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July 14, 2017

VIA FEDERAL EXPRESS

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

**Re: Federal Signal Corporation's Joint Application Pursuant to Rule 4:38A
Requesting Designation of New Jersey Firefighter Hearing Loss Cases as
Multicounty Litigation for Centralized Management**

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Dear Judge Grant:

Our firm represents Federal Signal Corporation, an Illinois company that designs and manufactures lifesaving emergency vehicle sirens. Seventy New Jersey current or retired firefighters have sued the Company alleging that exposure to the Company's sirens caused them varying degrees of high-frequency hearing loss. Plaintiffs' claims are based on disparate, long-term exposure to siren noise over the course of their careers during which time they worked in different positions at different firehouses during different decades and with different equipment (including sirens that may have been manufactured by other manufacturers). The firefighters hail from at least 29 fire departments, and they have filed eight separate lawsuits spread across six counties – Cape May County (1 complaint), Essex County (2 complaints), Hudson County (2 complaints), Middlesex County (1 complaint), Morris County (1 complaint), and Union County (1 complaint). See Exhibit A, list of hearing loss Cases pending in New Jersey. Although Plaintiffs petition is littered with certain prejudicial and irrelevant claims, Federal Signal agrees that centralized management of these cases in Bergen County is appropriate and it joins in Plaintiffs' request for a Multi-County Litigation ("MCL") designation.

The law firm of Marc J. Bern & Partners LLP, which represents all of the Plaintiffs, has requested, pursuant to New Jersey Court Rule 4:38A and Administrative Directive #8-12, that these cases be designated MCL for centralized management in Bergen County. Plaintiffs' 3-page Request devotes all of one paragraph, consisting of conclusory statements, to showing how and why the criteria for MCL designation are met in these hearing loss cases. In another paragraph, Plaintiffs state that if their Request is granted, they will move to bifurcate the issue of liability from damages because "deciding the issue of liability first might save the court, and the trier of fact, from the burden of having to rule on complex issues of damages." Plaintiffs reason that a win for Federal Signal on the bifurcated issue of liability

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would “clear the docket,” whereas a win for Plaintiffs on liability would encourage “settlement talks.”

Federal Signal disagrees with Plaintiffs’ attempt to argue the merits of their claims and to make proclamations about procedural tactics they would deploy if MCL status is granted. Such statements are not in keeping with the criteria laid out in the MCL Guidelines for determining whether MCL designation is warranted. In particular, the bifurcation discussion is not relevant to MCL consideration. Even if it were relevant, Plaintiffs are wrong. Bifurcation is unavailable because it is not supported by existing law, it ignores the prior history of firefighter hearing loss litigation around the country¹ and overlooks the fact that liability, causation, damages, and Federal Signal’s affirmative defenses are all inextricably intertwined in these cases.²

Plaintiffs’ improper arguments aside, Federal Signal agrees that MCL designation is warranted because the requirements for MCL designation are met and there are benefits to consolidated case management for pretrial purposes. Because centralized management of these cases will conserve judicial resources, avoid the risks of duplicative discovery and inconsistent rulings, expedite their processing, and

¹ This history shows that trying liability, causation, and damages together is efficient, orderly, and effective. Plaintiffs typically call the plaintiff firefighters, two liability experts, two medical experts, and a Federal Signal witness. Federal Signal, in turn, calls a company witness, a liability expert, no more than two medical experts, and at least one firefighter representative. Trials with ten or fewer plaintiffs have been completed in less than two weeks, and Federal Signal has prevailed in six out of the eight cases that have been tried in Cook County, Illinois, and Philadelphia, Pennsylvania. Trials of 9 plaintiffs and 8 plaintiffs took place in Cook County, Illinois in February 2009 and November 2011. In Philadelphia County, trials of 10 plaintiffs and 9 plaintiffs occurred in June and July 2010.

² To briefly illustrate, Plaintiffs claim they developed noise-induced hearing loss from a lifetime of exposure to short durations, but high volumes, of siren noise while on emergency runs. Plaintiffs’ experts admit that developing noise-induced hearing loss requires exposure to dangerous levels of noise for prolonged periods. To establish that a noise-making product like a siren is even dangerous requires evidence of excessive exposure. This means that, in each and every case, the individual plaintiff’s unique history of noise exposure is relevant for determining whether an individual firefighter’s hearing could be damaged and whether the product could be unreasonably dangerous. More specifically, the design of the firefighter’s rigs, where the siren was placed, where the firefighter rode, the number and length of emergency runs he made at a given assignment, his years of service, and how he protected himself from noise, such as using hearing protection or rolling up the windows, are all relevant inquiries. In short, the facts supporting each individual firefighter’s unique noise exposure circumstances are relevant to liability, causation, and damages.

will not prejudice either party, Federal Signal joins Plaintiffs' request for centralized management of these cases in Bergen County.

I. Background

Federal Signal's Q-Siren has been a fixture of the fire industry for over half a century. Its distinctive rolling warble is nearly as iconic as the shiny red engines where the sirens are installed. In the late 1990s, the Q-Siren and its electronic counterpart, the e-Q2B Siren, were targeted by personal injury attorneys claiming that the sirens were too loud and caused high frequency hearing loss among firefighters.³ Since that time, lawsuits have been filed in seven states by roughly 4,300 firefighters. Today, there are roughly 1,700 pending cases.

Not surprisingly, Plaintiffs' original claim failed to gain much traction. So the firefighters (and their attorneys) shifted tack, arguing instead, as Plaintiffs do in the pending New Jersey cases, that Federal Signal's sirens produce too much rearward noise, and that they could be redesigned to reduce noise to emergency vehicle cabs.

Federal Signal denies that its sirens produce too much rearward noise, it denies that its products are in any way defective and unreasonably dangerous, and it denies that its sirens are the cause of the Plaintiffs' alleged hearing loss. As it has successfully done in hearing loss litigation filed elsewhere, Federal Signal will present substantial evidence negating Plaintiffs' allegations and claims.

Over the years of litigating the firefighter hearing loss cases in various state and federal courts, Federal Signal has streamlined the extensive discovery process as much as practicable. It has devised case management strategies to complete the extensive plaintiff-related fact and expert discovery necessitated by these cases and get the cases ready for trial.

Federal Signal's efforts at consolidating discovery notwithstanding, the reality is that the bulk of the relevant evidence in these cases must be obtained from third parties, such as each individual fire department employer. In addition to fire departments, discovery from current and former medical providers, the military, firefighter unions, current and former employers other than the fire department, and the plaintiffs' insurance providers are all subject to the discovery process. This is the bulk of the discovery to be conducted and, without it, the parties also cannot complete the necessary plaintiff- and case-specific discovery and depositions. Federal Signal's process to obtain all of that essential evidence is underway and, despite Federal

³ Although Plaintiffs' Complaints identify the Q-Siren, the e-Q2B Siren, and "other electronic sirens" as the allegedly defective products, Plaintiffs' counsel has never pursued claims against sirens other than the Q and the e-Q2B, and generally the e-Q2B claims are dropped where the Q is present.

Signal's efforts, there remains significant third-party discovery to be completed. If history is any indicator, Federal Signal likely will require court involvement, which, as discussed below, would be considerably more productive and efficient if administered by a single judge with the full perspective of all the pending cases. The evidence Federal Signal obtains from these sources is relevant to the three threshold questions in the plaintiffs' cases – product defect, causation, and damages – as well as to numerous affirmative defenses, such as statute of limitations.

As explained below, the pending cases in the various New Jersey counties satisfy the criteria for centralized case management under New Jersey Court Rule 4:38A and Administrative Directive #8-12.

II. Argument

a. The Firefighter Hearing Loss Cases possess the requisite characteristics for centralized case management

First, this litigation involves a large number of parties. There are already at least 70 filed cases in New Jersey state courts so far and it is reasonable to expect that additional cases will be filed.

Second, every single one of the pending cases alleges exposure to the same two Federal Signal products – the Q-Siren and the e-Q2B Siren. And, if past litigation of these cases is any guide, Plaintiffs' claims at trial will likely be reduced to just the Q-Siren.

Third, and relatedly, while no case arises from the same occurrence because each Plaintiff has an individualized and unique medical history, exposure history, and unique facts bearing on the intertwined issues of liability, causation, and damages, each of the pending cases alleges that exposure to the Federal Signal sirens caused each Plaintiff high-frequency hearing loss, albeit in varying degrees and under different circumstances for each and every Plaintiff.⁴ The theories of liability are the same in each of the complaints. They contain identical allegations and make similar demands for damages. Plaintiffs allege that the two products that provided them protection during emergency runs "emit intense noise levels which, over time, are capable of causing permanent injury to human hearing." They claim they have suffered hearing loss as a result of that exposure. There is thus

⁴ For this reason, among other reasons, plaintiffs' counsel have failed in previous attempts to obtain class certification. Common issues simply do not predominate over the individual issues. Therefore no class certification is appropriate. See *Lamb v. Federal Signal Corp.*, No. 1-13-16, 2014 IL App (1st) 131016-U (1st Dist. 2014).

commonality of injuries or damages – i.e., some level of hearing loss – in these cases. The facts underlying all of the lawsuits are the same, and Defendants are the same in all the cases.

Fourth, there is value interdependence between different claims. Because all of the cases are based on the same contentions regarding Federal Signal's conduct and the design of its Sirens, the cases are related with respect to the crucial liability and general causation questions. Moreover, the success or failure of Plaintiffs' claims will impact resolution of hearing loss cases in New Jersey and elsewhere.

Fifth, the parties are geographically dispersed, and there is remoteness between the court and actual decision-makers in this litigation such that the simplest of decisions have "to pass through layers of local, regional, national, general and house counsel." The pending matters are currently venued in six vicinages stretching throughout New Jersey. Plaintiffs currently reside among New Jersey, Delaware, and Florida. Federal Signal maintains its corporate office in Oak Brook, Illinois, and its corporate witnesses also reside in Illinois. National Counsel for Federal Signal is located in Chicago, Illinois, and its attorneys reside in Chicago and St. Louis, Missouri. The office of Federal Signal's local counsel, McCarter & English, is in Newark, Essex County. Plaintiffs are all represented by Marc Bern, Joseph Cappelli and Thomas Joyce, whose offices are located in New York, New York, Conshohocken, Pennsylvania, and Englewood, New Jersey.

b. Centralization will not delay the progress, increase expense, complicate processing of any action, or prejudice any party

Centralization can efficiently advance the processing of these cases through to resolution without increasing the expense or complicating the processing or otherwise prejudicing any party. In fact, the likelihood of identical proofs on some issues of liability and causation in these cases warrants centralization so as to facilitate the economies that arise from stipulations and avoiding the repeated presentation of the same expert testimony. Centralization will not prejudice either party. To the contrary, Federal Signal will be prejudiced if it had to defend the same claims in at least eight actions pending in six vicinages proceeding at a different pace.

c. Centralized management is fair and convenient to the parties, witnesses, and counsel

Centralized management of these cases is appropriate and will streamline this litigation. If these cases are not centralized, and allowed to proceed in different counties, it will certainly inconvenience the parties, witnesses, and counsel, who all reside in different locations, not to mention risk duplicative motion practice and inconsistent rulings.

d. There is a high risk of duplicative and inconsistent rulings if the cases are not centrally managed

If the cases are not centralized and managed in a coordinated fashion, there is a very high risk of duplicative or inconsistent rulings, orders, or judgments because different judges will be handling these cases. And given that these cases have different track assignments, they will not proceed in parallel, further risking duplicative and/or inconsistent rulings. In light of the resources the parties and the Court will be required to devote to this litigation, it would be most efficient for the parties to present their evidence only once, within the confines of a multicounty litigation, as opposed to repeatedly to different judges. Both parties will present expert evidence in support of their positions, and the proffered expert testimony will likely have to be vetted through a Kemp hearing. Centralization will allow the expert testimony to be tested through a single Kemp hearing with a single ruling, as opposed to multiple ones risking inconsistent findings. Moreover, the parties and the court will benefit from the fact that centralization will allow a single judge to preside over the scheduling and, if necessary, compelling, of the essential third-party discovery that still remains to be completed. As noted above, that discovery will yield the bulk of the relevant evidence in these cases and it would only hinder the parties' and the court's efforts to bring these cases to a conclusion if the parties have to bring multiple different applications before multiple different judges to address the delays encountered when seeking discovery from such essential third-parties as fire departments, medical providers, and unions.

e. Coordinated discovery will be advantageous

Discovery should be completed in coordinated fashion because all 8 cases were filed by one law firm. If consolidated they will be venued in one jurisdiction, and will be overseen by one judge. The facts uncovered in discovery will be available in all cases.

f. The cases require specialized expertise and case processing as provided by the dedicated multicounty litigation judge and staff

Because the evidence will be complex, involving numerous documents and complicated and contested scientific testimony, the specialized expertise and case processing skills of the dedicated multicounty litigation judge and staff would ensure the most efficient processing of these cases and utilization of available and limited judicial resources.

g. Centralization will result in efficient utilization of judicial resources

Judicial resources, facilities, and personnel of the court will be utilized efficiently because the matters will be handled by one judge and in one jurisdiction. Without centralization, different judges must supervise 8 separate but interrelated actions.

The risk, under those circumstances, of duplicative scheduling orders, motion practice, inconsistent rulings, and hearings is evident.

- h. There are related matters pending in Federal court and in other state courts that require coordination with a single New Jersey judge

While there are matters pending in other state and federal courts, including the United States District Court for the District of New Jersey, it is likely that the cases could benefit from coordination with the MCL judge in certain respects. For example, New Jersey's federal judges and multi-county litigation judges handling other consolidated proceedings in their respective courts have participated in joint "science days" in order to minimize the inefficiencies and wastefulness associated with the same parties conducting such proceedings multiple times before multiple courts in the same state. Accordingly, coordinating such proceedings with the District Judge and Magistrate Judge would be more efficiently managed if there were only a single Superior Court Judge overseeing all of these cases.

- i. Bergen County is an appropriate venue for centralized management of these cases

"Issues of fairness, geographical location of parties and attorneys, and the existing civil and multicounty litigation caseload in the vicinage" are considered in determining to which vicinage a particular MCL will be assigned for centralized management. See MCL Guidelines and Criteria for Designation, as promulgated by Directive #08-12 pursuant to Rule 4:38A.

The Plaintiffs have requested MCL centralization with the court in Bergen County. Federal Signal agrees that Bergen County is an appropriate venue for centralized management.

III. Conclusion

Because the firefighter hearing loss cases are appropriate for MCL designation pursuant to Rule 4:38A and Directive #08-12, Federal Signal joins Plaintiffs' Request and respectfully requests that the Supreme Court designate the pending (and all future) hearing loss cases in New Jersey as Multicounty Litigation for centralized management, and consolidate these cases in the Bergen County Superior Court.

Respectfully submitted,


Kenneth R. Meyer

Enclosure

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cc: J. David Duffy, Esq. (via Federal Express and e-mail)
Thomas J. Joyce, III, Esq. (via Federal Express and e-mail)
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Firefighter Hearing Loss Litigation
Cases pending in the Superior Court of New Jersey

Case Number	Case	County	# of Plaintiffs
L-00352-16	Amasio, et al. v. Federal Signal Corporation	Union County	15
L-454-16	Robert Aiello, et al v. Federal Signal Corporation	Hudson County	12
L-672-16	Alessi, et al v. Federal Signal Corporation	Essex County	14
CPML-194-16	Eckhold, et al v. Federal Signal Corporation	Cape May County	3
L-1946-16	Hoover, et al v. Federal Signal Corporation	Hudson County	7
L-3418-16	Edward Allen, et al v. Federal Signal Corporation	Essex County	4
L-001091-16	Carbone, et al v. Federal Signal Corporation	Morris County	6
L-003153-16	Caswell, et al v. Federal Signal Corporation	Middlesex County	9