

IN THE SUPREME COURT OF OHIO

Melisa Arbino,	:	On Questions Certified by
	:	the United States District Court
Petitioner,	:	for the Northern District
	:	of Ohio, Western Division
v.	:	
	:	Case No. 06-1212
Johnson & Johnson, <i>et al.</i> ,	:	
	:	U.S. District Court Case No.
Respondents.	:	3:06 CV 40010

PETITIONER'S MOTION TO SUPPLEMENT THE RECORD

Pursuant to Supreme Court Practice Rule V, Section 6, Petitioner Melisa Arbino respectfully requests supplementation of the record on appeal based upon ongoing proceedings in the United States District Court. As this Court is aware, the *Arbino* matter is before this Court on an interlocutory basis to consider certified questions from the United States District Court for the Northern District of Ohio regarding the constitutionality of damages caps in Senate Bill 80. The *Arbino* case is part of the *In re: Ortho Evra Products Liability Litigation, MDL No. 1742*, a multidistrict proceeding pending before the Honorable David A. Katz.

During the time the certified questions have been pending before this Honorable Court, pretrial proceedings in the underlying multidistrict litigation have continued. The District Court has selected from among the 1500 claims pending those of seven plaintiffs to act as "bellwether," or representative, plaintiffs for trial. The *Arbino* case is one of the seven bellwether cases. Pursuant to Case Management Order No. 22, the first bellwether trials are scheduled for June 24, 2008 and July 22, 2008.

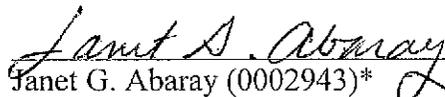
On November 20, 2007, Plaintiff-Petitioner *Arbino* filed in the Clerk of Court a Motion for Partial Summary Judgment on certain affirmative defenses raised by Defendants. *See In re Ortho Evra Products Liability Litigation, MDL Docket No. 1742, N.D. Ohio Case No. 1:06-cv-*

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SUPREME COURT OF OHIO

40010. The District Court has entered a briefing schedule for this motion. This Motion sets forth substantial information concerning the evidence obtained through discovery in the MDL litigation, which bears upon the issue of the appropriate measure of damages to be awarded. (Memorandum in Support of Motion for Partial Summary Judgment, at II, pp. 4 - 24.)

Petitioner submits that this supplementation "is necessary to the Supreme Court's consideration of the questions presented on appeal." *See* Ohio Supreme Court Rule V, Section 6. Although Rule V, Section 6, provides that requests can be made for certified copies of the supplements to the record, in the interest of time and as a convenience to the Court, Petitioner has appended hereto as Ex. A the District Court's Scheduling Order; Ex. B the District Court's briefing schedule and Ex. C, Petitioner's Motion and Memorandum for Partial Summary Judgment and Exhibits in Support.

Respectfully submitted,



Janet G. Abaray (0002943)*

Calvin S. Tregre, Jr. (0073454)

Melanie S. Bailey (0075821)

Burg Simpson Eldredge Hersh & Jardine

312 Walnut St., Ste. 2090

Cincinnati, OH 45202-4028

(513) 852-5600

(513) 852-5611 (fax)

jabaray@burgsimpson.com

Robert S. Peck (*Pro hac vice*)

Stephen B. Pershing (*Pro hac vice*)

Center for Constitutional Litigation, P.C.

1050 31st Street, N.W.

Washington, D.C. 20007

(202) 944-2874

(202) 965-0920 (fax)

robert.peck@cclfirm.com

Counsel for Petitioner Melisa Arbino

**Counsel of Record*

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of December, 2007, a true copy of the foregoing *Petitioner's Motion to Supplement the Record* was sent via regular U.S. mail, postage prepaid, to the following:

Robert C. Tucker
Julie A. Callsen
Irene C. Keyse-Walker*
Benjamin C. Sassé
Tucker Ellis & West LLP
1150 Huntington Bldg.
925 Euclid Ave.
Cleveland, OH 44115-1475

Counsel for Respondents Johnson & Johnson, et al.
**Counsel of Record*

Mark M. Kitrick
Mark Lewis
Kitrick & Lewis
515 E. Main St., Suite 515
Columbus, OH 43215-5398

Counsel for Amicus Curie
Ohio Academy of Trial Lawyers

Kathleen J. St. John
Nurenberg, Paris, Heller & McCarthy
1370 Ontario St., Suite 100
Cleveland OH 44113

Attorneys for Amicus Curiae
Ohio Academy of Trial Lawyers

Kenneth R. Sheets
46 S. Detroit St.
Xenia OH 45385

Attorney for Amicus Curia
Donna Ullman

Marc Dann
Ohio Attorney General
Frank M. Strigari
Assistant Attorney General
Constitutional Offices Section
30 E. Broad St., 17th Floor
Columbus, OH 43215-3428

Counsel for Respondent State of Ohio

Anthony E. Turley
405 Madison Ave., Suite 1600
Toledo, OH 43604

Counsel for Amicus Curie
Ohio Academy of Trial Lawyers

Bernard K. Bauer
Bernard K. Bauer Co., LPA
410 W. Sandusky St., Suite One
P.O. Box 932
Findlay OH 45839

Attorney for Amicus Curiae Ohio Chapter of
the American Board of Trial Advocates

Micah L. Berman
Caris Post (0074224)
Tobacco Public Policy Center
Capital University Law School
300 E. Broad St.
Columbus OH 43215

Attorney for Amicus Curiae
Tobacco Public Policy Center at Capital
University Law School

Frederick M. Gittes
Kathaleen B. Schulte
Gittes & Schulte
723 Oak St.
Columbus, OH 43205

*Attorneys for Amici Curiae Ohio Employment
Lawyers Association, Ohio Now Education
and Legal Defense Fund, Committee Against
Sexual Harassment, Ohio Conference of the
NAACP, and Columbus NAACP*

Daniel Michel
Arthur, O'Neil, Mertz & Michel Co.
901 Ralston Ave.
P.O. Box 871
Defiance OH 43512

*Attorney for Amicus Curiae
Mothers Against Drunk Driving (MADD)*

Robert F. Linton, Jr.
Linton & Hirshman
700 W. St. Clair, Suite 300
Cleveland OH 44113

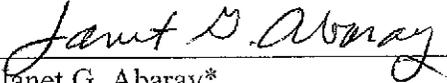
*Attorney for Amicus Curiae
Mothers Against Drunk Driving (MADD)*

Richard W. Schulte
Stephen D. Behnke
Behnke, Martin & Schulte
131 N. Ludlow St., Suite 840
Dayton OH 45402

*Attorneys for Amicus Curiae
Mothers Against Drunk Driving (MADD)*

Michael R. Thomas
Kirby Thomas Brandenburg & D'Amico
4 Sycamore Creek Dr.
Springboro OH 45066

*Attorney for Amicus Curiae
Mothers Against Drunk Driving (MADD)*


Janet G. Abaray*
Burg Simpson Eldredge Hersh & Jardine
312 Walnut St., Ste. 2090
Cincinnati, OH 45202-4028
(513) 852-5600
(513) 852-5611 (fax)
Counsel for Petitioner Melisa Arbino
**Counsel of Record*

Attachment not scanned