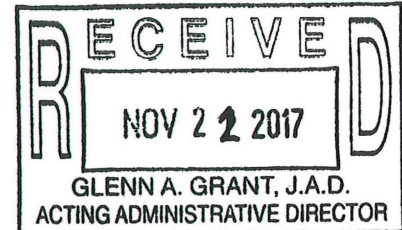


RAYNA E. KESSLER  
212 980 7431 TEL  
RKESSLER@ROBINSKAPLAN.COM  
ADMITTED ONLY IN NJ AND PA

November 21, 2017



VIA OVERNIGHT DELIVERY

Hon. Glenn A. Grant, J.A.D.  
Acting Administrative Director of the Courts  
Attention: MCL Comments - Abilify Litigation  
Administrative Director of the Courts  
Hughes Justice Complex  
25 Market Street  
Trenton, New Jersey 08625

**Re: Application Pursuant to Rule 4:38A ("Centralized Management of Multicounty Litigation") Joint Request for Designation of Abilify consolidated cases as a Multicounty Litigation for Centralized Management**

Dear Judge Grant:

Plaintiffs and Defendants jointly submit this letter application respectfully requesting that the Abilify consolidated cases currently filed in Bergen County become classified as a Multi-County Litigation ("MCL") for centralized management. The parties jointly request that if the Court determines that these actions satisfy the criteria for MCL treatment, they should remain before Honorable James J. DeLuca, J.S.C., in Bergen County.<sup>1</sup>

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<sup>1</sup> In addition to the 33 cases filed by Robins Kaplan LLP, the law firms of Liefv Cabraser Heimann & Bernstein LLP, Law Offices of Terence Sweeney, Esq., the Levensten Law Firm, and Bernstein Liebhard LLP, currently have pending additional *Abilify* consolidated cases. All Plaintiffs' counsel support consolidation.

### **BACKGROUND**

This application addresses 42 currently pending cases, and any future similar cases, filed in the Superior Court sounding in product liability alleging that the Plaintiffs' use of Abilify® caused them to engage in compulsive behaviors, including gambling. Abilify is a prescription medication that is approved by the U.S. Food and Drug Administration ("FDA") for treatment of, among other indicated uses, schizophrenia, bipolar I disorder, and major depressive disorder. Abilify is manufactured as tablets, oral solution, and injection.

The Complaints allege product liability and fraud claims against defendants (1) Otsuka America Pharmaceutical, Inc., ("OAPI"), with its principal offices in New Jersey, (2) Otsuka Pharmaceutical Co., Ltd. ("OPC"), a Japanese corporation with its principal offices in Tokyo, Japan, and (3) Bristol-Myers Squibb Company ("BMS"), with its principal executive office in New York City as well as its principal research and development facilities maintained in New Jersey.

On March 18, 2016, the Hon. Brian Martinotti, J.S.C., granted Plaintiffs' motion to consolidate the Abilify cases. On April 26, 2016, Judge DeLuca attended a Case Management Conference with Judge Martinotti and thereafter was assigned the cases upon Judge Martinotti's elevation to the federal bench in July 2017.

Since their consolidation, the cases have advanced considerably. Judge DeLuca has presided over nine case management conferences, and adjudicated discovery disputes and other common issues, participated in Science Day in coordination with the MDL, held a three-day Kemp general causation evidentiary hearing (involving four experts per side) and oral argument in July and August 2017, and selected ten bellwether cases for discovery and trial scheduled to begin

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in October 2018. Judge DeLuca currently has pending before him the Kemp motions concerning the issue of general causation. In addition, Judge Deluca presided over argument on Defendant OPC's motion to dismiss for lack of personal jurisdiction.<sup>2</sup>

The Judicial Panel of Multidistrict Litigation (JPML) consolidated the federal cases to the U.S. Northern District of Florida before the Honorable Casey Rodgers (*see* October 3, 2016 JPML Transfer Order entered in Case MDL No. 2734 In RE: Abilify (Aripiprazole) Products Liability Litigation). Currently, there are approximately 410 cases pending in the MDL.

The Plaintiffs anticipate filing numerous additional actions in the coming weeks, and continuing thereafter. Likewise, Plaintiffs also expect new case filings to continue by other firms who also represent plaintiffs alleging similar injuries.

### ARGUMENT

The parties submit that this litigation meets the criteria required under Directive #8-12 for Centralized Case Management and respectfully request that these cases be consolidated for case management in the Bergen County Superior Court before Judge James J. DeLuca, J.S.C., who has been assigned to these matters for twenty months and has already held a lengthy *Kemp* hearing and oral argument regarding general causation and has scheduled trials to begin in October 2018.

#### **I. These Cases Satisfy the Criteria for MCL Case Management.**

##### **A. The Abilify litigation involves a large number of parties that are geographically dispersed around the state and the country.**

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<sup>2</sup> The parties agreed to withdraw OPC's motion to dismiss without prejudice to OPC's right to reassert its personal jurisdiction defense at the close of discovery, which OPC intends to reassert.

As with other Multicounty Litigations centralized by this Court, the Abilify litigation involves a large number of parties that are geographically dispersed. The current actions filed in New Jersey involve plaintiffs from a number of different states, including New Jersey, New York, Pennsylvania, California, Delaware, and Arizona. The parties submit that this geographical diversity makes Centralized Management necessary for the efficient handling of this litigation.

**B. The Abilify litigation involves many claims with common, recurrent issues of law and fact that are associated with a single product alleged to cause similar injuries among various plaintiffs.**

The Abilify cases involve numerous claims with common, recurrent, and complex issues of law and fact. All of these cases involve Abilify, the same product manufactured and promoted by the same defendants. All of the plaintiffs claim that defendants knew, or should have known, that Abilify causes and contributes to uncontrollable compulsive behaviors, and that defendants failed to adequately warn of those risks. Further, all of the actions proposed for designation allege substantially similar violations of law and are based upon the same or substantially similar underlying claims surrounding the safety profile of Abilify.

Centralized management will conserve judicial resources and provide all parties with the benefits of coordinated discovery, and will not unreasonably delay the progress of this litigation if they continue to be assigned to Judge DeLuca. Centralization will provide a fair and more convenient, cost effective process for all parties, witnesses, counsel and the Court.

**C. There are related matters pending in federal court that require continued coordination with Judge DeLuca.**

There are a number of Abilify cases pending in federal court. Judge DeLuca has coordinated extensively with Chief Judge Rodgers, of the United

States District Court for the Northern District of Florida, including attending joint Science Day presentations, holding joint *Daubert/Kemp* evidentiary hearings, and conducting joint case management conferences. This coordination serves the goal of the efficient and inexpensive administration of cases and can prevent duplicative discovery motions and hearings.

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

Given the large number of parties, witnesses, and counsel, the cases would benefit from centralized management by ensuring that Judge DeLuca, who has developed specific expertise with this litigation, will continue to streamline the likely increasing number of cases in a prompt and effective way. Centralized management also avoids the possibility of duplicative practice and inconsistent discovery rulings between multiple judges in Bergen County. Moreover, since Bergen County is a mass tort venue, Judge DeLuca will continue to provide his specialized expertise and case processing that is available from the Judges and Staff in Bergen County. Because one of BMS's counsel is on Judge Harz' recusal list, the matter cannot be assigned to her. Judge DeLuca is also Judge Harz' conflicts judge for another MCL.

**E. Coordinated discovery is advantageous.**

Centralized management also provides for a streamlined approach and avoids the possibility of duplicative practice and inconsistent discovery rulings between multiple judges in Bergen County. Moreover, Judge DeLuca has worked closely with the MDL Judge assigned to the federal consolidated cases, which has helped increase the efficiency of both litigations. This is best exemplified by Judge DeLuca's participation in Science Day and his holding of joint *Daubert/Kemp* hearings, which saved the parties an immense amount of expenses and resources.

Given the advanced stage of this litigation, Judge DeLuca should be permitted to continue such coordinated discovery within the context of a centralized litigation.

**II. All Parties Agree That These Cases Should Remain with Judge DeLuca, and Bergen County is the Most Appropriate Venue for these Cases.**

Issues of fairness, geographical location of the parties and attorneys, and the existing civil and mass tort caseload in the vicinage are considered when determining the vicinage to assign a particular mass tort for centralized management. *See Mass Torts-Guidelines and Criteria for Designation*, at 2 (Oct. 25, 2007).

All parties agree that the cases should remain with Judge DeLuca, and it is both logical and fair to the litigants for these cases to remain in Bergen County. Given the advanced stage of the litigation, as well as the ongoing coordination with the MDL litigation, Judge DeLuca has developed an extensive knowledge particular to this litigation. This knowledge not only was developed through months of discovery motions and disputes, but also through Judge DeLuca participating in joint *Daubert/Kemp* hearings where he heard three days of testimony from both parties' experts on the issue of general causation, and his forthcoming ruling on this issue will have ramifications for both parties. It would be inefficient and prejudicial to require the parties to begin anew simply because the number of filed cases now requires designation as Multicounty litigation.

It is also clear that Bergen County is the best geographical location to centralize the cases. Bristol-Myers Squibb Company's headquarters are located in New York City, and several of the depositions to date have occurred in New York City.

Finally, Judge DeLuca is only assigned to one other MCL litigation and is thus able to continue to manage the cases within the centralized litigation context.

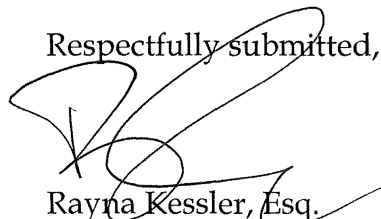
Although Judge DeLuca is not the designated MCL judge, Bergen County is a designated MCL county venue and therefore Judge DeLuca will have the benefit of the MCL staff and judges. Indeed, there is nothing in the MCL Handbook or Guidelines that prevent this Court from assigning these cases to Judge DeLuca, especially when all parties agree. As referenced above, Judge DeLuca is the MCL conflicts judge for Bergen County.

Therefore, for the purposes of efficiency and fairness, these cases should stay with Judge DeLuca, who has overseen this litigation from the beginning and who all parties agree should be assigned these cases for centralized management.

#### CONCLUSION

In light of all the factors and information discussed above, the parties respectfully request that the Abilify cases be designated as Multicounty Litigation for Centralized Management pursuant to Rule 4:38A and remain assigned to Judge DeLuca, who continues to handle these cases in an efficient and thorough manner.

Respectfully submitted,



Rayna Kessler, Esq.  
Attorney at Law

cc: Hon. James J. DeLuca, J.S.C. (*via overnight delivery*)  
All Counsel per attached Service List (*via email only per agreement of the parties*)