

# The Legal Intelligencer

The Legal Intelligencer  
By Amaris Elliott-Engel  
March 22, 2010

## Panel Rules Georgia Plaintiff May Sue Drugmaker in Phila.

A Georgia man who alleges his heart attack was caused by his use of the prescription drug Adderall can keep his case in the Philadelphia Common Pleas Court because the manufacturer's employees involved in the development, testing and marketing of Adderall are based in Pennsylvania, the state Superior Court ruled last week.

"There is no question that the central issue herein relates to [the manufacturer's] development, testing, and marketing of Adderall, and its knowledge of and warnings about the risks of heart attack from ingesting that drug," Judge Mary Jane Bowes wrote for a three-judge panel that also included Judge Correale F. Stevens and Senior Judge James J. Fitzgerald III, a former Supreme Court justice. "The events relating to these activities were conducted by [the manufacturer's] employees in Pennsylvania."

The Superior Court in *Hunter v. Shire US Inc.* also ruled against the defendant of the trial court's refusal to transfer the litigation to Chester County.

The trial judge in the case was Philadelphia Common Pleas Judge Gregory E. Smith.

The Superior Court originally issued its opinion as an unpublished memorandum. But following the plaintiff's motion, the court published the opinion last Wednesday.

Plaintiff Kim Gregory Hunter alleges that his January 2005 heart attack was caused by his use of Adderall, a psychostimulant, in the days preceding his heart attack, and that Shire failed to properly warn that use of the drug is allegedly associated with an increased risk of heart attack, Bowes said.

Shire argued that venue was improper in Philadelphia, and the plaintiff should have filed his lawsuit in Georgia or in Chester County, Pennsylvania, Bowes said. Shire is based in Chester County.

Shire argued that the action should have been dismissed by the trial judge under the codification of the doctrine of forum non conveniens because Hunter took Adderall in Georgia, where he

lives, and it would be burdensome to require the defense to depose Hunter's health care providers in Georgia, Bowes said.

Hunter argued that the central issue of the case was not his consumption of the drug, but Shire's development, marketing, testing and knowledge of the risks of heart attacks associated with the use of Adderall, all of which happened at Shire's principal place of business in Pennsylvania, Bowes said.

Bowes relied upon two recent cases that also looked at the appropriateness of forum in Philadelphia for out-of-state plaintiffs in other pharmaceutical product liability actions.

In *Wright v. Aventis Pasteur Inc.*, the Superior Court panel found that the Texas plaintiffs suing over their son's neurological damage allegedly caused by mercury contained in blood products and vaccines could maintain their case in Philadelphia, Bowes said.

"The crux of the [ *Wright* ] litigation pertained to the decisions by the manufacturers, which decisions were made in the Philadelphia area, to use and market the substance that allegedly caused the injuries in question when they sold their vaccines and blood products," Bowes wrote.

The *Wright* panel reversed Philadelphia Common Pleas Judge Sandra Mazer Moss. Moss, according to her opinion, dismissed the action because she found private and public interests indicated weighty factors sufficient to overcome the presumption that the plaintiff's choice of forum should not be disturbed, including that the medical care of the plaintiffs' son occurred in Texas and that there was no valid reason Philadelphia jurors should bear the burden of adjudicating cases in which they have no real ties.

That panel was composed of Judge Debra M. Todd, now a Supreme Court justice, Judge Richard B. Klein, now retired, and Senior Judge Stephen J. McEwen Jr.

According to Bowes, in *Engstrom v. Bayer Corp.*, the Superior Court panel said several out-of-state plaintiffs claiming to have suffered strokes after taking cold tablets marketed by Bayer could not keep their cases in Pennsylvania. Bayer has its corporate headquarters in Pennsylvania, but the medication was developed and produced outside of Pennsylvania, Bowes said. That Superior Court panel included Stevens, Judge John T. Bender, and Senior Judge Frank J. Montemuro Jr., a former Supreme Court justice. The panel affirmed Philadelphia Common Pleas Judge Norman Ackerman.

This instant case was distinguished from *Engstrom* because the employees involved in the manufacture and testing of Shire's Adderall, unlike those who worked on Bayer's cold tablets, are located in Pennsylvania, Bowes said.

Plaintiff's attorney [Charles Becker](#) of Kline & Specter said the *Hunter* case is significant because of the precedent it sets for the large number of pharmaceutical product liability cases that arise in Pennsylvania because of the state's large pharmaceutical industry.

The case underscores that the plaintiff-specific facts of medical history and drug use are not dispositive in a forum non conveniens analysis, Becker said. What drives a court's forum non conveniens' analysis is whether the facts regarding the development, marketing, testing and the company's knowledge of the risks of the drug have a "nexus in Pennsylvania," Becker said.

On the issue that forum was more appropriate in Chester County than Philadelphia County, Bowes said that under Pennsylvania Rule of Civil Procedure 1006(d)(1) and prior case law, a plaintiff's choice of forum should rarely be disturbed. Defendants may meet their burden of showing the plaintiffs' choice of forum is vexatious only with detailed averments in their petitions and briefs about why the forum is vexatious or burdensome, Bowes said.

This is not one of the rare cases in which plaintiff's choice of forum can be disturbed, Bowes said.

Bowes also said Chester County and Philadelphia are readily accessible in a short amount of travel time.

Becker predicted the case's language on the appropriateness of choice of forum between Philadelphia and its suburban neighbor will be used in forum non conveniens motions filed every day in the adversarial dance between plaintiffs' general preference to litigate in Philadelphia and defendants' general preference to litigate in the suburban counties.

A Shire spokesman did not respond to a request for comment before deadline.

Shire's defense counsel included Walter H "Pete" Swayze III and Patricia J. Baxter of Segal McCambridge Singer & Mahoney and Christopher J. Mulvaney and Joseph P. Thomas of Ulmer & Berne in Cincinnati, according to the docket.