ESI Lederle, manufactured and sold generic metoclopramide. Wyeth manufactured and sold brand name Reglan® tablets from 1989 until December 2001, when it sold the rights associated with that formulation of the drug to Schwarz.[1] At the same time, ESI Lederle ceased manufacturing and selling generic metoclopramide. Schwarz manufactured and sold brand name Reglan® tablets from December 2001 until February 2008. Alaven, who purchased the rights associated with brand name Reglan® tablets from Schwarz in February 2008, currently manufactures and sells brand name Reglan® tablets. Since the mid-1980's, several companies have manufactured and distributed generic metoclopramide, and almost the entire market share belongs to these generic manufacturers.[2]

B. The Plaintiffs

To date, twenty-two plaintiffs have initiated Reglan®/metoclopramide lawsuits in New Jersey. None of these plaintiffs are citizens of New Jersey, and they have no discernable connection to the state.[3] Each plaintiff asserts claims against some, but not all, of the following defendants: the Brand Name Defendants - Wyeth; Schwarz; and Alaven - and seven generic manufacturers - Pliva USA, Inc.; Actavis Elizabeth, LLC; Purepac Pharmaceutical Company; Northstar RX, LLC; Duramed Pharmaceuticals, Inc.; Teva Pharmaceuticals USA Inc.; and Watson Laboratories, Inc. The Plaintiffs allege ingestion of "Reglan and/or metoclopramide" from as long ago as the mid-1980's to as recently

[1] As part of its December 2001 transaction with Schwarz, Wyeth agreed to withdraw its FDA-approved New Drug Application for brand name Reglan® syrup. In a separate transaction, Wyeth sold the rights associated with brand name Reglan® injectable to an unrelated third party, who is not a defendant in these cases, Bedford Laboratories Corporation. Neither Schwarz nor Alaven have ever held any rights associated with brand name Reglan® syrup or injectable. Neither formulation appears to be at issue in these cases.

[2] Schwarz and Alaven have never manufactured or sold generic metoclopramide.

[3] The Complaints identify the plaintiffs as residents of 13 other states - Alabama, Arizona, Florida, Kansas, Maryland, Mississippi, Missouri, New York, Ohio, Tennessee, Texas, Vermont and Virginia.

as 2009, and claim to have used it for as long as 40 years but also for much shorter periods of time. Although most of the Complaints describe the injury as tardive dyskinesia, others allege oral dyskinesia, akathisia, facial twitching, or twitching to the extremities.

Plaintiffs are represented by two New York law firms – Rheingold, Valet, Rheingold, Shkolnik & McCartney, LLP, and Osbman & Mirisola, which is affiliated with Matthews & Associates in Houston, Texas.

C. The Litigation

The request for centralized management from the Assignment Judge of Essex County stems from the filing of a handful of Reglan®/metoclopramide cases in that county. Today, only 22 cases have been filed in New Jersey – 3 in Morris County and 19 in Essex.

The Reglan®/metoclopramide litigation is not new; it is a mature tort that has been on going since the 1980's. The nearly 20-year history of this litigation in both the state and federal courts has proved that there is no need for coordinated proceedings. During that period, attorneys for plaintiffs have filed a steady flow of cases. They have asserted claims against a spectrum of defendants, including the manufacturers of Reglan®, manufacturers of generic metoclopramide, distributors, and healthcare providers. The litigation has focused on a variety of issues, such as the adequacy of the metoclopramide label, the risk of tardive dyskinesia, specific causation, the fault of healthcare providers, informed consent, and injuries and damages. All the while, the parties have worked together to coordinate discovery through the use of document productions in multiple cases and the cross-noticing of depositions. There has been little to no duplication of effort, and many cases have been successfully resolved – through motion practice or settlement.

Nearly one year ago, the United States Judicial Panel on Multidistrict Litigation ("JPML") denied plaintiffs' request for federal coordination. In so doing, the Panel remarked that "metoclopramide litigation has a lengthy history, and the record indicates that a significant amount of the common discovery has already taken place." Since the JPML denied MDL status, more lawsuits have been filed but the Panel's observations are just as true today.

Nonetheless, on January 12, 2010, the Philadelphia Court of Common Pleas designated the 38 metoclopramide cases pending there as a mass tort. In the nearly twenty years before the plaintiffs requested this designation only 130 cases had ever been filed in federal and state courts. Since the Philadelphia cases were designated a mass tort, however, the case census in that Court has grown to over 200 cases and there are now a total of approximately 300 cases nationwide. Although the number of Reglan®/metoclopramide cases has increased outside of Pennsylvania, it has done so at a much slower pace. Indeed, it now appears as though most plaintiffs will bring Reglan®/metoclopramide lawsuits in Pennsylvania.

ARGUMENT

POINT I

The Cases Do Not Warrant Centralized Management

An analysis of several of the criteria set forth by the Court in Directive #11-03 make clear that these cases are inappropriate for centralized management.

A. Does the litigation involve large numbers of parties?

As it currently stands, the metoclopramide cases currently pending in New Jersey involve 22 plaintiffs and ten defendants. These numbers mirror those present at the time the JPML refused to

create a federal MDL for the Reglan®/metoclopramide litigation. This number of cases is simply too small to justify assigning the cases to the Mass Tort court for centralized management.

Further, none of the 22 plaintiffs are New Jersey residents. These plaintiffs apparently were not prescribed metoclopramide in New Jersey, did not ingest metoclopramide in New Jersey, were not diagnosed with their alleged injuries in New Jersey and did not receive medical treatment in New Jersey for their alleged injuries. Because of the lack of nexus these plaintiffs have to this State, the defendants will likely move for an early dismissal of each complaint on *forum non conveniens* grounds. Should these motions be granted, the Courts in each respective plaintiff's rightful place of residence will oversee these cases and there will be no need to manage them here, let alone to do so in a centralized fashion.

B. Does the Litigation Involve Many Claims With Common, Recurrent Issues of Law and Fact That Are Associated With a Single Product, Mass Disaster or Complex Environmental or Toxic Tort?

The answer to this question is no; the cases share only one factor in common – the alleged ingestion of metoclopramide. Not even that fact presents a truly common issue because the plaintiffs did not all ingest the same brand of metoclopramide. Those who ingested brand name Reglan® may have done so when it was sold by Wyeth, others when Schwarz or Alaven were responsible for the product. Still others were prescribed up to seven different generic versions of the drug.

There are also other factual and legal distinctions that make centralization improper. As a threshold matter, to resolve *forum non conveniens* motions, the court must analyze the plaintiff's connection to the state of New Jersey and his or her connection to some other state, which will require an individualized inquiry in each case. Among other things, the Court must examine where each

plaintiff resides, where each plaintiff was prescribed and purchased the drug, where treatment was rendered, where a plaintiff's health care providers are located, as well as the substance of each plaintiff's knowledge and the knowledge of their individual health care providers with regard to the risks of the medicine. In this regard, each case is factually distinct, and no efficiency will be created through centralization.

In the event that any of those cases proceeds on its merits, each presents a distinct set of facts that requires independent analysis. Each plaintiff has a unique medical history. Some plaintiffs may have had pre-existing conditions or taken other medications that caused their injuries, some plaintiffs claim different injuries, and each plaintiff used metoclopramide at different times during which the label contained different warnings. Because the plaintiffs took different drugs manufactured by different defendants, their proofs will depend on individual issues concerning the knowledge and actions of different companies at different times. As such, the defendants' liability in each case will depend on different proofs and different causation analyses.

Finally, if the cases do remain in New Jersey, each case will require an independent choice of law analysis that will result in the application of the laws of thirteen different states to different legal questions, many of which will be of first impression. For example, these cases often involve claims that a Brand Name Defendant may be held liable for injuries caused solely by the ingestion of a competing generic product. Central to the disposition of such claims is a determination on the question of duty – *i.e.* whether Brand Name Manufacturers have a duty to warn about the risks of competing generic products – a legal issue dependent on state law. The courts have already ruled on this issue as

a matter of law under the law of over 20 states, including New Jersey[4], and have virtually uniformly held that a Brand Name Manufacturer is not liable for injuries allegedly caused by generic medication. However, no rulings have addressed the issue under the laws of Arizona, Kansas, Mississippi, Missouri, Ohio, Tennessee, Vermont or Virginia – states from which 13 of the plaintiffs who have filed suit in New Jersey hail.

In the absence of common issues of fact or law that can be resolved in a single proceeding, there would be little benefit achieved from centralized management.

C. Is there Geographic Dispersement of Parties?

This is not a situation where centralization will save judicial resources because cases have been filed in many counties throughout the state. The plaintiffs have filed cases in only two counties – three in Morris and nineteen in Essex. Moreover, that the plaintiffs come from 13 states other than New Jersey weighs in favor of dismissal and transfer to the relevant forums, not transfer into the New Jersey mass tort court system.

D. Is There a Value Interdependence Between Different Claims?

Cases involving metoclopramide have been pending in various state and federal courts for nearly 20 years. To the extent the perceived strength or weakness of the causation and the liability aspects of the cases might be dependent upon the success or failure of similar lawsuits in other jurisdictions, there is already a track record. Because of this nearly 20 years of experience, centralization is not necessary to achieve any value interdependence. Moreover, because both factual and medical causation will depend on a number of facts specific to each individual case – the

[4] *See,* opinion in *Sloan v Wyeth*, attached as Exhibit A.

plaintiff's medical history, risk factors and his or her doctor's knowledge about the medicine, label and risks – the outcome in one case will not necessarily affect the resolution of other cases.

E. Is There a Degree of Remoteness Between the Court and Actual Decision-Makers?

The decision-makers and the Court are not remote. All 22 plaintiffs are represented by two law firms, both of which are affiliated with counsel handling metoclopramide cases elsewhere. And while there will be New Jersey and national counsel involved for the defendants as well, this will not prevent case management decisions from being made in an expedited manner. In this day and age, counsel have the ability to – and do – confer efficiently and promptly via phone and email among themselves and with their clients about issues as they arise. The plaintiffs' national counsel have appeared in the PCCP and have a good working relationship with defendants' national counsel. Counsel for all parties have already demonstrated an ability to cooperate on discovery issues and work through them with a minimum of disagreement.

F. Is There a Risk that Centralization May Unreasonably Delay the Progress, Increase the Expense, or Complicate the Processing of Any Action, or Otherwise Prejudice a Party?

Centralized management would certainly delay and complicate these cases and prejudice the parties.

The Court directives do not specify any distinction between cases that are designated as mass torts and those assigned for centralized management without the mass tort designation. Rather, those litigations that have been designated only for centralized management are, for all practical purposes, handled in the same manner as mass torts. They are listed on the New Jersey Judiciary's Mass Tort Information Center, the Court's "Mass Tort" judges oversee them, and those judges, to date, have

utilized the same case management tools they use when a case is called a mass tort (*e.g.*, frequent case management conferences, assignment of liaison counsel, use of plaintiff and defendant fact sheets). If these cases are assigned for centralized management any casual observer of the litigation, as well anyone investigating the litigation on the Court's website, would fail to discern how these cases are any different from those cases that are designated as a mass tort in New Jersey.

As a result, centralization would be extremely prejudicial to the Brand Name Defendants. It would convey the impression that a "mass" of users of their product claim to have been injured, a result that may have consequences both in the litigation and to their business. Because the generic market dwarves the brand market, such an impression clearly would be wrong. But the harm will have been done. And because none of the plaintiffs are New Jersey residents, centralization would no doubt lead to still more forum shopping by non-New Jersey residents. Centralization, with or without the "mass tort" designation, creates the risk that marginal claims will be filed in the hope there will one day be a global resolution of the litigation from which those cases will benefit. This is not mere supposition – it is precisely what occurred in Philadelphia where the case census grew from a mere 38 cases to over 200 after the PCCP designated the litigation as a mass tort.

Centralization would also forever bind those who rightly belong in only a limited number of cases to the larger litigation and severely limit their ability to extricate themselves from cases at an early stage, as it is the practice in the mass tort courts to hold the cases of the "minor" defendants in abeyance while the litigation proceeds against the perceived "target" defendants. This would not only adversely impact those manufacturers who are only named in a small number of cases. All the defendants would end up spending more, rather than less, time on administrative details such as

negotiations over the form of fact sheets or case management orders, or the procedures for how to stage discovery.

Rather than subjecting these cases to the Mass Tort Court's administrative requirements, it is respectfully suggested that the cases remain where they were filed, where the assigned judges can set a schedule for *forum non conveniens* discovery and motions to dismiss. After that, the parties can target discovery in those cases that remain in New Jersey toward identifying the actual drugs ingested so that those manufacturers whose products plaintiffs did not use can be dismissed. Once the cases include only the proper parties, discovery can proceed as in any other case.

G. Is Centralized Management Fair and Convenient to The Parties, Witnesses and Counsel?

Based on the plaintiffs' states of residence, it is clear that New Jersey is not a convenient forum for them, beyond whatever advantage their lawyers perceived would inure to their benefit by filing suit in this State. Plaintiffs will have to travel to New Jersey for depositions, medical evaluations, and trial.

New Jersey is also an inconvenient forum for the Brand Name Defendants. None are New Jersey residents.[5] Their documents and employees are not here. Moreover, before they can depose

[5] The application for centralized management expresses concern that significant numbers of cases will eventually be filed in New Jersey because of Wyeth's presence in the State. It states, "Wyeth Pharmaceuticals ... appears to be the primary defendant in these cases," the company is "headquartered in Madison, Morris County, New Jersey," and "The main defendant is a New Jersey Domiciliary." This concern is misplaced and is factually inaccurate for four reasons. First, in 19 of the 22 New Jersey cases the alleged ingestion occurred after Wyeth sold the product line, therefore Wyeth is neither the "primary" nor the "main" defendant at all. Second, even for those cases in which plaintiffs ingested Reglan® and did so before Wyeth sold the product lines in 2001 and 2002, it is simply incorrect to assert "the main defendant is a New Jersey Domiciliary." All of Wyeth's operations concerning the product took place in Pennsylvania, not New Jersey. Moreover, Wyeth Inc. - the Madison, New Jersey based company to which the application refers - no longer exists. It is now Wyeth, LLC, whose states of citizenship are Delaware and New York, not New Jersey. Third, because Wyeth sold its Reglan® oral tablet product line and discontinued the syrup formulation nine years ago and sold the injectable formulation eight years ago, the complaints of plaintiffs who seek damage from injuries alleged caused by Wyeth's Reglan®, are probably time-barred. Finally, Wyeth cannot be deemed the "main defendant" when none of the Complaints definitively alleges use of its product. Instead, each claims only that plaintiff ingested "Reglan and/or metoclopramide" (emphasis added). Therefore, it

fact witnesses such as prescribing and treating physicians, defense counsel will be required to obtain commissions from the New Jersey courts and apply to the plaintiffs' home state courts for issuance of a subpoena. So long as the cases remain in New Jersey, defendants will be unable to compel critical witnesses to appear live at trial.

H. Is There a Risk of Duplicative and Inconsistent Rulings, Orders or Judgments if the Cases Are Not Managed in a Coordinated Fashion?

Any such risk can be resolved by the two counties in which these cases have been filed. A single judge in each county could be assigned the cases and manage them in such a way as to avoid duplicative and inconsistent rulings. The cases need not be transferred to the mass tort court to accomplish this end. Indeed, that is precisely how the Court handled the Remicade® litigation both before and after the application for mass tort designation was rejected. The cases were assigned to Judge Epstein and the parties agreed to utilize a discovery master to assist in resolving any issues they could not work out themselves. Such a model is an appropriate alternative to centralized management within the mass tort construct and has the further advantage of preventing any misperception in the eyes of outsiders that this is a "mass tort."

I. Would Coordinated Discovery be Advantageous?

There is no particular advantage to coordination insofar as discovery addressed to the plaintiffs is concerned. And because metoclopramide cases have existed for many years, many of the defendants

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is not clear whether any of the plaintiffs actually used Reglan® or a generic. If they used generic metoclopramide, then Wyeth (as well as Schwarz and Alaven) was not properly named and should be dismissed from the cases. For each of these reasons, Wyeth's alleged presence here is an insufficient basis to once again turn New Jersey into a locus for a national litigation that will only serve to encourage more filings here of cases with little or no nexus to the citizens of this State.

have already collected and produced documents (or will have done so shortly in the PCCP) so that this discovery can readily be produced in response to discovery requests served here.

J. Can Issues of Insurance, Limits on Assets and Potential Bankruptcy be Best Addressed in Coordinated Proceedings?

These factors are not an issue in these cases.

K. Are There Related Matters Pending in Federal Court or in Other State Courts That Require Coordination with a Single New Jersey Judge?

As discussed above, there is no MDL proceeding and the application to create one was denied. The PCCP recently designated the cases in Philadelphia as a mass tort. If necessary, coordination with the PCCP proceedings can easily be achieved without centralization or mass tort status in New Jersey. David Matthews, who represents most of the plaintiffs in the New Jersey cases is also heavily involved in the PCCP proceedings.

POINT II

If the Court is Inclined to Designate These Cases for Centralized Case Management, Venue is Most Appropriate in Bergen County

According to the Court's Directive "issues of fairness, geographical location of parties and attorneys, and the existing civil and mass tort caseload in the vicinage will be considered in determining to which vicinage a particular mass tort will be assigned for centralized management." Wyeth, Schwarz and Alaven object to centralized management of these cases, but should the Court so designate this litigation, we request that the cases be assigned to Bergen County, for the reasons discussed below.

A. Geographic location of parties and attorneys

Plaintiffs chose to venue their cases in Essex and Morris Counties. Therefore, it is apparent that they deem it more convenient for them to litigate these cases in Northern New Jersey. Because they are all from out of state and would have to travel to New Jersey for depositions, medical examinations and trial, the location of major airports and train stations through which they can travel is relevant. Two of the plaintiffs are from New York, the rest live further from New Jersey. ~~Bergen County is closer and more easily reached by the New York plaintiffs than is Middlesex or Atlantic Counties, and Middlesex County is more accessible by train than is Atlantic.~~ For the remaining plaintiffs, Bergen County is closest to the New York airports. Although Middlesex County is further from the New York airports than Bergen, it is shorter in terms of both distance and time than is Atlantic County. Both Bergen and Middlesex are about equidistant from Liberty Airport in Newark; Atlantic is further. These facts suggest Bergen as the most appropriate venue, followed by Middlesex County.

~~Plaintiffs' lawyers are in New York City. National counsel for Schwarz and Alaven are also in New York City.~~ This also weighs in favor of choosing Bergen County as the venue as it is only a short drive or train ride from Manhattan. National counsel for Wyeth are in New Orleans and Austin, making travel to New York or Newark and venue in Bergen or Middlesex more convenient than Atlantic.

B. Existing case load

Information about the cases assigned to the mass torts courts are found on the judiciary mass tort website. Six mass torts and one case for centralized management are assigned to Judge Higbee,

the sole mass tort judge in Atlantic County. Seven mass torts are assigned to Middlesex County, two to Judge McCormick and five to Judge Mayer[6], and the judges have a special master who provides assistance in managing the case load. ~~Judge Martinotti in Bergen County is overseeing four mass torts and two cases for centralized management.~~

In addition to the number of "litigations" assigned to each county, the actual number of pending cases is relevant. The most up-to-date accounting of the mass tort caseload is contained in the report, New Jersey Judiciary Court Management February 2010. The report lists by county the active inventory as well as the backlog, described as the "number of active pending cases that are not within generally accepted normative case processing time frames." Atlantic County has 1,401 active pending mass torts. Its backlog/100 monthly filings totals 989 cases. Middlesex County has 4,624 active pending cases, with 3,020 backlog/100 monthly filings. ~~Bergen County has only 231 active pending cases and 144 backlog/100 monthly filings.~~[7]

Conclusion

For the reasons set forth above, the Brand Name Defendants oppose centralized management of the Reglan®/metoclopramide litigation. Should the Court nonetheless assign the cases for centralized

[6] One of those mass torts, the HRT litigation, is essentially stayed pending an appeal of summary judgment that was granted to the defendants in July 2008.

[7] *See,* excerpts from New Jersey Judiciary Court Management February 2010, attached as Exhibit B.

management, the convenience of the parties and counsel, as well as the case load of the mass tort court, weigh in favor of the cases being assigned to Bergen County.

Respectfully submitted,

Lauren E. Handler

EXHIBIT

A

PORZIO, BROMBERG & NEWMAN, P.C.
100 Southgate Parkway
Morristown, NJ 07962-1997
(973) 538-4006
Attorneys for Defendant Wyeth, Inc.

DIANNE SLOAN and PAUL WAYNE SLOAN, Plaintiffs, v. WYETH, INC., et al., Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MORRIS COUNTY DOCKET NO. MRS-L-1183-04 CIVIL ACTION **ORDER** Granting Summary Judgment

THIS MATTER having been opened to the Court upon application by Porzio, Bromberg & Newman, P.C., attorneys for the Defendant, Wyeth, Inc., and the Court having read and reviewed the moving papers submitted and any opposition thereto and for good cause having been shown;

It is on this 4th day of October, 2004,

ORDERED that the motion of Defendant, Wyeth, Inc., to dismiss the plaintiffs' Complaint as against Wyeth for failure to state a claim, is hereby GRANTED; and it is further

ORDERED, that the plaintiffs' Complaint is hereby dismissed as against Wyeth, Inc. with prejudice.

A copy of the within Order shall be served upon all counsel within 3 days from the date of entry.

Hon. Thomas V. Manahan, J.S.C.
DAVID B. RAND, J.S.C.

832311

☒ The court made the attached findings of fact or reasons for its decision on to be submitted in 3 days -

☐ The court set forth its findings of fact or reasons for its decision orally on the record on _____

This Motion was:

☒ Opposed

☐ Unopposed

SUPERIOR COURT OF NEW JERSEY

Chambers of
David B. Rand
Judge

Morris County Courthouse
P. O. Box 910
Morristown, NJ 07963-0910
(973) 656-4045

October 13, 2004

Advokat & Rosenberg
22 North Park Place
Morristown, New Jersey 07960-7102

Porzio, Bromberg & Newman, P.C.
100 Southgate Parkway
Morristown, New Jersey 07962-1997

Re: Sloan v. Wyeth, et. als.
Docket No.: MRS-L-1183-04

Dear Counsel:

Preliminary Matters

Wyeth, Inc. ("Wyeth") is the successor in interest to A.H. Robbins Co., Inc., and American Home Products Corporation named in counts IV – VI and IX –XI of the complaint filed by the plaintiffs, Diane and Paul Sloan. Plaintiffs assert that Wyeth was guilty of common law fraud, made negligent representations, committed fraud by concealment and violated the Consumer Fraud Act (N.J.S.A. 56:8-1 et seq.). The defendant Wyeth moves for Summary Judgment.

The action is factually predicated upon the allegation that Wyeth manufactured and distributed the drug metoclopramide under the brand name "Reglan" until December 27, 2001. The plaintiff, purchased and consumed generic versions of Reglan between June 1999 and April 2002.

These "generic" versions of Reglan were manufactured and distributed by co-defendants Pliva, Sidmak and Harvard Drug Group. Plaintiff alleges that the generic versions of the drug caused her to develop tardive dyskinesia, a neurological syndrome.

The gravamen of plaintiff's complaint against Wyeth is predicated upon the assertion that Wyeth is responsible for the injuries caused by the co-defendants' generic drugs because the plaintiff's physicians, who prescribed the drug, relied on information derived from Wyeth which that defendant promulgated in connection with its brand name product Reglan.

It is not disputed, however, that the brand name drug was never actually used by plaintiff. As noted she actually used "generic" versions of the drug, manufactured and distributed by co-defendants. For reasons, which more particularly are set forth below, Summary Judgment will be granted in favor of Wyeth and those claims asserted against it in the complaint will be dismissed.

Discussion

This action presents a case of first impression in New Jersey, ie., whether a brand name drug manufacturer can be held liable for injuries caused by the generic drug manufactured by another company.

Wyeth cites three decisions as persuasive authority in support of its argument to dismiss plaintiffs' claims. Forster v. American Home Products, 29 F.3d 165 (4th Cir. 1994); Block v. Wyeth, Inc., et al, 2003 WL 203067 (N.D. Texas Jan. 28, 2003): and Beutella v. AH Robbins et al., #980502372

slip opinion at 6 (Utah 5th Judicial District, Washington County, Nov. 7, 2001).

In Forster, the United States Court of Appeals for the Fourth Circuit (applying Maryland law) dismissed an action which involved a similar situation to the instant litigation. In that case, the Court of Appeals considered the decision of the lower Court, which held that a manufacturer of a brand name prescription drug could be liable for an alleged negligent misrepresentation relating to a death caused by another company's generically equivalent drug. The Court of Appeals considered whether the trial court was correct dismissing the plaintiffs' claim for failure to show reasonable reliance by the plaintiffs on the representations made by the brand name drug company. Because the Court in Forster held that the brand name manufacturer could not be held liable for a negligent misrepresentation, it did not reach the second issue on appeal. Id. at 167.

In Forster, Wyeth, as successor to American Home Products, was sued arising from its manufacture of a brand name drug known as Phenergan. The drug was prescribed by a physician in syrup form to the plaintiff's infant twins Brandy and Bradley Forster, who were suffering from colic. The infant twins were given a generic version of the drug several times. One of the infants, Brandy, was found deceased in her crib shortly following the last administration of the drug. An autopsy report attributed the child's death to Sudden Infant Death Syndrome (SIDS), however, a pediatrician related to the University of Maryland attributed the

infant's death to the use of the drug Promethazine, the generic version of Phenergan.

The trial court in Forster granted summary judgment in favor of Wyeth on the product's liability counts based upon the assertion that the product actually sold in the Forster case was not manufactured by the defendant. The drug taken by the infants was a generic version of the brand name drug and was manufactured by others. The District Court stated that if plaintiffs were able to establish that the defendant actually made false presentations concerning the safety of the drug itself, ie. the chemical substance which comprises both the generic and brand name drug, then the drug company "...maybe liable for any harm caused..." to plaintiffs or their children as a result of the ingestion of such drugs. Forster, 29 F.3rd at 67.

The trial court in Forster drew a distinction between the negligent misrepresentation claim and the products liability claims. However, on the particular facts of that action, the trial court granted the defendant's motion for Summary Judgment on grounds that the plaintiffs had failed to establish that the physician relied upon the representations made by the brand name drug company in his decision to prescribe the generic drug to the children. Hence, all claims made by the plaintiffs were dismissed. The plaintiff and defendant appealed and cross-appealed.

Subsequently, the Fourth Circuit acknowledged that there presently existed no recognizable Maryland cause of action based upon negligent misrepresentation against one manufacturer for injuries sustained from

the use of another manufacturer's product. Id. at 168. The Court in Forster further stated:

> "We reject the contention that a name brand manufacturer's statements regarding its drug can serve as the basis for liability for injuries caused by another manufacturer's drug." Id. at170.

The Court also noted that Maryland law requires that a plaintiff seeking to recover for injuries by a product must demonstrate that the defendant manufactured the product at issue.See eg., Tidler v. Eli Lily and Co., 851F. 2nd 418 (D.C. Cir. 1988) (applying Maryland law).

Here, the plaintiff seeks to avoid the fatal results dictated by Forster, Block and Beutella, by asserting that there is a distinction to be drawn by the Court, that defendant Wyeth, was a "disseminator" of negligently false and misleading information, rather than a "manufacturer" of a defective product. Plaintiff relies on decisions such as Reynolds v. Lancaster County Prison, 325 N.J. Super. 298 (App. Div. 1999) to demonstrate the generic view that New Jersey has adopted towards the Restatement (Second) of Torts § 311, which permits third parties to assert claims for negligent misrepresentation involving risk of physical harm to third parties.

Reynolds involved a case action in which plaintiff brought an action against the defendant predicated upon the tort of negligent misrepresentation. There, defendant donated an attack dog to the plaintiff's business without disclosing its vicious nature. Subsequent to the donation, the dog caused serious injuries to the plaintiffs in an alleged

unprovoked and vicious attack. The jury awarded substantial damages to the plaintiffs and the defendants appealed. The Appellate Division upheld the jury verdict on various grounds including the applicability of the Restatement (Second) of Torts § 311.

Hence, it is quite clear that presently in New Jersey, in the appropriate circumstance, the tort predicated upon negligent misrepresentation may be viable. It should be noted, however, in Reynolds there was no issue regarding the connection between the cause of plaintiffs' injuries, ie. a vicious dog, and the source or identity of that injury, ie. the receipt of the animal from the defendants.

The ultimate analysis here requires the Court to determine the effect, if any, of the New Jersey Product Liability Act, N.J.S.A. 2A:50C-1 et seq., ("PLA") upon the ability of the plaintiff to recover in this context. Stated succinctly, does the PLA immunize Wyeth from plaintiffs' claims when it admittedly was not the manufacturer of the product that caused plaintiff's injuries?

More particularly, Wyeth relies upon N.J.S.A. 2A:52C-2 and asserts that under this part of the PLA any product liability action must, by necessity, involve "...a claim or action brought by a claimant for harm brought by a product, irrespective of the theory of the claim." The complaint alleges "harm caused by a product" as defined by the PLA. Under the PLA, the defendant asserts "harm includes"

> (a) Physical damage to property, other than the product itself; (b) personal physical injury or death; (c) pain and suffering,

> mental anguish or emotional harm; (d) any loss of consumption of services or other loss deviating from any type of harm described in paragraphs (a) thru (c) of this paragraph. N.J.S.A. 2A:58C-1(b)2.

Hence, Wyeth asserts that for it to be held liable, the cause of action or mechanism of the injury must flow from a product manufactured by Wyeth or a product under its immediate direction or control.

Plaintiffs counter this argument by asserting that the PLA hardly constitutes their exclusive remedy and maintain that causes of action may also arise by virtue of common law principles of fraud, misrepresentation, etc. Alloway v. General Marine Industries, LP, 149 N.J. 620, 639-40 (1997). Alloway, was not a personal injury action but addressed the appropriate theory of liability a plaintiff must pursue in circumstances of economic or non-personal injury. Nevertheless, the plaintiffs seek to apply generalized dictum that appearing in Alloway to the facts and circumstances.

The Court, however, notes that it has generally been held that the PLA is not merely plaintiffs' proper remedy in New Jersey, it is their exclusive remedy. "the PLA, by its terms," made clear 'three causes of action 'ie; manufacturing defects, failure to warn, [and] design defect' are intended to be inclusive, as the sole basis for recovery on a product claim against the manufacturer or seller to the other terms of the statute." See Dryer, Keefe and Katz, "NJ Products Liability and Torts Law" at 16 (Gann 2000 ed.).

As noted by the defendants in Tirrell v. Navistar, Inter., Inc., 248 N.J. Super. 390 (App. Div. 1991), cert. denied, 126 N.J. 390 (1991), the Appellate Division held a litigant's negligence and implied warranty claims are subsumed by the PLA because "...the act established a sole method to prosecute a product liability action." Id. at 398, 399. Other cases posit a similar rule. See Ropela v. Morebark Industries, 934 F.2nd 383 (3rd Cir. 1991); Brown X Well Brown v. Philip Morris Inc., 228 F.Supp. 205 (D.N.J. 2002); Reef v. Convergent Technologies, 957 F.Supp. 573 (D.N.J. 1997).

In this action, plaintiffs seek to bypass the PLA through application of a generic Restatement (Second) of Torts provision (§311). It seeks to expand the liability of brand name manufacturers to damages caused by generic versions of their product. Does a duty even exist upon Wyeth in this action?

Indeed, it is well established that whether a duty exists in a given context is in the first instance for the Court to determine. Carvalho v. Toll Brothers, 143 N.J. 565, 573 (1996) and Wang v. Allstate Insurance, 125 N.J. 2, 15 (1991).

The question of whether a duty exists to exercise reasonable care to avoid harm to another is determined by fairness and policy considerations and may implicates complex factors. See Carvalho, 143 N.J. at 573 and Dunphy v. Gregor, 136 N.J. 99 (1994). Certainly, foreseeability of harm is an important consideration in the determination of the existence of a duty to exercise reasonable care. Carter Lincoln-Mercury Inc. v. Emar Group, Inc., 135 N.J. 182 (1994). As held by the Supreme Court of New Jersey,

once foreseeability of injuries has been established, policy considerations and fairness govern whether the imposition of a duty is warranted. Carter, 135 N.J. at 194-195.

Here, policy considerations must weigh against imposing liability on defendant Wyeth under these circumstances. Certainly, it can hardly be persuasively argued that the PLA was intended to expand the liability of manufacturers, such as defendant, in contexts such as the one presented here. The sole basis for the policy advanced by the plaintiffs at oral argument was that "plaintiffs should have recourse and injured plaintiffs should have the right to recover."

The Court notes that nothing before it allows for any viable argument that either New Jersey or the Federal authorities intended to expand prescription drug manufacturer liability to injuries sustained by consumers of products manufactured by generic drug companies, which use formulations developed by the brand name company. Indeed, there is nothing in the PLA or elsewhere which would suggest such liability will advance the affordably of drugs, one of the main policy foundations for the Hatch-Waxman amendments to the Federal Food Drug and Cosmetic Act.

The Court agrees with Wyeth's assertion that as a practical matter, imposing additional liability upon brand name drug manufacturers would achieve the exact opposite effect sought by the Federal Legislation. Brand name manufacturers would be less likely to develop new products if liability were imposed upon these companies for injuries wrought by products of generic manufacturers.

On the other hand, plaintiffs are hardly without a remedy. Their recourse remains viable against the manufacturers of the generic drug that was in fact prescribed and utilized. Generic manufacturers can hardly claim immunity from liability merely because they relied upon warnings appearing on the defendant's brand name product. (See Forster, 29 F.3d at 169). These entities have the same duty under the PLA as the brand name defendant Wyeth.

For all the foregoing reasons, therefore, Summary Judgment is hereby granted to the defendant Wyeth dismissing all claims against it brought by the plaintiffs.

Very truly yours,

David B. Rand, J.S.C.

EXHIBIT

B

New Jersey Judiciary

Court Management

February 2010

Stuart Rabner
Chief Justice

Glenn A. Grant
Acting Administrative Director

TABLE OF CONTENTS

INTRODUCTION

COURT MANAGEMENT provides caseload statistics for New Jersey Superior Trial Courts. Statistics are compiled from monthly statistical reports prepared by division managers in each county and submitted by trial court administrators.

The statewide overview section of the report provides court year-to-date clearance and inventory percentages and current month clearance numbers. The county profile section provides a two-page court year-to-date caseload report for each county.

Court Management is produced by the Administrative Office of the Courts' Quantitative Research Unit.

QUANTITATIVE RESEARCH UNIT
P.O. BOX 037
TRENTON, NJ 08625

STATISTICAL TERMINOLOGY

ADDED: "Added" and "Filing" are used interchangeably to indicate the number of incoming cases. Added cases include new, reopened, reactivated, and transferred cases.

ACTIVE PENDING: Cases that have not been disposed of. Does not include inactive cases.

BACKLOG: Number of active pending cases that are not within generally accepted normative case processing time frames. See "Inventory."

BACKLOG PERCENTAGE: Backlog/Active Pending *100.

BACKLOG/ 100 MONTHLY FILINGS: Backlog/(most recent 12 mnths of filings/12) * 100

CLEARANCE: Disposed-Added.

CLEARANCE PERCENTAGE: Dispositions/Added *100.

RESOLVED: Cases disposed or terminated.

INVENTORY: Active pending cases within generally accepted normative case-processing time frames. The following goals are used:

Criminal	4 months from filing
Municipal Appeals	3 months from filing
Post-Conviction Relief	3 months from filing
Equity	12 months from filing
Civil (Track 1)	12 months from filing
Civil (Track 2)	18 months from filing
Civil (Track 3)	24 months from filing
Civil (Track 4)	24 months from filing
Special Civil (small claims & tenancy)	2 months from filing
Special Civil (all other)	4months from filing
Probate	12 months from filing
Dissolution - New	12 months from filing
Dissolution - Reopened	6 months from filing
Delinquency	3 months from filing
Non-Dissolution	3 months from filing
Domestic Violence	1 month from filing
Abuse/Neglect (out-of-home)	4 months to fact-finding
Abuse/Neglect (in-home placement)	6 months to fact-finding
Adoption*	no guideline
Child Placement Review	12 months to permanency hearing
Juvenile/Family Crisis Petition	1 month from filing
Termination of Parental Rights	6 months from filing
Criminal/Quasi-Criminal/Other	3 months from filing
Kinship	6 months from filing

* New Adoption goals pending implementation are:
Adoption: Agency=2 months, Stepparent= 4 months, Private Placement = 12 months

Percent Change: The percentage increase from last year during the same period to the current period.

CASE TYPE ABBREVIATIONS

CIVIL - MASS TORT: Includes Asbestos, Silicon Implant, Blood-clotting Serum, Repetitive Stress Syndrome, Gas Pipe Explosion, Maywood Contamination, Latex, Diet Drug, FRT Plywood, Black Jack, and Tobacco

CRIMINAL: Only post-indictment criminal activity is reported in this publication.

CRIM/QUASI DV CONTEMPT: Includes Domestic Violence Contempt cases docketed as "FO" Family Division Criminal/Quasi-Criminal/Other matters.

CRIM/QUASI WEAPONS: Includes weapons cases and willful non-support/interference with custody cases docketed as "FO" Family Division Criminal/Quasi-Criminal/Other matters.

CRIMI/QUASI OTHER: Includes other Family Division Criminal/Quasi-Criminal Other Matters docketed as "FO."

DELINQUENCY-NEW: Includes juvenile delinquency cases reported as new/not previously adjudicated.

DELINQUENCY-PREV. ADJUD: Includes previously adjudicated juvenile delinquency cases.

DISSOLUTION-NEW: Includes dissolution cases reported as new/pre-judgment.

DISSOLUTION-REOPENED: Includes dissolution cases reported as reopened/ post-judgment.

DOMESTIC V-NEW: Includes domestic violence cases reported as new/TRO extended.

DOMESTIC V-REOPENED: Includes domestic violence cases reported as reopened/post-judgment.

EQUITY: General Equity

JUV/FAM CRISIS PETITION: Juvenile/Family Crisis Petitions.

NON-DISSOL.-NEW: Includes non-dissolution cases reported as new/ previously dismissed.

NON-DISSOL.-REOPENED: Includes non-dissolution cases reported as reopened/post-disposition.

OTHER FAMILY: Family Division category that includes abuse/neglect, adoptions, child placement review, juvenile/family crisis petitions, termination of parental rights and criminal/quasi-criminal cases.

P.C. RELIEF: Post-Conviction Relief.

PROBATE: Contested probate.

TERM OF PARENTAL RIGHTS: Termination of Parental Rights.

Caseload Profile
Atlantic
July 2009 - February 2010

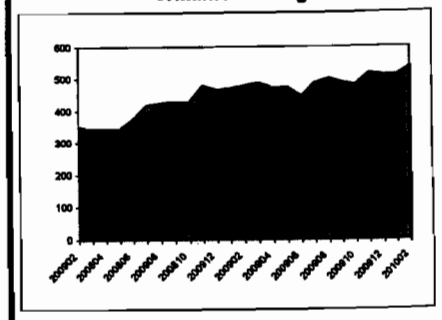
	Added	Resolved	Clearance number	Clearance percent	Inventory number	Inventory percent	Backlog number	Backlog percent	Active Pending	Backlog/100 Mthly Filings
Criminal	2,511	2,397	-114	95%	810	60%	533	40%	1,343	165
percent change	-2%	-4%			0%		12%		5%	14%
Municipal Appeals	55	50	-5	91%	21	75%	7	25%	28	91
percent change	-20%	-34%			-5%		17%		0%	43%
Post-Convict. Relief	27	24	-3	89%	11	33%	22	67%	33	714
percent change	29%	-17%			120%		-27%		-6%	-25%
Criminal Division - Total	**2,593**	**2,471**	**-122**	**95%**	**842**	**60%**	**562**	**40%**	**1,404**	**168**
percent change	**-2%**	**-5%**			**1%**		**10%**		**4%**	**12%**
General Equity - Total	158	142	-16	90%	100	78%	29	22%	129	158
percent change	18%	-7%			30%		123%		43%	120%
Contested Foreclosure	71	53	-18	75%	41	69%	18	31%	59	240
percent change	51%	4%			64%		157%		84%	126%
Equity (excluding foreclosure)	87	89	2	102%	59	84%	11	16%	70	102
percent change	0%	-12%			13%		83%		21%	95%
Civil - Total	3,821	3,473	-348	91%	4,281	80%	1,093	20%	5,374	238
percent change	14%	-43%			10%		3%		8%	-9%
Civil Track 1	1,325	1,376	51	104%	801	92%	67	8%	868	40
percent change	8%	34%			0%		2%		0%	-11%
Civil Track 2	1,478	1,448	-30	98%	2,066	82%	445	18%	2,511	236
percent change	1%	-8%			-2%		4%		-1%	2%
Civil Track 3	479	394	-85	82%	533	86%	87	14%	620	168
percent change	62%	83%			25%		38%		27%	-7%
Civil Track 4	539	255	-284	47%	881	64%	494	36%	1,375	939
percent change	43%	-92%			55%		-3%		28%	-26%
Special Civil - Total	16,864	16,628	-236	99%	2,619	98%	58	2%	2,677	3
percent change	7%	4%			41%		71%		42%	61%
Special Civil - Auto	34	40	6	118%	7	88%	1	13%	8	18
percent change	113%	300%			-13%				0%	
Special Civil - Contract	10,223	9,940	-263	97%	2,202	98%	49	2%	2,251	4
percent change	1%	-3%			54%		69%		54%	65%
Special Civil - Other	356	370	14	104%	24	83%	5	17%	29	14
percent change	401%	469%			50%		25%		45%	-69%
Special Civil - Small Claims	2,047	1,983	-64	97%	138	99%	2	1%	140	1
percent change	25%	14%			17%		100%		18%	67%
Special Civil - Tenancy	4,204	4,295	91	102%	248	100%	1	0%	249	0
percent change	7%	8%			-13%				-13%	
Probate	174	171	-3	98%	35	100%	0	0%	35	0
percent change	39%	26%			30%				30%	
Civil Division - Total	**21,017**	**20,414**	**-603**	**97%**	**7,035**	**86%**	**1,180**	**14%**	**8,215**	**45**
percent change	**9%**	**-9%**			**20%**		**6%**		**18%**	**-1%**

Civil										
Civil - Mass Tort	521	243	-278	47%	910	65%	491	35%	1,401	989
percent change	51%	-92%			61%		-3%		31%	-29%
Civil - Non Mass Tort	3,300	3,230	-70	98%	3,371	85%	602	15%	3,973	147
percent change	9%	14%			1%		8%		2%	-3%

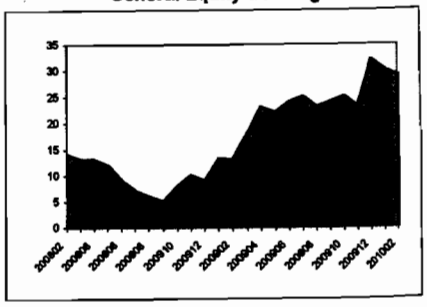
NOTE: Mass torts are defined as mass torts and/or centrally managed cases.

Backlog By Month
Atlantic
February 2008 - February 2010

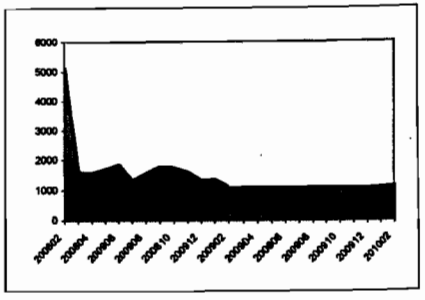
Criminal Backlog



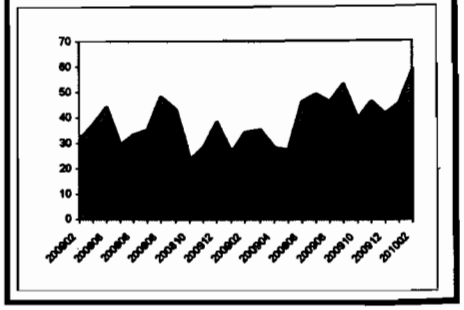
General Equity Backlog



Civil Backlog



Special Civil Backlog



Caseload Profile
Bergen
July 2009 - February 2010

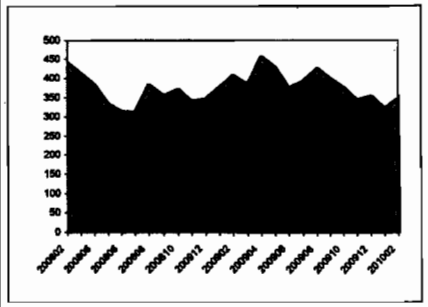
	Added	Resolved	Clearance number	Clearance percent	Inventory number	Inventory percent	Backlog number	Backlog percent	Active Pending	Backlog/100 Mthly Filings
Criminal	1,797	1,915	118	107%	369	52%	347	48%	716	152
percent change	-15%	6%			-41%		-15%		-30%	-5%
Municipal Appeals	85	101	16	119%	29	88%	4	12%	33	33
percent change	10%	98%			-19%				-8%	
Post-Convict. Relief	41	45	4	110%	14	36%	25	64%	39	508
percent change	-2%	2%			27%		-24%		-11%	-8%
Criminal Division - Total	**1,923**	**2,061**	**138**	**107%**	**412**	**52%**	**376**	**48%**	**788**	**153**
percent change	**-14%**	**8%**			**-38%**		**-14%**		**-29%**	**-6%**
General Equity - Total	691	537	-154	78%	398	89%	50	11%	448	65
percent change	26%	18%			8%		285%		17%	221%
Contested Foreclosure	439	291	-148	66%	210	85%	36	15%	246	81
percent change	183%	99%			184%		800%		215%	291%
Equity (excluding foreclosure)	252	246	-6	98%	188	93%	14	7%	202	43
percent change	-36%	-20%			-36%		56%		-34%	115%
Civil - Total	7,853	7,826	-27	100%	7,875	89%	940	11%	8,815	95
percent change	12%	15%			0%		4%		1%	-8%
Track 1	3,570	3,180	-390	89%	2,137	96%	100	4%	2,237	23
percent change	30%	30%			18%		-11%		17%	-31%
Track 2	3,816	4,078	262	107%	4,790	87%	715	13%	5,505	149
percent change	2%	7%			-8%		3%		-6%	3%
Track 3	318	342	24	108%	596	89%	77	11%	673	194
percent change	2%	-9%			3%		1%		3%	-1%
Track 4	149	226	77	152%	352	88%	48	12%	400	148
percent change	-17%	27%			28%		100%		34%	23%
Special Civil - Total	37,293	35,250	-2,043	95%	5,551	98%	129	2%	5,680	3
percent change	9%	3%			15%		61%		16%	57%
Auto	124	115	-9	93%	28	97%	1	3%	29	7
percent change	18%	16%			4%		-75%		-6%	-78%
Contract	26,529	25,110	-1,419	95%	4,724	98%	102	2%	4,826	3
percent change	9%	4%			8%		52%		9%	48%
Other	772	566	-206	73%	238	98%	4	2%	242	6
percent change	226%	130%			278%		100%		272%	-9%
Small Claims	3,064	2,897	-167	95%	217	94%	15	6%	232	4
percent change	8%	-1%			61%		650%		69%	565%
Tenancy	6,604	6,562	-242	96%	344	98%	7	2%	351	1
percent change	1%	-5%			42%		40%		42%	47%
Probate	368	350	-18	95%	145	99%	2	1%	147	4
percent change	0%	-8%			12%		-50%		11%	-45%
Civil Division - Total	**46,205**	**43,963**	**-2,242**	**95%**	**13,969**	**93%**	**1,121**	**7%**	**15,090**	**20**
percent change	**9%**	**5%**			**6%**		**12%**		**6%**	**7%**

Civil										
Mass Tort	48	109	61	227%	204	88%	27	12%	231	144
percent change	-46%	627%			62%		2600%		82%	1040%
Non Mass Tort	7,805	7,717	-88	99%	7,671	89%	913	11%	8,584	94
percent change	13%	14%			-1%		1%		0%	-9%

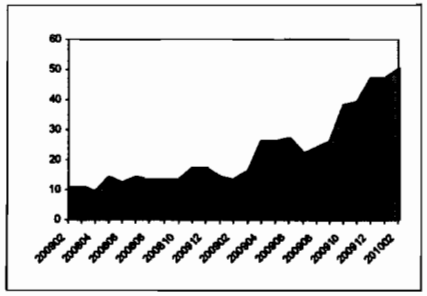
NOTE: Mass torts are defined as mass torts and/or centrally managed cases.

Backlog By Month
Bergen
February 2008 - February 2010

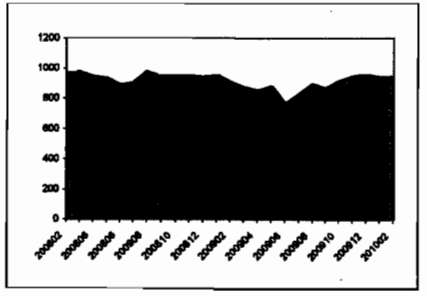
Criminal Backlog



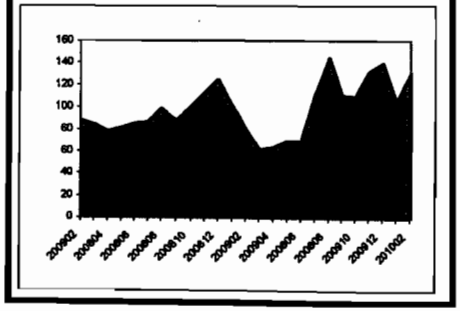
General Equity Backlog



Civil Backlog



Special Civil Backlog



Caseload Profile
Middlesex
July 2009 - February 2010

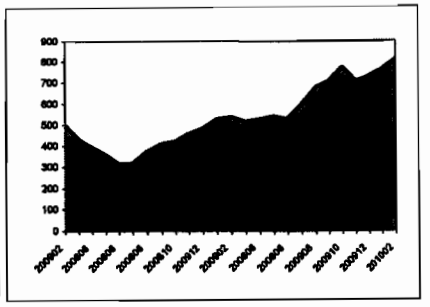
	Added	Resolved	Clearance number	Clearance percent	Inventory number	Inventory percent	Backlog number	Backlog percent	Active Pending	Backlog/100 Mthly Filings
Criminal	2,135	2,091	-44	98%	637	44%	809	56%	1,446	285
percent change	5%	11%			-6%		51%		19%	42%
Municipal Appeals	75	87	12	116%	29	56%	23	44%	52	228
percent change	3%	50%			0%		5%		2%	-7%
Post-Convict. Relief	24	23	-1	96%	11	24%	35	76%	46	824
percent change	-25%	-39%			22%		59%		48%	50%
Criminal Division - Total	**2,234**	**2,201**	**-33**	**99%**	**677**	**44%**	**867**	**56%**	**1,544**	**291**
percent change	**4%**	**11%**			**-5%**		**49%**		**19%**	**40%**
General Equity - Total	362	325	-37	90%	186	93%	15	7%	201	36
percent change	25%	-5%			20%		-57%		6%	-63%
Contested Foreclosure	173	142	-31	82%	76	92%	7	8%	83	38
percent change	88%	28%			55%		-30%		41%	-55%
Equity (excluding foreclosure)	189	183	-6	97%	110	93%	8	7%	118	34
percent change	-5%	-20%			4%		-68%		-10%	-67%
Civil - Total	7,160	6,699	-461	94%	10,495	72%	4,131	28%	14,626	436
percent change	-11%	-6%			0%		13%		3%	19%
Track 1	2,130	1,880	-250	88%	1,572	93%	124	7%	1,696	47
percent change	11%	11%			13%		6%		12%	-3%
Track 2	4,154	3,967	-187	95%	5,850	80%	1,456	20%	7,306	271
percent change	-7%	-9%			-2%		0%		-1%	3%
Track 3	525	509	-16	97%	663	79%	181	21%	844	295
percent change	29%	-2%			0%		2%		0%	-4%
Track 4	351	343	-8	98%	2,410	50%	2,370	50%	4,780	2,783
percent change	-72%	-37%			-5%		24%		8%	116%
Special Civil - Total	32,369	31,555	-814	97%	5,360	98%	85	2%	5,445	2
percent change	-5%	-3%			2%		16%		2%	20%
Auto	60	58	-2	97%	12	100%	0	0%	12	0
percent change	200%	241%			100%				100%	
Contract	20,252	20,243	-9	100%	4,303	98%	75	2%	4,378	3
percent change	-5%	-3%			10%		10%		10%	13%
Other	992	392	-600	40%	199	98%	4	2%	203	4
percent change	477%	140%			522%		100%		497%	-56%
Small Claims	2,022	2,108	86	104%	123	98%	3	2%	126	1
percent change	1%	3%			29%		50%		30%	44%
Tenancy	9,043	8,754	-289	97%	723	100%	3	0%	726	0
percent change	-13%	-9%			-41%		200%		-41%	234%
Probate	210	226	16	108%	106	77%	31	23%	137	109
percent change	-23%	-14%			-14%		3%		-10%	30%
Civil Division - Total	**40,101**	**38,805**	**-1,296**	**97%**	**16,147**	**79%**	**4,262**	**21%**	**20,409**	**84**
percent change	**-6%**	**-4%**			**0%**		**12%**		**3%**	**16%**

Civil										
Mass Tort	283	266	-17	94%	2,311	50%	2,313	50%	4,624	3,020
percent change	-76%	-41%			-4%		24%		8%	123%
Non Mass Tort	6,877	6,433	-444	94%	8,184	82%	1,818	18%	10,002	209
percent change	0%	-4%			1%		1%		1%	0%

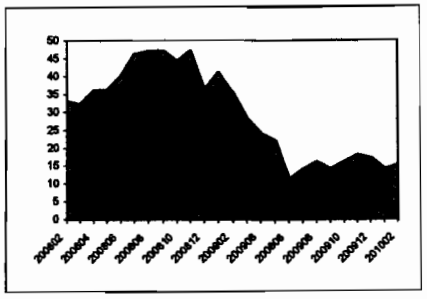
NOTE: Mass torts are defined as mass torts and/or centrally managed cases.

Backlog By Month
Middlesex
February 2008 - February 2010

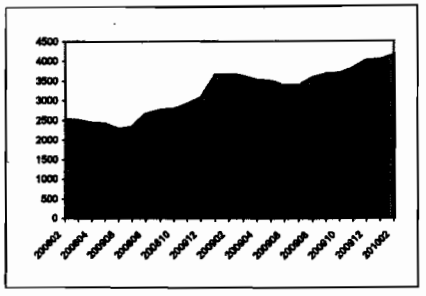
Criminal Backlog



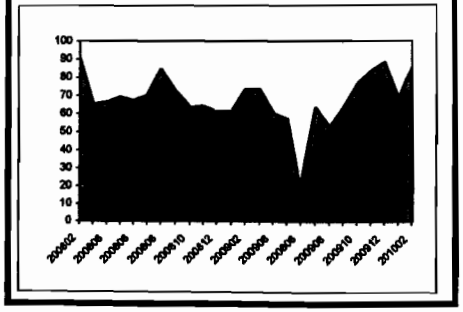
General Equity Backlog



Civil Backlog



Special Civil Backlog



torsos. These movements may take the form of facial grimacing, constant protrusions of the jaw, tongue thrusting, chewing, Parkinson's like tremors and Tourette's syndrome.

WHY COORDINATION IS APPROPRIATE

Pursuant to R.4:38A and Directive #07-09, Revised Mass Tort Guidelines, centralized management in the Reglan/Metoclopramide litigation is warranted as:

1. It involves a large number of parties;
2. There are many claims with common, recurrent issues of law and fact that are associated with a single product;
3. There is geographical dispersement of parties;
4. There is a high degree of commonality of injury;
5. There is a value interdependence between different claims; and
6. There is a degree of remoteness between court and actual decision makers in the litigation;

There are approximately 30 cases already filed in the Superior Court involving 5 different plaintiff law firms. In addition to the 24 cases delineated in the annexed Exhibit A, which have been filed by the undersigned, cases have also been filed by the firms of D'Arcy, Johnson & Day, Ralph Pittle, Esq., Rheingold, Valet, Rheingold, Scholnick & McCartney, LLP, Matthews & Associates and Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, P.C. The counties in which these cases have been filed include Atlantic County, Essex County, Morris County, Ocean County and Somerset County. In addition to these 30 cases, there are approximately 25 – 30 cases which these same firms have yet to filed but which will be filed within the next 90 days. Likewise, based upon my involvement in the consolidated Reglan/Metoclopramide litigation pending in that state, I am aware of at least four to five other law firms who have voiced an intenion on filing approximately 30 – 40 cases of their own in the Superior Court of New Jersey.

While many of the plaintiffs in this litigation reside in the State of New Jersey, there are also residents of New York, Texas, Tennessee, Alabama, Virginia, Missouri, Florida, Pennsylvania, Maryland, Arizona, Vermont, Mississippi, Iowa and Ohio who have filed claims in our Superior Court. Likewise, there are numerous defendants, many who are common to all actions, who are either currently, or prior to the time of being purchased by a third party, domiciled in the State of New Jersey. They include Wyeth, LLC (currently claiming to me a New York business entity); Schwarz Pharma; Actavis Elizabeth, LLC; Pliva USA, Inc. Teva Pharmaceuticals, Barr Pharmaceuticals, Alpharma Pharmaceuticals and Northstar Pharmaceuticals (currently claiming to be a California business entity).

These cases also involve numerous common and recurring issues of law and fact. By example, all cases subject to this application for consolidation, upon information and belief, involve usage by plaintiffs of metoclopramide in excess of 90 days. In addition, all plaintiffs have been found to have developed movement disorders related to Tardive Dyskinesia. Furthermore, there are overlapping factual/liability issues relating to the

knowledge of the defendants prior to the FDA warning, the absence of warnings by brand manufacturers and generic manufacturers to the medical community and their patients of risks associated with long term metoclopramide use, the absence of warnings in the Physicians' Desk Reference for nearly 7 years prior to February 2009, misrepresentations by brand manufacturers as to the statistical frequency of movement disorders in users of metoclopramide, causation and the like.

The cases before the Court contain recurrent legal issues under the state's Product Liability Act which, under the January 8, 2010 decision of the United States Court of Appeals for the Fifth Circuit in a Demahy v Actavis, No. 08-31204, recognized the right of those suffering from tardive dyskinesia caused by long term metoclopramide use to file state-law based claims against manufacturers of metoclopramide, without concern for federal preemption. Likewise, unless set forth otherwise by opponents of this application for consolidation, defendants will raise the same controversial defenses as they have in other jurisdictions where similar cases have previously been filed.

Finally, as each of the subject cases are in virtually identical stages of litigation, involve similar injuries, identical claims under the Product liability Act, will likely involve common experts, identical core documents and common discovery of witnesses from around the country, Centralized Case Management would be the most effective method for optimizing judicial economy, litigation expense and ensuring uniform legal rulings.

WHY ATLANTIC CITY IS AN APPROPRIATE MASS TORT VENUE

Clearly, geographical location is a factor to be considered when selecting the most appropriate venue for centralized management and accordingly, plaintiffs request the vicinage of Atlantic County or alternately, Middlesex County, as the locale for the consolidation of these actions. While all of the available venues for centralization — Atlantic, Bergen, and Middlesex counties — are convenient to regional and international airports and are within a reasonable driving distance, only Atlantic County has a filed Reglan/Metoclopramide action which has been assigned to the Honorable Carol E. Higbee, P.J.CV.

Another important factor to consider is the existing civil and mass tort caseload in the vicinage. With the conclusion of the Vioxx and Bextra/Celebrex mass tort consolidations, there are currently 4 mass tort consolidations and one centralized management (Stryker Hip Implants) in Atlantic County. By contrast, there are 7 mass tort consolidations in Middlesex County and 4 in Bergen County (including the burgeoning Yaz/Yasmin litigation), with an additional 2 cases for centralized management (Prudential and Zelnorm). Moreover, based upon my experience as co-lead counsel In Re Depo-Provera Contraceptive Injection Litigation, Superior Court of New Jersey, Law Division, Bergen County, Case No. 276, plaintiffs have certain concerns regarding this vicinage being overwhelmed by another case involving centralized management. While the litigation ultimately concluded favorably for all parties in the litigation, at one point in June of 2008, the Court issued an order dismissing all cases on the grounds of forum non conveniens (which order was eventually stayed). The basis for the decision, as enunciated

by the Court was twofold. First, it was felt an insufficient nexus to the State of New Jersey existed. Second, and of equal significance based upon the Courts decision, was that it was stated that the case was too burdensome on the Court and local community. As the number of cases centralized in Bergen County has only increased since the resolution of the Depo-Provera cases, concern exists as to the issues which were raised by that particular Court in its decision.

Finally, having presided over the settlement of the Vioxx litigation, three Vioxx trials and three Accutane trials in the last few years, the Honorable Carol Higbee has extensive experience in managing, trying and settling complex product liability and mass tort actions. Accordingly, in light of all that set forth above, plaintiffs respectfully request that the Supreme Court designate the Reglan/Metoclopramide litigation for centralized management in the Atlantic County Superior Court.

Respectfully submitted,
Oshman & Mirisola, LLP

By: Theodore Oshman, Esq.

Cc: Hon. Eugene J. Codey, Jr. P.J.CV.
Michelle V. Perone, Esq., Chief Civil Court Programs

FILED REGLAN CASES:

Name	Defendants	Index/ Docket Number
Arruda, Alexander	Wyeth; Schwarz; Actavis Eliz.; Actavis MA; Alparma	NJ –Essex County
Ashby, Louise	Wyeth; Schwarz; Pliva	NJ-Morris County 001275-10
Bolton, Beatrice	Wyeth; Schwarz; Pliva	NJ-Morris County 001485-10
Chatfield, Rita	Wyeth; Schwarz; Actavis; Purepac; Pliva	NJ-Essex County
Clein, Lanette	Wyeth; Schwarz; Actavis; Purepac; Pliva	NJ- Essex County 002389-10
Condouris, Ruby Edna	Wyeth; Scwarz; Pliva; Teva; Barr	NJ- Atlantic County 001940-10
Davis, Willie Nell	Wyeth; Schwarz; Actavis; Purepac; Pliva	NJ- Essex County 002967-10
Davis, Billy Gene	Wyeth; Schwarz; Actavis; Pliva; Northstar;	NJ-Essex County 003207-10

	Duramed	
Harris, Patricia	Wyeth; Schwarz; Actavis	NJ-Essex County
Harrison, Panfila	Wyeth; Schwarz; Actavis	NJ- Essex County
Hubert, Lucy Phyllis	Wyeth; Schwarz; Actavis; Purepac	NJ- Essex County 002355-10
Johnson, Nellie	Wyeth; Schwarz; Actavis; Purepac	NJ- Essex County 002391-10
Krystof, Mindy	Wyeth; Schwarz; Actavis; Purepac	NJ- Essex County 003210-10
Loening, Ernest	Wyeth; Schwarz; Actavis; Purepac; Pliva	NJ- Essex County 002356-10
Long, Dennis	Wyeth; Schwarz; Pliva	NJ-Morris County 001121-10
Lynn, Craig G.	Wyeth; Schwarz; Pliva	NJ-Morris County 001463-10
McLaughlin, Christine	Wyeth; Schwarz; Pliva	NJ- Essex County 002354-10
Milton, Will	Wyeth; Schwarz; Actavis	NJ- Essex County 002968-10

Mouradian, Patricia	Wyeth; Schwarz; Actavis	NJ- Essex County 003208-10
Peno, Elizabeth	Wyeth; Schwarz; Actavis	NJ- Essex County 002334-10
Rikard, David	Wyeth; Schwarz; Actavis; Pliva	NJ- Essex County 002333-10
Spurlock, Wanda	Wyeth; Schwarz; Pliva	NJ-Morris County 001285-10
Turner, Frances J.	Wyeth; Schwarz; Actavis; Pliva	NJ- Essex County
Willeby, Kimberly	Wyeth; Schwarz; Actavis	NJ- Essex County 002335-10