Civil

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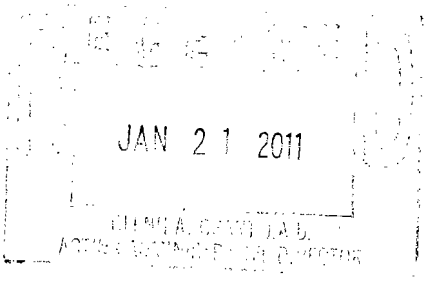
January 20, 2011



Via U.P.S. Overnight Delivery

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Richard J. Hughes Justice Complex
25 West Market Street
P.O. Box 037
Trenton, New Jersey 08625

Re: Plaintiff Response To Defendants' Application For Centralized Management Of DePuy ASR Hip Litigation Cases In Middlesex County

Dear Judge Grant:

My firm represents a number of individuals, including several New Jersey residents, who have had a DePuy ASR hip implant surgically implanted in their body and who have already had or been told that they need to have revision surgery to remove the implant and replace it with a different device. Many of my firm's cases will be filed in the federal Multi-District Litigation (MDL) that has been coordinated in Toledo, Ohio. However, because Johnson & Johnson ("J&J") is a New Jersey corporation and New Jersey residents do not satisfy federal diversity jurisdiction requirements, we will need to file in New Jersey state court.

On December 13, 2010, counsel for Defendants J&J and Depuy Orthopaedics, Inc. ("DePuy") filed an application with the New Jersey Supreme Court seeking to have all DePuy ASR hip implant cases classified as a mass tort and centralized for purposes of management. We do not disagree with Defendants' suggestion that coordination of these matters is necessary. Nor do we disagree with Defendants' stance as it relates to the skill of the mass tort judiciary and staff in Middlesex County. However, it is our position that coordination, if any, should be directed to either Atlantic or Bergen counties as we do not believe a plaintiff can obtain a fair jury when J&J is the defendant.

J&J is headquartered in Middlesex County, and its world corporate headquarters is literally around the block from the courthouse. Likewise, the local hospital is Robert Wood Johnson. Given the number of Middlesex County residents who work for J&J, or whose friends and relatives work for J&J, we do not believe that an impartial jury can be obtained there. Our request is borne out by first-hand experience. Recently, we tried a case in Middlesex County involving a child who was permanently blinded and scarred by a severe attack of Steven-Johnson Syndrome which, as determined by her treating physicians at St. Barnabas Medical Center, was caused by her use of Children's Motrin, manufactured by a J&J subsidiary. The case was no-caused and is presently on appeal (A-003984-08T1).

In the alternative, should the Court decide to centralize management of DePuy ASR hip implant cases in Middlesex County, we respectfully request that any trials take place in an alternative venue. Case management of a mass tort in one venue with transfer to another venue for purpose of trial is not uncommon in New Jersey. *See, i.e., Armona v. Dupont*, L-5116-93 (an environmental mass tort wherein Honorable Lawrence Lerner, J.S.C., ordered that all discovery and case management be coordinated in Middlesex County, but that all trials be held in Passaic County). A copy of the *Armona* Order is attached hereto.

For the above reasons, we respectfully request the DePuy ASR hip implant matters be centralized for management in either Atlantic or Bergen counties. In the alternative, should the Court choose Middlesex County for centralized management, we respectfully request that centralization be only for purposes of discovery and case management and that all trials be held in a different venue.

Respectfully submitted,

Daniel R. Lapinski

cc: Taironda E. Phoenix, Esq.
Chief, Civil Courts Program

Susan M. Sharko, Esq.
Drinker Biddle & Reath
Counsel for Defendants

HINCHMAN, et al.;	SUPERIOR COURT OF NEW JERSEY
	LAW DIVISION: MIDDLESEX COUNTY
Plaintiffs,	DOCKET NO. L-7747-93
v.	
	Civil Action
E.I. DU PONT DE NEMOURS & CO., et al.;	
Defendants.	

This matter having been opened to the Court upon the motion of Defendant, E.I. DuPont de Nemours & Co., for an Order for a change of venue, and upon the Cross-Motion of Plaintiffs for an Order for the Court to apply to the Chief Justice for the Appointment of a Special Master, upon notice to all parties of record, and the Court having reviewed the papers submitted and having heard oral argument, for the reasons stated on the record of 10/8/93

IT IS on this 5 day of Nov, 1993;

ORDERED that Defendant DuPont's Motion for Change of Venue is hereby denied; and

IT IS FURTHER ORDERED that Plaintiffs' Motion for an Order compelling the Court to apply to the Chief Justice to have a Special Master appointed, is hereby granted; and

IT IS FURTHER ORDERED that all TRIALS will be held in Passaic County; and

IT IS ORDERED that Plaintiffs pay all the necessary filing fees and complaints in MIDDLESEX County; and

IT IS ORDERED that Plaintiffs then consolidate their cases for purposes of discovery; and

IT IS ORDERED that all case management and discovery matters will be heard in Middlesex County; and

IT IS ORDERED that all discovery

and case Management will be conducted by Special Master Richard Hunke in Middlesex County; and

IT IS FURTHER ORDERED that a true copy of this Order be served upon all parties of record within 5 days of the date hereof.

Laurence Lerner
J.S.C.

_____ Opposed

_____ Unopposed

2/16/11 Kevin Wolfe

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COHEN, PLACITELLA & ROTH

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CHRISTOPHER M. PLACITELLA
MANAGING NJ ATTORNEY

February 15, 2011

VIA UPS

FEB 16 2011

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Richard J. Hughes Justice Complex
25 West State Street
P.O. Box 037
Trenton, NJ 08625

RE: Plaintiff's Response to Defendants' Application for Centralized Management of DePuy ASR Hip Litigation Cases in Middlesex County

Dear Judge Grant:

Please accept this letter in lieu of a more formal response to the application of Johnson & Johnson to have the DePuy hip implant cases consolidated for centralized case management in Middlesex County. I was recently appointed as the state liaison for the state of New Jersey by Honorable David A. Katz who is charge of the DePuy MDL coordinated proceedings. While I support consolidated case management including the designation of the DePuy cases as a mass tort, I respectfully request that the cases not be venued in Middlesex County. Selecting a jury without obvious or not so obvious connections to Johnson & Johnson in Middlesex County would be extremely challenging given the fact that Johnson & Johnson's worldwide headquarters is only a short walk from the courthouse.

Fortunately, all the Judges handling mass torts in New Jersey are very capable and well respected by the bar. Judge Higbee in Atlantic County is currently handling the litigation involving Stryker hip implants, and accordingly, is very familiar with the kinds of issues that will be confronted in these cases. In fact, it is quite conceivable that some cases will involve both Stryker and DePuy implants. Thus, it would seem logical, if her workload permitted, to have Judge Higbee handle the DePuy cases as well. A similar management system was used involving Vioxx, Celebrex and Bextra which although involved different defendants with some overlap were all handled by Judge Higbee and resolved. It is also worth noting that Judge Higbee is currently handling the Johnson & Johnson Trans Vaginal Mesh and the Levaquin cases that involve the same defense counsel as well as many of the same plaintiff's counsel in the DePuy cases.

Respectfully submitted,

CHRISTOPHER M. PLACITELLA

CMP/tr
CC: Taironda E. Phoenix, Esq.
(Chief, Civil Courts Program)

Susan M. Sharko, Esq.
Drinker, Biddle & Reath

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January 13, 2011

Civil Practice Divi

JAN 18 2011

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VIA FEDERAL EXPRESS

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Richard J. Hughes Justice Complex
25 West Market Street
P.O. Box 037
Trenton, New Jersey 08625

Re: **Plaintiff Response to Defendants' Application for Centralized Management of DePuy ASR Hip Litigation Cases in Middlesex County**

Dear Judge Grant:

My firm represents more than one hundred individuals who have had a DePuy ASR hip implant surgically implanted in their body, many of whom have already had or been told that they need to have revision surgery to remove the implant and replace it with a different device. Other clients are awaiting blood testing for the heavy metals chromium and cobalt, and some have already been told they need revisions due to the dangerously highly level of these metals in their blood attributable to particles abrading.

Most of my firm's cases will be filed in the federal Multi-District Litigation (MDL) in Toledo, Ohio. However, we will need to file in New Jersey state court the claims of our New Jersey and Indiana clients who could not obtain jurisdiction in the MDL because their citizenship along with Johnson and Johnson, a New Jersey corporation and DePuy, an Indiana corporation, would destroy the needed federal diversity.

We do not disagree with Ms. Sharko's suggestion that coordination is necessary. Depending upon the volume of cases filed and anticipated to be filed, the coordination could be either Mass Tort status or Centralized Management. We also have no objection to having pre-trial coordination for discovery purposes in Middlesex County as we appreciate this skill of the judiciary mass tort professionals in Middlesex. **However, we believe that any such coordination should be contingent on the transfer of the case to Atlantic or Bergen Counties for *trial* as we believe a plaintiff can not obtain a fair jury when the local behemoth Johnson and Johnson is the defendant.** Missing from Defendants' petition is the fact that Johnson & Johnson is headquartered in Middlesex County and one can literally see the courthouse from the Johnson & Johnson headquarters, which is basically across the street. Given the number of Middlesex County residents who work or whose friends and relatives work for Johnson & Johnson, we do not believe that an impartial jury could be obtained there. The local hospital is Robert Wood Johnson, and the Johnson and Johnson affiliations are limitless.

This is borne out by experience. There was a recent trial in Middlesex County involving a young child Stephanie Zundel who was permanently blinded and scarred from head to toe by a severe attack of Stevens Johnson Syndrome that her Burn Team

doctors at St Barnabas attributed to her use of Children's Motrin as a toddler. She was no caused and the case is presently on appeal (A-003984-08T1).

In light of these developments, the situation as to the DePuy litigation is that most plaintiffs who can avoid New Jersey will file in the MDL to minimize the chance of a trial before a Middlesex County jury. Unfortunately, New Jersey residents do not have a choice, and instead of their ordinary right to venue the case where they live or had the surgery, they instead are forced to have a jury comprised of Middlesex residents, and hence a disproportionate number of Johnson & Johnson leaning individuals.

For the above reasons, we submit that if the litigation is centralized in Middlesex County, it should be limited only to pre-trial proceedings, or in the alternative, that the litigation instead be venued in Atlantic County or else Bergen County.

Respectfully Submitted,

Ellen Relkin

cc: Taironda E. Phoenix, Esq.
Chief, Civil Courts Program

Susan M. Sharko, Esq.
Drinker Biddle & Reath

Curl

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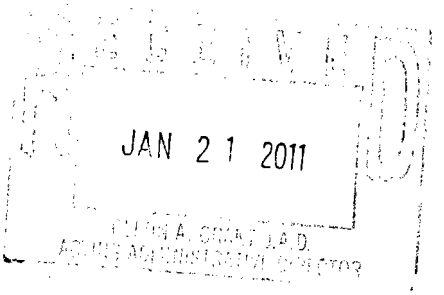
VIA OVERNIGHT MAIL

January 20, 2011



Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Richard J. Hughes Justice Complex
25 West Market Street
P.O. Box 037
Trenton, New Jersey 08625

Re: Defendants' Application for Centralized Management of DePuy ASR™ Hip Litigation in Cases in Middlesex County

Dear Judge Grant:

On behalf of defendants DePuy Orthopaedics, Inc. ("DePuy") and Johnson & Johnson, we write in response to the serious but unfounded claim by plaintiffs' counsel in her letter of January 13, 2011, purporting to support Defendants' Application for Centralized Management of DePuy ASR™ Hip Litigation Cases in Middlesex County dated December 1, 2010. Plaintiffs' counsel claims that they cannot have a fair trial in Middlesex County because the corporate headquarters of Johnson & Johnson are there.

Venue in Middlesex County is appropriate pursuant to R. 4:3-2 because defendant Johnson & Johnson is located there. Change of venue is only appropriate where there is substantial doubt that a fair and impartial trial can be had. See Sinderbrand v. Schuster, 170 N.J. Super. 506, 511-12 (App. Div. 1979). A party seeking a change of venue for such reasons generally must present substantial evidence that a fair trial cannot be obtained due to the existence of a pervasive bias. See Id. at 514. Courts remain reluctant to change venue on such grounds because the interrogation of prospective jurors is

Edward A. Gramigna, Jr. Partner responsible for Florham Park Office

Established 1849

ordinarily sufficient to insure an unbiased jury. Id. at 512. No such evidence is presented here, nor would this be the proper forum or the proper time to do this.

Reliance by plaintiffs' counsel on a recent defense verdict in Zundel v. Johnson & Johnson, et al., Docket No. MID-L- 6854-05, Superior Court of New Jersey, Middlesex County, an individual products case tried to a jury before the Honorable Jamie Happas, the former mass torts judge in Middlesex County, is completely misplaced. In Zundel, the plaintiff never asserted that Johnson & Johnson's corporate presence in Middlesex County prevented a fair trial -- either at trial or in the litany of issues raised on appeal. It was never an issue at any time, and therefore Ms. Relkin's inference should not color this application. The potential reasons for the defense verdict there are outlined in Judge Happas' opinion denying plaintiff's motion for a new trial, attached as Exhibit A. Indeed, in that case, as will be likely in this litigation, all claims against the Johnson & Johnson parent company were dismissed before the case went to the jury.

There have been thousands of cases brought by plaintiffs all over the United States in Middlesex County against Johnson & Johnson and its family of companies, and not once has any plaintiff ever raised a claim that he or she could not receive a fair trial there, going back for several decades. No such claim was made in the Propulsid® Litigation, which was managed by Judge Corodemus in Middlesex County, a litigation in which the Weitz & Luxenberg firm represented many plaintiffs. No such claim was made in the Latex Litigation, which was managed by Judge Corodemus in Middlesex

County. No such claim was made in the Risperdal® Litigation, which is currently being managed by Judge Mayer in Middlesex County, and where the Weitz & Luxenberg firm is lead counsel for the plaintiffs. No such claim was made in the ORTHO EVRA® Litigation, which is currently managed by Judge Mayer in Middlesex County and where the Weitz & Luxenberg firm was lead counsel for the plaintiffs. No such claim was made in the Hormone Replacement Therapy Litigation, which is currently managed by Judge Mayer in Middlesex County.

Plaintiffs' January 13, 2011 letter falls far short of providing "substantial" evidence that an impartial jury could not be had in Middlesex County. If plaintiffs' counsel really believes she cannot get a fair trial in this venue, she needs to bring a proper motion under R. 4:3-3(a)(2) at the appropriate time. It does not follow logic, nor is it the way the system works, to consolidate and manage the cases in one county and then divert the cases to another county for trial. It is rank forum shopping.

For the reasons set forth above and for those in defendants' original application, defendants submit that the DePuy ASR™ Hip Implant Litigation cases currently and subsequently filed in New Jersey should be centralized in Middlesex County.

Respectfully submitted,

DRINKER BIDDLE & REATH LLP

Susan M. Sharko

cc: Kevin M. Wolfe, Esq., Assistant Director, Civil Practice Devision
Ellen Relkin, Esq.
Nathan D. Cromley, Esq.
James S. Dobis, Esq.
Thomas F. Portelli, Esq.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
MIDDLESEX COUNTY
DOCKET NO. MID-L-6854-05
APP. DIV. NO. _____

KIMBERLY ZUNDEL, et al.,	:	
	:	
Plaintiffs,	:	TRANSCRIPT
	:	
v.	:	OF
	:	
JOHNSON & JOHNSON, et al.,	:	DECISION OF THE COURT
	:	
Defendants.	:	

Place: Middlesex County Courthouse
56 Paterson Street
New Brunswick, NJ 08903

Date: March 20, 2009

B E F O R E:

HONORABLE JAMIE D. HAPPAS, J.S.C.

TRANSCRIPT ORDERED BY:

RICHARD E. BRENNAN, ESQUIRE (Drinker, Biddle & Reath, LLP)

A P P E A R A N C E S:

NONE

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Operator - Mary M. Arway

I N D E X

(NOTE: The quality of the audio on the copy of the original audiotape was poor, thereby resulting in indiscernible portions of the Court's decision.)

THE COURT: On in the Zundel versus McNeil. This is L-6854-05. This is a motion for a new trial.

That's a products liability action against McNeil for failure to warn of the risks and symptoms of SJS and TEN from children's Motrin.

Stephanie Zundel suffered TEN on January 5th '98. Over the course of her treatment, the (indiscernible) surgeons and the multi-disciplinary team ascertained that her injury was caused by ingestion of Ibuprofen. And these are the facts as gleaned from the moving papers:

At trial, Dr. Marano testified that it was essential that Stephanie Zundel's treating physicians determine the cause of her attack to avoid another potentially fatal attack. As Dr. Marano explained, the patient was examined and the (indiscernible). As the discharge summary revealed, the final determination was that Stephanie was found to have been allergic to Ibuprofen. No other drug in this case was implicated and it was undisputed that the overwhelming majority of TEN cases are drug induced.

Plaintiff's expert toxicologist, Dr. Gochfeld, revealed that the balance of the studies showed an increased risk of SJS and TEN from propionic acid NSAIDS, N-S-A-I-D-S. Defendants' own

prescription, Children's Motrin label of '97 revealed that probable causal relationship between Ibuprofen and SJS and TEN, a subsequent warning on the over-the-counter Children's Motrin reveals an Ibuprofen allergy alert that includes the symptoms Stephanie exhibited, such as blisters.

The testimony at trial revealed that Ibuprofen allergy are symptoms of SJS -- they're synonymous with SJS and TEN. It's undisputed that in 7 -- 1977 (sic) and 1998, over-the-counter Children's Motrin label did not have a warning for Ibuprofen allergies or their symptoms.

Stephanie Zundel's grandmother and mother both testified they had given Stephanie Children's Motrin before her initial symptoms and, after the onset of her injury, exacerbated it. Pointing to the testimony of Dr. Foster, both Stephanie's grandmother and mother also testified that, had Children's Motrin warned of blister or blindness or life-threatening consequences of taking the drug, they would not have administered it.

Plaintiffs' argument in support of the motion for a new trial is as follows:

Plaintiff should be granted a new trial, because the jury's verdict of no cause of action was

against the weight of the evidence.

I should first note, before I go any further, that this is plaintiffs' motion. The plaintiff requested that the matter be heard on the papers.

The standard for a trial court's review of a jury's finding which is said to be against the weight of the evidence is set forth at Dolson. Plaintiff sets forth in their brief that plaintiffs assert that, what the trial judge must do is canvass the record, not to balance the persuasiveness of the evidence on one side against the other, but determine whether reasonable minds may the accept the evidence as adequate to support the jury verdict. The question is whether the results strikes the judicial minds of a miscarriage of justice.

Plaintiff asserts that in this case they are entitled to a new trial under the Dolson standard, as the jury's verdict was clearly against the weight of the evidence. The evidence presented at trial revealed that, by the preponderance of the evidence, Stephanie Zundel's ingestion of Children's Motrin resulted in her attack and its exacerbation. No other drug was or could be implicated. A viral cause was dismissed by the treating physician and offered only under the most speculative grounds by the defense expert.

The claim by McNeil that Ibuprofen does not SJS and TEN is severely undermined by the defendants' own product warning on its prescription label and its subsequent OTC label, as well as by the balance of (indiscernible) journal studies, the jury's return of a no cause on the question of whether Children's Motrin causes SJS and TEN is against the weight of the evidence.

The Court received opposition. The defendants' opposition is, as follows:

First of all, defendant contends that plaintiffs' motion failed to meet the standards for overturning a jury verdict.

"The burden required to set aside a jury verdict is very high and a jury verdict, from the weight-of-the-evidence standpoint, is impregnable unless so distorted in law as to manifest with utmost certainty a plain miscarriage of justice."

"A trial judge must grant a new trial only if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law."

"In making its determination, the judge may

not substitute her judgment for that a jury, merely because she would have reached the opposite conclusion. She is not the 13th and decisive juror."

"The judge's role is not to balance the persuasiveness of the evidence on one side as against the other, but determine whether reasonable minds may accept the evidence as adequate to support the jury verdict."

"On a motion for a new trial, all evidence supporting a verdict must be accepted as true and all reasonable inferences must be drawn in favor of the upholding the verdict."

The defendant contends that the jury's verdict is not against the clear weight of the evidence. Plaintiffs' argument that the jury -- jury's finding of no cause is against the clear weight of the evidence. However, there is more than sufficient evidence for reasonable minds on three separate independent grounds to accept the evidence as adequate to support the jury's verdict.

First, the evidence was adequate for reasonable minds to conclude that Stephanie Zundel did not receive Children's Motion prior to the onset of her disease. As doctors testified, neither the medical

records nor the first set of depositions and interrogatory responses show that Stephanie Zundel received Children's Motion before the onset of her SJS/TEN in January of '98. Experts for both sides agreed that, if she did not receive the medication before onset, it could not have caused the disease.

Therefore, the plaintiffs' case turned on the credibility of Stephanie's grandmother, Mrs. Frangipane, who claimed that she gave Stephanie doses of Children's Motion on December 25th and 31st, 1997. The jury had ample reason, however, to disbelieve this testimony. (Indiscernible) plaintiffs (indiscernible) Ms. Frangipane mentioned these alleged December 1997 doses until eight years after Stephanie Zundel's injuries. The absence of any mention in the medical records is especially telling, given the unquestioned motivation of the Zundel family, through Mrs. Frangipane, to give complete information to Stephanie's doctors during the diagnosis and treatment.

Nor did plaintiffs present any credible explanation for their late change of story. Ms. Zundel and Ms. Frangipane, who were very close and spoke daily, both attempted to suggest they were under a year's long legal prohibition from communicating about the case. But, as the Court instructed, there is no

such legal prohibition. Plaintiff suggests that they might recall and Ms. Zundel and Ms. Frangipane can provide further testimony explaining the delay, but they never did so.

Ms. Frangipane's testimony was ambiguous and inconsistent (indiscernible) taken at face value. She testified that she gave Stephanie Cold Formula Children's Motrin, but the evidence showed without dispute that McNeil did not market a Children's Motrin Cold Formula until August 2000, over two years after Stephanie's illness.

Ms. Frangipane also testified that she never gave Stephanie medicine that was not prescribed or recommended for her by a doctor. Neither it was undisputed that in December of 1997 no doctor had prescribed or recommended Children's Motrin.

The final damage to her credibility was changing her deposition testimony at trial from having given one dose to two doses on December 25th of '97.

A trial court ruling on a new trial motion must give due regard to the opportunity of a jury to pass upon the credibility of the witness. Considering all of the above, as well as Ms. Frangipane's demeanor at trial, a reasonable jury could have disbelieved her claim that she gave Stephanie Children's Motion in

December of 1997. This alone mandates denial of plaintiffs' new trial motion.

Secondly, defendant argues that the evidence was adequate and that reasonable minds could conclude that currently available scientific evidence does not establish more probably than not that Children's Motion causes SJS and TEN. A reasonable jury also could have found that plaintiffs did not provide that Children's Motion more likely than not causes SJS and TEN. At the outset, the Court properly excluded spontaneous adverse event reports as unreliable evidence of causation. It was undisputed that SJS and TEN are extremely rare, even plaintiffs' expert readily concealed (sic) that anecdotal case reports, including those published in the medical literature, cannot demonstrate a causal relationship between SJS/TEN and Ibuprofen.

A jury reasonably and correctly could have concluded, therefore, that the general causation issue on this case turned on a evaluation of the epidemiologic data. The jury heard lengthy testimony about two large epidemiological studies referred to as SCAR, S-C-A-R, and EuroSCAR studies designed to investigate the possibility of causal connections between SJS and TEN and a number of drugs or classes of drugs, including propionic NSAIDS, such as Ibuprofen.

The first published analysis of the studies, a 1995 article by Dr. Roujeau and several colleagues, including Drs. Stern and Mockenhaupt, describing interim results of the SCAR study. The report notes t here's a statistically significant association between incidents of SJS/TEN and the use of propionic acid NSAIDS, such as Ibuprofen.

A second published analysis, a 2003 article by Drs. Mockenhaupt and colleagues, including Drs. Stern and Roujeau, describing that final results of the SCAR study reported a very small, but statistically significant association between SJS/TEN and Ibuprofen, albeit based on only a handful of cases and controls.

By contrast, a third published analysis, a 2008 article by Dr. Mockenhaupt describing the final results of the later larger and better controlled EuroSCAR study reported no statistically significant association between SJS/TEN and propionic acid NSAIDS, such as Ibuprofen. The authors therefore concluded that Ibuprofen probably did not increase the risk of SJS/TEN.

Dr. Stern explained that the later EuroSCAR study was the most reliable and thorough assessment of the risks to date, because it was specifically designed to improve on and address potential defects in the

methodology used in the SCAR study, thereby enhancing the results.

Dr. Mockenhaupt, who led the EuroSTAR -- EuroSCAR study, testified in rebuttal on the baseless criticism of his studies and methodology posited by plaintiffs.

Plainly, a jury could reasonably credit the testimony of Drs. Sterns and Mockenhaupt on these issues over the testimony of plaintiffs' experts, who were less qualified and who had no different or additional evidence on the question of general causation. (Indiscernible) equally the testimony of Drs. Stern and Mockenhaupt supplied a reasonable basis for concluding that Ibuprofen probably did not cause SJS or TEN. Again, this may be a basis, according to the defendant, for denial of plaintiffs' new trial motion.

Thirdly, the defendant argues that the evidence was adequate for reasonable minds to conclude that, even if Stephanie Zundel received Children's Motion before her illness, even if Children's Motion can cause SJS and TEN, the medication was not a probable cause of her illness. Finally, in assuming that Stephanie received Children's Motion, as claimed by Mrs. Frangipane, and assuming as well that Ibuprofen

can cause SJS/TEN, generally a reasonable jury could still have found that Children's Motion did not cause Stephanie's SJS/TEN.

Again, the key testimony in this regard came from Dr. Stern, who opined that even on his assumption at the time of the alleged December '97 doses in relation to the onset of Stephanie's illness made it very improbable that the medication had any connection to her illness. Dr. Stern predicated his opinion on the following facts, at least of the first three of which were undisputed:

Ibuprofen has a short half-life of two hours. A single dose of Ibuprofen remains in the body for a maximum of only 16 hours. Plaintiffs' own epidemiological expert, Dr. Gochfeld, acknowledged this. By January 5th of '98, at the onset dealing with Stephanie's illness, the Ibuprofen would have been out of her body for four days. Stephanie's minimal assumed (indiscernible) exposure to Ibuprofen, consisted of the two December '97 doses and one earlier dose in '96, would not have been enough to allow a person to develop the immunologic reaction required to trigger SJS.

Defendants argue that even as to the last point, plaintiffs' expert had nothing to say, essentially ignoring the issues of timing and

sensitization of -- raised by Dr. Stern. Plaintiffs' expert opined essentially that Ibuprofen must have caused Stephanie's illness, because no other cause were apparent and most cases of SJS and TEN were triggered by a reaction to drugs.

However, plaintiffs' experts acknowledged that numerous other agents, including viruses, (indiscernible) against chemicals and even food additives are potential triggers for SJS and TEN. It was undisputed that Stephanie was out and about during the relevant period and plaintiffs' experts could not rule out the possibility of exposure to an undetected or perhaps untested for virus or other causative agents.

The Court did not receive a reply brief and this Court's opinion is, as follows:

"The burden required to set aside a jury verdict is very high. The jury verdict, from the weight-of-the-evidence standpoint is impregnable unless so destroyed and wrong as to manifest with utmost certainty a plain miscarriage of justice."

And the Court cites to Boryszewski versus Burke -- that's B-O-R-Y-Z-Z-E-W-S-K-I (sic) -- 380 N.J.Super. 361 at 370.

"The judgment of the initial fact finder is

entitled to considerable respect and should not be overturned except upon the basis of a carefully reasoned and factually supported and articulated determination after canvassing the record and weighing the evidence that the continued viability of the judgment would constitute a manifest denial of justice."

And the Court cites to Baxter versus Fairmont, 74 N.J. 588 at 597-98.

"The object is to correct clear error or mistake by the jury. It is only the predicate in a determination that there has been a manifest miscarriage of justice that corrective judicial action is warranted."

And the Court cites to Baxter at those same pages.

"The trial judge must grant a new trial under Rule 4:49-1(a) only, according to the rule, quote, 'if, having given due regard to the opportunity of the jury to pass upon the credibility of the witnesses, it clearly and convincingly appears that there was a miscarriage of justice under the law.'" End quote.

And that's Dolson versus Anastasia at 55 N.J. 2 at page 6.

"In making this determination, a judge may not substitute her judgment for that of the jury merely because she would have reached the opposite conclusion. She is not a 13th and decisive juror."

And that comes right from the Dolson case.

"The judge's role" according to Dolson "is not to balance the persuasiveness of the evidence on one side as against the other, but determine whether reasonable minds may accept the evidence as adequate to support the jury verdict."

Boryszewski sets forth that:

"On a motion for a new trial, all evidence supporting a verdict must be accepted as true and all reasonable inferences must be drawn in favor of the upholding the verdict."

And that's at 380 N.J.Super. at 391.

This Court opines that plaintiffs have failed to establish the high standard needed in order for a new trial to be granted and, accordingly, the plaintiffs' motion is denied.

This Court considered all the evidence presented at trial and the arguments made by the parties in their written briefs and this Courty does not believe that there was a miscarriage of justice

under the law to warrant a new trial. The Court agrees with the assertions set forth in the defendants' brief and incorporates them herein.

Specifically, this Court is of the opinion that the jury could have reasonably concluded that Stephanie Zundel did not receive Children's Motion before her disease began. Based on the testimony of Mrs. Frangipane and articulated by the defendant, it took over eight years for Ms. Frangipane to assert that she did not, in fact, give Stephanie Children's Motion and her testimony changed again at trial with regard to how many doses she gave Stephanie. Plaintiff also didn't provide an explanation as to the supposed gag order Ms. Frangipane claimed she was under.

The Court's role, as I previously indicated, is not to consider the persuasiveness of the evidence on either side, but the Court is required to consider matters of credibility and demeanor evidence. That's Dolson at 55 N.J. at 5-6.

Considering the totality of the testimony, this Court finds that a reasonable jury could have reached the conclusion that Ms. Frangipane never gave Stephanie the Motrin that she indicated and, therefore, the jury's verdict must stand. Although this sole basis is sufficient to deny plaintiffs' motion for a

new trial, the Court also believes that a jury could have reasonably concluded that Children's Motion could not cause SJS and TEN and specifically that Children's Motion did not cause Stephanie's SJS and TEN.

The 2008 article by Dr. Mockenhaupt describing the second EuroSCAR study could have been reasonably relied upon by the jury to reach the conclusion that Ibuprofen probably did not increase the risk. Dr. Mockenhaupt testified at trial and Dr. Sterns explained in his testimony why the second EuroSTAR (sic) study was the most reliable study conducted to date, including the specific focus on shortcomings of the original study.

Based upon the testimony regarding the half-life of Ibuprofen and how long it stays in the body, the reasonable jury also could have concluded that Children's Motion did not cause Stephanie Zundel's injuries, even if they believed the testimony of Ms. Frangipane and even if they had believed the general causation argument made by plaintiffs' expert, by January 5th of '98 the Ibuprofen would have been out of Stephanie's body for four days. Based upon the testimony of Dr. Gochfeld and Stern, a reasonable jury could have concluded that this would have been too long to trigger the reaction Stephanie eventually suffered.

So, for the reasons that I have previously set forth and for all the reasons set forth in defendants' brief, and after reviewing the trial testimony, the Court -- my notes from the trial, as well as the written briefs that were submitted to the Court, the Court finds that there's no basis to grant plaintiffs' application for a new trial. Therefore, the Court is going to enter an order denying the plaintiffs' motion.

(Decision concluded)

CERTIFICATION

I, TERRY L. DeMARCO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on Tape No. 1, Index No. from 0339 to 1445, is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

Dated: 04/06/09

Terry L. DeMarco, AD/T 566
KLJ Transcription Service

Civil

DrinkerBiddle&Reath LLP Civil Practice Division

FEB 28 2011

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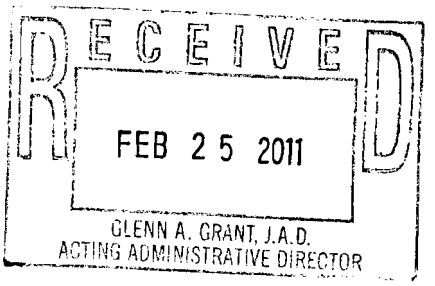

VIA FACSIMILE AND OVERNIGHT MAIL

February 24, 2011

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Richard J. Hughes Justice Complex
25 West Market Street
P.O. Box 037
Trenton, New Jersey 08625

Re: Defendants' Application for Centralized Management of DePuy ASR™ Hip Litigation in Cases in Middlesex County

Dear Judge Grant:

On behalf of defendants DePuy Orthopaedics, Inc. ("DePuy") and Johnson & Johnson, we write in response to the February 15, 2011 letter of Christopher Placitella, which was sent twenty five days after the January 21, 2011 deadline for comments to the Application for Centralized Management.

Mr. Placitella Has No Standing to Object to Venue.

First, Mr. Placitella has no standing to take a position here. He has not filed a single case in New Jersey Superior Court. His role is to be the *plaintiffs' counsel* liaison from the federal proceedings to the soon-to-be consolidated New Jersey proceedings. As such, it should be made clear that he does NOT speak for the MDL judge, the Honorable David Katz of the U.S. District Court for the Northern District of Ohio. He does NOT speak for the defense. And he cannot speak for lawyers who, like himself, have not filed cases in New Jersey.

Edward A. Gramigna, Jr.
Partner responsible for
Florham Park Office

Established 1849

State-Federal Coordination.

Second, in Middlesex County, the Hon. Jessica Mayer, J.S.C., currently manages the ORTHO EVRA® Birth Control Patch Litigation and the Risperdal® Anti-Psychotic Litigation, both of which involve Johnson & Johnson as a defendant, and the unfairness/prejudice issue has never been raised by counsel or Court. In the ORTHO EVRA® Birth Control Patch Litigation, specifically, which was a large and complex mass tort in which a Notice of Proposed Termination of Designation as Mass Tort was published on December 21, 2010, Judge Mayer gained significant experience coordinating litigation with the Judge Katz, to whom the ORTHO EVRA ® MDL was assigned and to whom DePuy ASR™ Hip MDL is now assigned. The working relationship and coordination efforts of Judge Mayer and Judge Katz were lauded by plaintiffs' counsel and defendants' counsel alike.

The DePuy ASR™ Hip and the Stryker Trident Hip Litigations Involve Different Products and Different Legal Issues and Different Facts, and Therefore They Should be Managed by Different Judges.

Third, there is no basis in law or fact for the idea that the DePuy ASR™ Hip Litigation should be managed by the same judge as the Stryker Trident Hip Litigation, Case Code 285 ("Stryker Trident Litigation"). These are different products from different companies and the litigations involve far different legal and factual issues. For this reason, defendants believe that the pendency of the Stryker Trident Litigation before

Judge Higbee in Atlantic County is a reason why the ASR™ Hip Litigation should *not* be assigned for centralized management in her court.

Aside from the significant burden which another centralized management proceeding will impose on Judge Higbee, to the probable detriment of the Stryker Trident Litigation, as well as any subsequent proceedings involving the ASR™ XL System, the pendency of two concurrent proceedings involving distinctly different hip products sold by competing medical device companies is likely to cause unnecessary complications, conflation of issues, and unintended prejudice to all parties.

Although DePuy's ASR™ XL System and Stryker's Trident Hip Implant fall within a generic category of hip replacement devices, they are distinctly different products in almost every other respect. The ASR™ XL System comprises both an acetabular cup (implanted in the pelvis) and a femoral ball (implanted on the taper of a femoral component), comprising a metal-on-metal system. Stryker does not manufacturer metal-on-metal implants, and the Stryker Trident Litigation focuses only on ceramic-on-ceramic parts. Even if one compares only the acetabular cups at issue, those products have significantly different design features, materials and manufacturing processes, surgical technique instructions, product literature, and the like. The products had different (proprietary) testing and development histories and, the company witnesses as to development and marketing of each product will be different. The amount, quality, and timing of receipt by the companies of data from clinical usage of each product were

different, and each company's actions with respect to suspension and termination of marketing of the products differed. Regulatory issues and recall actions are also different.

Accordingly, the DePuy ASR™ XL System and the Stryker Trident Hip Implant are different products and deserve individualized and product-specific case management by separate judges. There is no reason to believe, as Mr. Placitella avers, that some plaintiffs may have both implants. Combining the ASR™ and Stryker litigations before the same judge may have the effect of complicating and conflating the legal and regulatory issues and taxing judicial resources.

It was for this very reason that one of the ASR™ MDL Plaintiff Steering Committee members, Mark Lanier, made the request that that one federal judge should not handle two separate, consolidated hip implant litigations. In a brief to the Judicial Panel on Multidistrict Litigation, he changed his original position and asserted that the DePuy ASR™ Hip MDL should *not* be assigned to a federal district judge to whom the Zimmer Durom Cup MDL was assigned because the two devices were different and the MDLs involved wholly separate legal issues and considerations, stating: "After carefully considering the thoughtful arguments advanced by DePuy, [Plaintiff] agrees that consolidation and transfer of DePuy ASR Hip Implant actions to the Honorable Susan D. Wigenton may be inappropriate in view of her role as Transferee Judge in the In re Zimmer Durom Cup Products Liability Litigation." See Reply Brief in Support of Motion for

Transfer of Actions Pursuant to 28 U .S.C. § 1407, dated September 30, 2010, MDL No 2197, Doc. No. 11.

Mr. Placitella Cannot Prove Substantial Evidence of Pervasive Bias and Impartiality.

Finally, there is no evidence to support the claims that plaintiffs cannot have a fair trial in Middlesex County because the corporate headquarters of Johnson & Johnson are "only a short walk from the courthouse."

Venue in Middlesex County is appropriate pursuant to R. 4:3-2 because defendant Johnson & Johnson is located there. Change of venue is only appropriate where there is substantial doubt that a fair and impartial trial can be had. See Sinderbrand v. Schuster, 170 N.J. Super. 506, 511-12 (App. Div. 1979). A party seeking a change of venue for such reasons generally must present substantial evidence that a fair trial cannot be obtained due to the existence of a pervasive bias. See Id. at 514. Courts remain reluctant to change venue on such grounds because the interrogation of prospective jurors is ordinarily sufficient to insure an unbiased jury. Id. at 512. No such evidence is presented here, nor would this be the proper forum or the proper time to do this.

There have been thousands of cases brought by plaintiffs all over the United States in Middlesex County against Johnson & Johnson and its family of companies, and not once has any plaintiff ever raised a claim that he or she could not receive a fair trial there, going back for several decades. No such claim was made in the Propulsid® Litigation, which was managed by Judge Corodemus in Middlesex County. No such

claim was made in the Latex Litigation, which was managed by Judge Corodemus in Middlesex County. No such claim was made in the Risperdal® Litigation, which is currently being managed by Judge Mayer in Middlesex County. No such claim was made in the ORTHO EVRA® Litigation, which is currently managed by Judge Mayer in Middlesex County. No such claim was made in the Hormone Replacement Therapy Litigation, which is currently managed by Judge Mayer in Middlesex County.

Mr. Placitella's letter provides no evidence – much less "substantial" evidence – that an impartial jury could not be had in Middlesex County. If Mr. Placitella believes he cannot get a fair trial in this venue, then he needs to bring a proper motion under R. 4:3-3(a)(2) at the appropriate time. His request is nothing more than forum shopping.

Conclusion.

For the reasons set forth above and for those in defendants' December 1, 2010 application and January 13, 2011 letter, defendants submit that the DePuy ASR™ Hip Litigation cases currently and subsequently filed in New Jersey should be centralized in Middlesex County.

Respectfully submitted,

DRINKER BIDDLE & REATH LLP

Susan M. Sharko

Susan M. Sharko

cc: Taironda Phoenix, Esq., Chief, Civil Courts Program
Ellen Relkin, Esq.
Christopher Placitella, Esq.

Cml

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January 20, 2011

VIA Federal Express

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Richard J. Hughes Justice Complex
25 West Market Street
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Trenton, New Jersey 08625

Re: Plaintiff's Response to Defendants' Application for Centralized Management of DePuy ASR Hip Litigation Cases in Middlesex County

Dear Judge Grant:

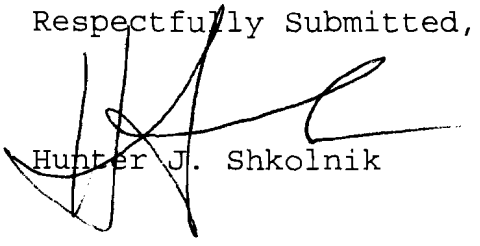
My firm represents dozens of DePuy hip implant clients. A surprising amount of these have had surgery or are scheduled to have surgery. We expect New Jersey to be a potential forum for many of these cases.

We have no objection for pre-trial coordination in Middlesex County. As expressed in responses to the Court, an important concern would be obtaining a fair jury. Johnson & Johnson, as well as the closely related Robert Wood Johnson Hospital, are both in the top ten employers in Middlesex County. Should the litigation be consolidated in Middlesex County, the location of trials is a matter which could be addressed at the appropriate time.

For the above reasons we submit that if the litigation I

centralized in Middlesex County, it should be limited only to pretrial proceedings.

Respectfully Submitted,



Hunter J. Shkolnik

HJS/gl