

# EXHIBIT A

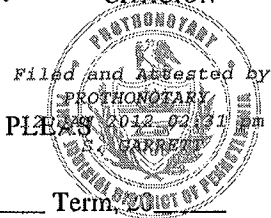
Court of Common Pleas of Philadelphia County  
Trial Division  
**Civil Cover Sheet**

For Prothonotary Use Only (Docket Number)		
<b>JANUARY 2012</b>		<b>001485</b>
E-Filing Number: 1201020372		
PLAINTIFF'S NAME RANA TERRY	DEFENDANT'S NAME MCNEIL-PPC, INC.	
PLAINTIFF'S ADDRESS 7296 COUNTY LINE ROAD LEIGHTON AL 35646	DEFENDANT'S ADDRESS 7050 CAMP HILL ROAD FORT WASHINGTON PA	
PLAINTIFF'S NAME DENICE HAYES, DECEASED	DEFENDANT'S NAME MCNEIL CONSUMER HEALTHCARE, DIVISION OF MCNEIL-PPC, INC.	
PLAINTIFF'S ADDRESS 7296 COUNTY LINE ROAD LEIGHTON AL	DEFENDANT'S ADDRESS 7050 CAMP HILL ROAD FORT WASHINGTON PA	
PLAINTIFF'S NAME	DEFENDANT'S NAME JOHNSON & JOHNSON, INC.	
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK NJ	
TOTAL NUMBER OF PLAINTIFFS 2	TOTAL NUMBER OF DEFENDANTS 3	COMMENCEMENT OF ACTION <input type="checkbox"/> Complaint <input type="checkbox"/> Petition Action <input type="checkbox"/> Notice of Appeal <input checked="" type="checkbox"/> Writ of Summons <input type="checkbox"/> Transfer From Other Jurisdictions
AMOUNT IN CONTROVERSY <input type="checkbox"/> \$50,000.00 or less <input checked="" type="checkbox"/> More than \$50,000.00	COURT PROGRAMS <input type="checkbox"/> Arbitration <input checked="" type="checkbox"/> Jury <input type="checkbox"/> Non-Jury <input type="checkbox"/> Other:	<input type="checkbox"/> Mass Tort <input type="checkbox"/> Savings Action <input type="checkbox"/> Petition <input type="checkbox"/> Commerce <input type="checkbox"/> Minor Court Appeal <input type="checkbox"/> Statutory Appeals <input type="checkbox"/> Settlement <input type="checkbox"/> Minors <input type="checkbox"/> W/D/Survival
CASE TYPE AND CODE 2P - PRODUCT LIABILITY		
STATUTORY BASIS FOR CAUSE OF ACTION		
RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)	<p style="text-align: center;"><b>FILED PRO PROTHY JAN 12 2012 S. GARRETT</b></p>	
	IS CASE SUBJECT TO COORDINATION ORDER? YES NO	
TO THE PROTHONOTARY: Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant: <u>RANA TERRY , DENICE HAYES, DECEASED</u> Papers may be served at the address set forth below.		
NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY MICHAEL M. WEINKOWITZ	ADDRESS LEVIN FISHBEIN SEDRAN&BERMAN 510 WALNUT ST STE 500 PHILADELPHIA PA 19106	
PHONE NUMBER (215) 592-1500	FAX NUMBER (215) 592-4663	
SUPREME COURT IDENTIFICATION NO. 76033	E-MAIL ADDRESS MWeinkowitz@lfsblaw.com	
SIGNATURE OF FILING ATTORNEY OR PARTY MICHAEL WEINKOWITZ	DATE SUBMITTED Thursday, January 12, 2012, 02:31 pm	

C.P.97

Commonwealth of Pennsylvania  
CITY AND COUNTY OF PHILADELPHIA

SUMMONS  
CITACION



Rana Terry, as Personal Rep. and Admin. of the  
Estate of Denice Hayes, Deceased, 7296  
County Line Rd., Leighton, AL 35646

Filed and Attested by  
PROTHONOTARY  
COURT OF COMMON PLEAS  
Term, \_\_\_\_\_

No. \_\_\_\_\_

vs.

McNeill-PPC, Inc. and McNeil Consumer  
Healthcare, 7050 Camp Hill Rd., Ft. Wash., PA  
19034; and Johnson & Johnson, Inc., 1 Johnson  
and Johnson Plaza, New Brunswick, NJ 08933

To<sup>(1)</sup>

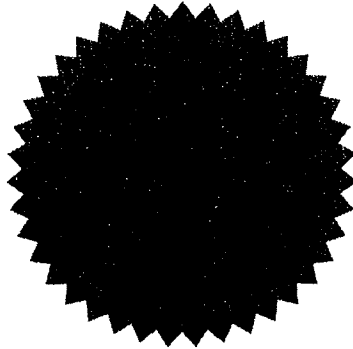
McNeill-PPC, Inc. and McNeil  
Consumer Healthcare, 7050 Camp Hill  
Rd., Ft. Wash., PA 19034

Johnson & Johnson, Inc., 1 Johnson and  
Johnson Plaza, New Brunswick, NJ  
08933

You are notified that the Plaintiff<sup>(2)</sup>  
*Usted esta avisado que el demandante<sup>(2)</sup>*

Rana Terry, as Personal Rep. and Admin. of the Estate of Denice Hayes, Deceased

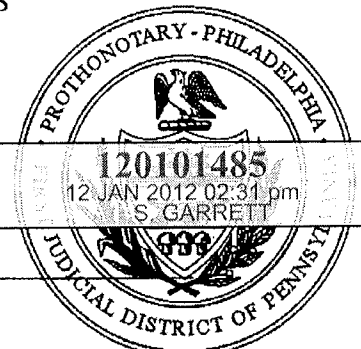
Has (have) commenced an action against you.  
*Ha (han) iniciado una accion en contra suya.*



JOSEPH H. EVERS  
Prothonotary

By \_\_\_\_\_

Date January 12, 2012



<sup>(1)</sup> Name(s) of Defendant(s)  
<sup>(2)</sup> Name(s) of Plaintiff(s)

**COURT OF COMMON PLEAS**

\_\_\_\_\_ Term, 20 \_\_\_\_ No. \_\_\_\_\_

Rana Terry, as Personal Rep. and Admin. of the  
Estate of Denice Hayes, Deceased, 7296 County  
Line Rd., Leighton, AL 35646

vs.

McNeill-PPC, Inc. and McNeil Consumer  
Healthcare, 7050 Camp Hill Rd., Ft. Wash., PA  
19034; and Johnson & Johnson, Inc., 1 Johnson and  
Johnson Plaza, New Brunswick, NJ 08933

**SUMMONS**

**LEVIN, FISHBEIN, SEDRAN & BERMAN**

**BY: Laurence S. Berman, Esquire  
(Attorney ID No. 26965)  
Fred S. Longer, Esquire  
(Attorney ID No. 46653)  
Michael M. Weinkowitz, Esquire  
(Attorney ID No. 76033)**

**510 Walnut Street, Suite 500  
Philadelphia, PA 19107  
(215) 592-1500 / (215) 592-4663 (telecopier)**

**Rana Terry, Personal Representative and  
Administratrix of the Estate of Denice  
Hayes, Deceased  
7296 County Line Road  
Leighton, AL 35646**

**Plaintiffs,**

**vs.**

**McNEIL1-PPC, INC., and McNEIL  
CONSUMER HEALTHCARE,  
7050 Camp Hill Rd.  
Ft. Washington, PA 19034**

**and**

**JOHNSON & JOHNSON, inc.  
1 Johnson and Johnson Plaza  
New Brunswick, NJ 08933**

**Defendants.**

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY**

**\_\_\_\_\_ TERM, 2011**

**CIVIL ACTION NO. \_\_\_\_\_**

**JURY TRIAL DEMANDED**

**PRAECIPE TO ISSUE A WRIT OF SUMMONS**

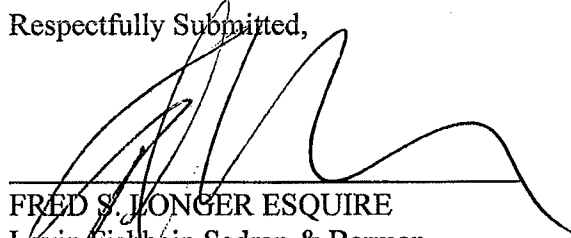
**TO THE PROTHONOTARY:**

Kindly issue a Writ of Summons for the below listed defendants in the above-captioned matter:

McNEIL1-PPC, INC. and McNEIL CONSUMER HEALTHCARE  
7050 Camp Hill Rd.  
Ft. Washington, PA 19034

JOHNSON & JOHNSON, INC.  
1 Johnson & Johnson Plaza  
New Brunswick, NJ 08933

Respectfully Submitted,



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FRED S. JONGER ESQUIRE  
Levin Fishbein Sedran & Berman  
Attorneys for Plaintiff

Dated: January 12, 2012

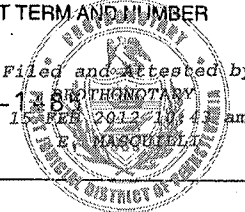
12000946

Exp. 2-10-12

RETURN OF SERVICE

DENNIS RICHMAN'S SERVICES FOR THE PROFESSIONAL INC.

1500 J.F.K. BOULEVARD • SUITE 1706 • PHILADELPHIA, PA 19102 • (215) 977-9393

TO BE COMPLETED BY ATTORNEY (PLEASE ONE FORM FOR EACH DEFENDANT.)		COURT TERM AND NUMBER	
PLAINTIFF/S/ Rana terry	1-23	12-01-12	
DEFENDANT/S/ McNeil-PPC, Inc., et al			
<b>SERVE</b> ➔ <b>AT</b>	NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. McNeil-PPC, Inc <span style="float:right">1 of 2</span>		
	ADDRESS (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP Code) 7050 Camp Hill Road, Fort Washington, PA		
INDICATE TYPE OF PLEADING <input checked="" type="checkbox"/> SUMMONS <input type="checkbox"/> COMPLAINT <input type="checkbox"/>			
INDICATE UNUSUAL SERVICE: <input type="checkbox"/> REG. MAIL <input checked="" type="checkbox"/> DEPUTIZE <input type="checkbox"/> POST <input type="checkbox"/> OTHER			
SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE			

Now, January 20 20 12 I, Regina Richman do hereby deputize the Sheriff of Montgomery County to execute this Writ and make return thereof according to law. The deputation being made at the request and risk of the plaintiff.

Process Server Regina Rich

**TO BE COMPLETED BY PROCESS SERVER**

Served and made known to RONAY LAWSON, Defendant(s)  
 on the 24 day of JAN 20 12, at 0945 o'clock, A M.,  
 at \_\_\_\_\_, County of Phila. Commonwealth of Pennsylvania, in  
 the manner described below:

- Defendant(s) personally served.
- Adult family member with whom said Defendant(s) reside(s). Relationship is \_\_\_\_\_
- Adult in charge of Defendant's residence who refused to give name or relationship.
- Manager/Clerk of place of lodging in which Defendant(s) reside(s).
- Agent or person in charge of Defendant's office or usual place of business.
- \_\_\_\_\_ an officer of said Defendant company.
- Other \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.  
 Defendant not found because:  
 Moved  Unknown  No Answer  Vacant  Other \_\_\_\_\_

Comments \_\_\_\_\_

NAME OF SERVER WICKINSON  
 I, \_\_\_\_\_ hereby affirms that the information contained in the Return of Service is true and correct. This affirmation is made subject to the penalties of 18 PA C.S. 4904 relating to unsworn falsification to authorities.  
 Sworn to and subscribed before me  
 this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

(Signature) \_\_\_\_\_

<b>TO BE COMPLETED BY ATTORNEY</b>		<b>TO BE COMPLETED BY PROTHONOTARY</b>	
Name <u>Michael Wienkowitz, Esquire</u>			
Address <u>510 Walnut St., Ste. 500, Phila, PA</u>			
Telephone Number <u>2150592-1500</u>			
Identification Number <u>76033</u>			
Represents:			
<input type="checkbox"/> Plaintiff(s)			
<input type="checkbox"/> Defendant(s)			
<input type="checkbox"/> Other _____			



54399

Case ID: 120101485

12000946

RETURN OF SERVICE

Exp. 2-10-12

DENNIS RICHMAN'S SERVICES FOR THE PROFESSIONAL INC.

1500 J.F.K. BOULEVARD • SUITE 1706 • PHILADELPHIA, PA 19102 • (215) 977-9393

TO BE COMPLETED BY ATTORNEY (PLEASE ONE FORM FOR EACH DEFENDANT.)		COURT TERM AND NUMBER	
PLAINTIFFS/ Rana Terry	1-23	12-01-1485	Filed and Attested by PROTHONOTARY 152 FEB 2012 10:43 am PHILADELPHIA DISTRICT OF PENNSYLVANIA
DEFENDANT(S)/ McNeill-PPC, Inc., et al			

**SERVE** { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC.  
McNeill Consumer Healthcare, division of McNeill-PPC, Inc. 2 of 2

**AT** { ADDRESS (Street or RFD, Apartment No., City, Boro, Twp., State and ZIP Code)  
7050 Camp Hill Road, Fort Washington, PA

INDICATE TYPE OF PLEADING:  SUMMONS  COMPLAINT

INDICATE UNUSUAL SERVICE:  REG. MAIL  DEPUTIZE  POST  OTHER

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE

Now, January 20 2012, I, Regina Richman do hereby deputize the Sheriff of montgomery County to execute this Writ and make return thereof according to law. The deputation being made at the request and risk of the plaintiff.

Process Server Regina Richman

**TO BE COMPLETED BY PROCESS SERVER**

Served and made known to RENAY LAWSON, Defendant(s) on the 24 day of JAN 20 12, at 0945 o'clock, A M., at \_\_\_\_\_, County of Phila. Commonwealth of Pennsylvania, in the manner described below:

Defendant(s) personally served.  
 Adult family member with whom said Defendant(s) reside(s). Relationship is \_\_\_\_\_  
 Adult in charge of Defendant's residence who refused to give name or relationship.  
 Manager/Clerk of place of lodging in which Defendant(s) reside(s). \_\_\_\_\_  
 Agent or person in charge of Defendant's office or usual place of business. \_\_\_\_\_  
 \_\_\_\_\_ an officer of said Defendant company.  
 Other \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_, at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

Defendant not found because:  
 Moved  Unknown  No Answer  Vacant  Other \_\_\_\_\_

Comments \_\_\_\_\_

NAME OF SERVER Will Lawson  
 I, \_\_\_\_\_ hereby affirms that the information contained in the Return of Service is true and correct. This affirmation is made subject to the penalties of 18 PA C.S. 4904 relating to unsworn falsification to authorities.  
 Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

(Signature) \_\_\_\_\_

<b>TO BE COMPLETED BY ATTORNEY</b>		<b>TO BE COMPLETED BY PROTHONOTARY</b>	
Name <u>Michael Weinkowitz, Esquire</u>			
Address <u>510 Walnut St., Ste. 500, Phila, PA</u>			
Telephone Number <u>215-592-1500</u>			
Identification Number <u>76033</u>			
Represents: <input type="checkbox"/> Plaintiff(s) <input type="checkbox"/> Defendant(s) <input type="checkbox"/> Other _____			



54400

Case ID: 120101485



David F. Abernethy  
Attorney Identification No. 36666  
david.abernethy@dbr.com  
Melissa A. Graff  
Attorney Identification No. 90363  
melissa.graff@dbr.com  
DRINKER BIDDLE & REATH LLP  
One Logan Square, Suite 2000  
Philadelphia, Pennsylvania 19103-6996  
(215) 988-2700



Attorneys for Defendants McNeil-PPC, Inc.  
and Johnson & Johnson, Inc.

RANA TERRY, AS PERSONAL REP.  
AND ADMIN. OF THE ESTATE OF  
DENICE HAYES, DECEASED

Plaintiff,

v.

McNEIL-PPC, INC., McNEIL  
CONSUMER HEALTHCARE and  
JOHNSON & JOHNSON, INC.,

Defendants.

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

JANUARY TERM 2012  
NO. 01485

**ENTRY OF APPEARANCE AND JURY TRIAL DEMAND**

**TO THE PROTHONOTARY:**

Kindly enter our appearance on behalf of Defendants McNeil-PPC, Inc. and Johnson & Johnson, Inc. in the above-entitled action.<sup>1</sup> A trial by a jury of twelve (12) is hereby demanded.

<sup>1</sup> This entry of appearance is filed on behalf of Johnson & Johnson as well as McNeil-PPC, Inc. The entry of appearance on behalf of McNeil-PPC, Inc. includes all divisions of the Company. McNeil Consumer Healthcare is an unincorporated division of McNeil-PPC, Inc. and thus is incorrectly named as a separate defendant in this action.

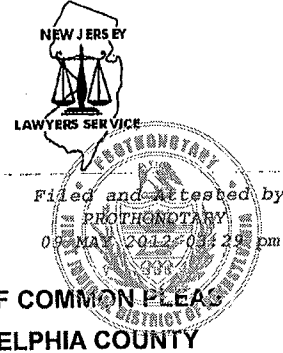
**DRINKER BIDDLE & REATH LLP**

Dated: February 8, 2012

By: /s/ Melissa A. Graff  
David F. Abernethy  
Melissa A. Graff  
Attorneys for Defendants McNeil-PPC, Inc.  
and Johnson & Johnson, Inc.

New Jersey Lawyers Service  
2333 U.S. Hwy 22 West  
Union, New Jersey 07083  
908-686-7300

JOB # 96642



PLAINTIFF

RANA TERRY VS. JOHNSON & JOHNSON INC ETALS

DEFENDANT

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
DOCKET 2012-1485

AFFIDAVIT OF SERVICE

FileRef#

LEVIN FISHBEIN SEDRAN & BERMAN  
PATRICIA DANDREA  
510 WALNUT ST. STE 500  
PHILADELPHIA PA 19106  
(215) 592-1500

Papers Served: WRIT OF SUMMONS

Person served at location stated:

JOHNSON & JOHNSON  
ONE JOHNSON & JOHNSON PLAZA  
NEW BRUNSWICK NJ

Served Successfully  Not Served  Date 1-20-12 Time 11:15pm

Attempts: \_\_\_\_\_

\_\_\_\_ Delivered a copy to him/her personally  
\_\_\_\_ Left a copy with a competent household member  
over 14 years of age residing therein (indicate name  
relationship at right)

Name of Person Served and relationship/title:

Chris L

\_\_\_\_ Left a copy with a person authorized to accept service, e.g., managing  
agent, registered agent, etc.  
(indicate name official title at right)

Description of Person Accepting Service:

Sex: Male Age: 45-50 Weight: 200 Skin Color: white Hair Color: BL

Military Service I asked the person whether recipient was in active military service of the United States or the State of New Jersey in any activity whatever and received a negative reply. Recipient wore civilian clothes and no military uniform. The source of my information and the grounds of my belief are the conversation and observation above narrated.

Subscribed and Sworn to me this  
25 day of January 2012

Notary Signature  
FRANCESCO NAPPI  
NOTARY-PUBLIC OF NEW JERSEY  
My Commission Expires January 9, 2016

I, Angel Casiano, at the time of service a competent adult not having a direct interest in the litigation. I declare under penalty of perjury that the foregoing is true and correct.

Signature of Process Service



IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL

*HAYES, DECEASED ETAL*

*January Term 2012*

*VS*

*No. 01485*

*MCNEIL-PPC, INC. ETAL*

DOCKETED  
CLERK OF COURT CENTER

MAY 08 2012

**CASE MANAGEMENT ORDER  
COMPLEX TRACK**

STANLEY THOMPSON

AND NOW, 08-MAY-2012 , it is Ordered that:

1. The case management and time standards adopted for complex track cases shall be applicable to this case and are hereby incorporated into this Order.
2. All *discovery* on the above matter shall be completed not later than *05-AUG-2013*.
3. *Plaintiff* shall identify and submit *curriculum vitae and expert reports* of all expert witnesses intended to testify at trial to all other parties not later than *02-SEP-2013*.
4. *Defendant and any additional defendants* shall identify and submit curriculum vitae and expert reports of all expert witnesses intended to testify at trial not later than *07-OCT-2013*.
5. All *pre-trial motions* shall be filed not later than *07-OCT-2013*.
6. A *settlement conference* may be scheduled at any time after *04-NOV-2013*. Prior to the settlement conference all counsel shall serve all opposing counsel and file a settlement memorandum containing the following:
  - (a). A concise summary of the nature of the case if plaintiff or of the defense if defendant or additional defendant;
  - (b). A statement by the plaintiff or all damages accumulated, including an itemization of injuries and all special damages claimed by categories and amount;
  - (c). Defendant shall identify all applicable insurance carriers, together with applicable limits of liability.
7. A *pre-trial conference* will be scheduled any time after *06-JAN-2014*. Fifteen days prior to pre-trial conference, all counsel shall serve all opposing counsel and file a pre-trial memorandum containing the following:
  - (a). A concise summary of the nature of the case if plaintiff or the defense if defendant or

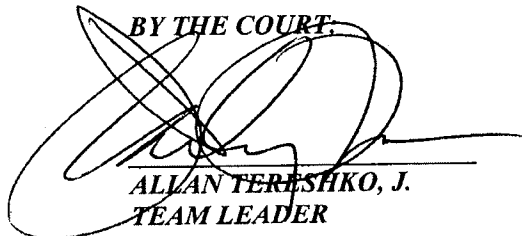
Hayes, Deceased Etal Vs-CMOIS



additional defendant;

- (b). A list of all witnesses who may be called to testify at trial by name and address. Counsel should expect witnesses not listed to be precluded from testifying at trial;
  - (c). A list of all exhibits the party intends to offer into evidence. All exhibits shall be pre-numbered and shall be exchanged among counsel prior to the conference. Counsel should expect any exhibit not listed to be precluded at trial;
  - (d). Plaintiff shall list an itemization of injuries or damages sustained together with all special damages claimed by category and amount. This list shall include as appropriate, computations of all past lost earnings and future lost earning capacity or medical expenses together with any other unliquidated damages claimed; and
  - (e). Defendant shall state its position regarding damages and shall identify all applicable insurance carriers, together with applicable limits of liability;
  - (f). Each counsel shall provide an estimate of the anticipated length of trial.
8. *It is expected that the case will be ready for trial 03-FEB-2014*, and counsel should anticipate trial to begin expeditiously thereafter.
9. All counsel are under a continuing obligation and are hereby ordered to serve a copy of this order upon all unrepresented parties and upon all counsel entering an appearance subsequent to the entry of this Order.

**BY THE COURT:**



**ALLAN TERESHKO, J.  
TEAM LEADER**

David F. Abernethy  
Attorney Identification No. 36666  
david.abernethy@dbr.com  
Melissa A. Graff  
Attorney Identification No. 90363  
melissa.graff@dbr.com  
DRINKER BIDDLE & REATH LLP  
One Logan Square, Suite 2000  
Philadelphia, Pennsylvania 19103-6996  
(215) 988-2700  
Attorneys for Defendants McNeil-PPC, Inc.  
and Johnson & Johnson, Inc.



\_\_\_\_\_  
RANA TERRY, AS PERSONAL REP. AND :  
ADMIN. OF THE ESTATE OF DENICE :  
HAYES, :  
Plaintiff, :  
v. :  
McNEIL-PPC, INC., McNEIL :  
CONSUMER HEALTHCARE and :  
JOHNSON & JOHNSON, INC. :  
Defendants. :

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY  
  
JANUARY TERM 2012  
NO. 01485

**PRAECIPE FOR RULE TO FILE COMPLAINT**

TO THE PROTHONOTARY:

Please enter a Rule upon plaintiff to file a Complaint within 20 days hereof or suffer the entry of a Judgment of Non Pros.

Dated: November 27, 2012

/s/ Melissa A. Graff  
David F. Abernethy  
Melissa A. Graff  
DRINKER BIDDLE & REATH LLP  
One Logan Square, Suite 2000  
Philadelphia, PA 19103-6996  
(215) 988-2700  
Attorney for Defendants McNeil-PPC, Inc.  
and Johnson & Johnson, Inc.

RANA TERRY, AS PERSONAL REP. AND :  
ADMIN. OF THE ESTATE OF DENICE :  
HAYES, :

Plaintiff, :

v. :

McNEIL-PPC, INC., McNEIL :  
CONSUMER HEALTHCARE and :  
JOHNSON & JOHNSON, INC. :

Defendants. :

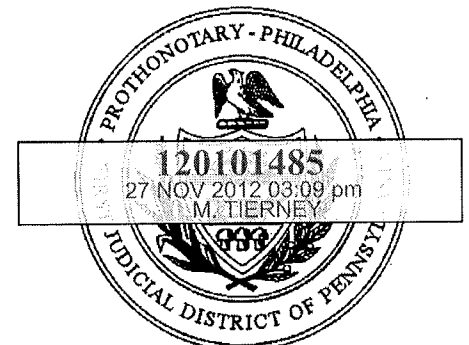
COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

JANUARY TERM 2012  
NO. 01485

**RULE TO FILE COMPLAINT**

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2012, a Rule is hereby granted upon  
plaintiff to file a Complaint herein within 20 days after service hereof or suffer the entry of a  
Judgment of Non Pros.

\_\_\_\_\_  
Prothonotary



Case ID: 120101485

**CERTIFICATE OF SERVICE**

I, Meredith N. Reinhardt, Esquire, hereby certify that on this 27th day of November, 2012, I caused a true and correct copy of the foregoing Praecipe for Rule to File Complaint to be served by Electronic Filing and Hand Delivery upon the following:

Laurence S. Berman, Esq.  
Michael M. Weinkowitz, Esq.  
LEVIN, FISHBEIN, SEDRAN & BERMAN  
510 Walnut Street, Suite 500  
Philadelphia, PA 19107

/s/ Meredith N. Reinhardt  
Meredith N. Reinhardt



**LEVIN, FISHBEIN, SEDRAN & BERMAN**

**BY: Laurence S. Berman, Esquire**

**(Attorney ID No. 26965)**

**Michael M. Weinkowitz, Esquire**

**(Attorney ID No. 76033)**

**510 Walnut Street, Suite 500**

**Philadelphia, PA 19107**

**(215) 592-1500 / (215) 592-4663 (telecopier)**

**L.Berman@lfsblaw.com; MWeinkowitz@lfsblaw.com**



*Attorneys for Plaintiff*

**RANA TERRY, AS PERSONAL REPRESENTATIVE AND ADMINISTRATOR OF THE ESTATE OF DENICE HAYES, DECEASED,**

*Plaintiff,*

**v.**

**McNEIL-PPC, INC., McNEIL CONSUMER HEALTHCARE, and JOHNSON & JOHNSON, INC.,**

*Defendants.*

**COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY**

**JANUARY TERM, 2012**

**NO. 1485**

**COMPLAINT  
AND DEMAND FOR JURY TRIAL**

Plaintiff, by and through counsel, and for her Complaint against Defendants, alleges as follows:

**I. THE PARTIES**

**A. PLAINTIFF**

1. Plaintiff, Rana Terry, Personal Representative and Administrator of the Estate of Denice Hayes, ("Plaintiff"), resides at 7296 County Line Road, Leighton, Alabama.

2. Plaintiff Denice Hayes, ("Decedent") was the sister of Rana Terry, and ingested Tylenol, including Tylenol Extra Strength, and suffered severe injury, including, but not limited to, acute liver failure and death.

**B. DEFENDANTS**

3. Defendant McNeil-PPC, Inc. is, and at all times relevant was, a corporation organized under the laws of the State of New Jersey, with its headquarters and principal place of business at 7050 Camp Hill Rd., Fort Washington, Pennsylvania.

4. Defendant McNeil Consumer Healthcare is, and at all times relevant was, a division of McNeil-PPC, Inc., with its headquarters and principal place of business at 7050 Camp Hill Rd., Fort Washington, Pennsylvania.

5. Defendant Johnson & Johnson, Inc. is, and at all times relevant was, a corporation organized under the laws of the State of New Jersey with its headquarters and principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey.

6. At all times alleged herein, Defendants include and included any and all parents, subsidiaries, affiliates, divisions, franchises, partners, joint ventures, and organizational units of any kind, their predecessors, successors and assigns and their officers, directors, employees, agents, representatives and any and all other persons acting on their behalf.

7. At all times herein mentioned, each of the Defendants was the agent, servant, partner, predecessors in interest, aider and abettor, co-conspirator and joint venturer of each of the remaining Defendants herein and was at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy and joint venture.

8. At all times relevant, Defendants were engaged in the business of developing, designing, licensing, manufacturing, labeling, distributing, selling, marketing, and/or introducing into interstate commerce throughout the United States, and in the Commonwealth of Pennsylvania, either directly or indirectly through third parties, subsidiaries or related entities, an

acetaminophen product sold under the trade name "Tylenol," including "Tylenol Extra Strength." Hereinafter, these products will be referred to collectively as "Tylenol" and/or "Tylenol Extra Strength."

## **II. JURISDICTION AND VENUE**

9. Jurisdiction over Defendants is based on 42 Pa. C.S.A § 5301 and is therefore proper in this Court.

10. Venue is proper pursuant to Pa. R.C.P. No. 2179. Defendants regularly conduct substantial business in Philadelphia County, Pennsylvania.

11. The amount in controversy exceeds, exclusive of interest and costs, the sum of one hundred and fifty thousand (\$150,000.00) dollars.

## **III. FACTUAL ALLEGATIONS**

### **A. NATURE OF THE CASE**

12. At all times relevant hereto, Defendant McNeil-PPC, Inc. (a wholly owned subsidiary of Johnson and Johnson, Inc.), designed, manufactured, packaged, labeled, marketed and/or distributed the subject product under the trade name "Tylenol."

13. At all times relevant hereto, Defendant McNeil Consumer Healthcare (a division of McNeil-PPC, Inc.), designed, manufactured, packaged, labeled, marketed and/or distributed the subject product with the trade name "Tylenol." Hereinafter, McNeil-PPC, Inc. and McNeil Consumer Healthcare will be referred to collectively as "McNeil."

14. At all times relevant hereto, Tylenol was also promoted and marketed extensively by McNeil's parent company, Johnson & Johnson, Inc.

15. Johnson & Johnson, Inc. and/or McNeil maintain ultimate control and authority over the design, manufacture, packaging, marketing, distribution, labeling and sale of Tylenol.

16. The only active ingredient in Tylenol is the drug “acetaminophen.”

17. Acetaminophen is the leading cause of acute liver failure in the United States.

18. The potential for acetaminophen-induced liver damage and failure have been well documented and well known to the Defendants for many years prior to the incident involving Decedent.

19. Prior to August 31, 2010, Decedent took doses of Tylenol at appropriate times and in appropriate amounts.

20. On or about August 23, 2010, Decedent was seen on an emergent basis at Helen Keller Hospital, and then transferred to University of Alabama, with catastrophic liver damage which resulted in her death on August 31, 2010.

21. The subject Tylenol product taken by Decedent, and which proximately caused his suffering, total liver failure, and death was designed, manufactured, packaged, labeled, and placed into the stream of interstate commerce by Defendants.

22. The Defendants are joint tortfeasors, jointly and severally liable to Plaintiff for injuries of Decedent.

#### **B. FEDERAL STANDARDS AND REQUIREMENTS**

23. Upon information and belief, the Defendants have or may have failed to comply with all federal standards and requirements applicable to the sale of their product, Tylenol, including, but not limited to, violations of various sections and subsections of the United States Code and the Code of Federal Regulations.

#### **IV. CLAIMS FOR RELIEF**

##### **COUNT I** **STRICT LIABILITY**

24. Plaintiff incorporates by reference each preceding and succeeding paragraph as

though set forth fully at length herein.

25. At the time of injuries of Decedent, Defendants' drug, Tylenol, was defective and unreasonably dangerous to foreseeable consumers, including Decedent.

26. The Tylenol ingested by Decedent was in the same or substantially similar condition as it was when it left the possession of Defendants.

27. Decedent did not materially alter the Tylenol product he ingested.

28. Defendants are strictly liable for Decedent's injuries in the following ways:

a. Tylenol, as designed, manufactured, sold and supplied by the Defendants, was defectively designed and placed into the stream of commerce by Defendants in a defective and unreasonably dangerous condition;

b. Defendants failed to properly market, design, manufacture, distribute, supply and sell Tylenol;

c. Defendants failed to warn and place adequate warnings and instructions on Tylenol;

d. Defendants failed to adequately test Tylenol;

e. Defendants failed to provide timely and adequate post-marketing warnings and instructions after they knew of the risk of injury associated with the use of Tylenol; and,

f. Defendants failed to market a feasible alternative design that existed that was capable of preventing Decedent's injuries.

29. Defendants' actions and omissions were the direct and proximate cause of Decedent's injuries.

30. Defendants' conduct, as described above, was extreme and outrageous.

Defendants risked the lives of the consumers and users of their products, including decedent, with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting consuming public. Defendants' outrageous conduct which was wanton and willful warrants an award of punitive damages.

31. Plaintiff pleads this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, including but not limited to the State of Alabama, as may be determined by choice of law principles regardless of whether arising under statute and/or common law.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

**COUNT II**  
**BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

32. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

33. At the time Defendants marketed, distributed and sold Tylenol to Decedent, Defendants warranted that Tylenol was merchantable and fit for the ordinary purposes for which it was intended.

34. Members of the consuming public, including consumers such as Decedent, were intended third party beneficiaries of the warranty.

35. Tylenol was not merchantable and fit for its ordinary purpose, because it has a propensity to lead to the serious personal injuries described in this Complaint.

36. Decedent reasonably relied on Defendants' representations that Tylenol was safe

and free of defects and was a safe means of reducing pain.

37. Defendants' breach of the implied warranty of merchantability was the direct and proximate cause of Decedent's injury.

38. Defendants' conduct, as described above, was extreme and outrageous. Defendants risked the lives of the consumers and users of their products, including Decedent, with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting consuming public. Defendants' outrageous conduct warrants an award of punitive damages.

39. Plaintiff pleads this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, including but not limited to the State of Alabama, as may be determined by choice of law principles regardless of whether arising under statute and/or common law.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

**COUNT III**  
**BREACH OF IMPLIED WARRANTY OF FITNESS**  
**FOR A PARTICULAR PURPOSE**

40. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

41. Defendants manufactured, supplied and sold Tylenol with an implied warranty that it was fit for the particular purpose of a safe means of reducing pain.

42. Members of the consuming public, including Decedent, were the intended third-

party beneficiaries of the warranty.

43. Tylenol was not fit for the particular purpose as a safe means of reducing pain without serious risk of personal injury, which risk is much higher than other medications for reducing pain.

44. Decedent reasonably relied on Defendants' representations that Tylenol was safe and effective for reducing pain.

45. Defendants' breach of the implied warranty of fitness for a particular purpose was the direct and proximate cause of Decedent's injuries.

46. Defendants' conduct, as described above, was extreme and outrageous. Defendants risked the lives of the consumers and users of their products, including Decedent, with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting consuming public. Defendants' outrageous conduct warrants an award of punitive damages.

47. Plaintiff pleads this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, including but not limited to the State of Alabama, as may be determined by choice of law principles regardless of whether arising under statute and/or common law.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

**COUNT IV**  
**NEGLIGENT FAILURE TO WARN**

48. Plaintiff incorporates by reference each preceding and succeeding paragraph as



though set forth fully herein.

49. Before Decedent ingested Tylenol, and during the period in which he ingested the medication, Defendants knew or had reason to know that Tylenol was dangerous and created an unreasonable risk of bodily harm to consumers.

50. Defendants had a duty to exercise reasonable care to warn end users of the dangerous conditions or of the facts that made Tylenol likely to be dangerous.

51. Despite the fact that Defendants knew or had reason to know that Tylenol was dangerous, Defendants failed to exercise reasonable care in warning the medical community and consumers, including Decedent, of the dangerous conditions and facts that made Tylenol likely to be dangerous.

52. Decedent's injuries were the direct and proximate result of Defendants' failure to warn of the dangers of Tylenol.

53. Defendants' conduct, as described above, was extreme and outrageous. Defendants risked the lives of consumers and users of their products, including Decedent, with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting consuming public. Defendants' outrageous conduct warrants an award of punitive damages.

54. Plaintiff pleads this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, including but not limited to the State of Alabama, as may be determined by choice of law principles regardless of whether arising under statute and/or common law.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for

compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

**COUNT V**  
**NEGLIGENT DESIGN DEFECT**

55. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

56. Defendants are the manufacturer, seller, distributor, marketer, and supplier of Tylenol which was negligently designed.

57. Defendants failed to exercise reasonable care in designing, developing, formulating, manufacturing, inspecting, testing, packaging, selling, distributing, labeling, marketing, and promoting Tylenol which was defective and presented an unreasonable risk of harm to consumers, such as Decedent.

58. As a result, Tylenol contains defects in its design which renders it dangerous to consumers, such as Decedent, when used as intended or as reasonably foreseeable to Defendants. The design defects render Tylenol more dangerous than other pain relievers and cause an unreasonable increased risk of injury including but not limited to acute liver failure.

59. Decedent ingested Tylenol in a reasonably foreseeable manner, and substantially as intended by Defendants.

60. Tylenol was not materially altered or modified after manufactured by Defendants and before ingested by Decedent.

61. The design defects directly rendered Tylenol defective and were the direct and proximate result of Defendants' negligence and failure to use reasonable care in designing, testing, and manufacturing Tylenol.

62. As a direct and proximate result of Defendants' negligent design of Tylenol,

Decedent suffered injury.

63. Despite the fact that Defendants knew or should have known that Tylenol was defectively designed, contained design defects, and caused an unreasonable risk of harm, Defendants designed, manufactured, sold, and marketed Tylenol to consumers, including the medical community and Decedent, and failed to warn consumers, the medical community, and Decedent of the increased risk of harm relative to other medications for relieving pain.

64. Defendants' conduct was extreme and outrageous. Defendants risked the lives of consumers and users of their products, including Decedent, with the knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting consuming public. Defendants' outrageous conduct warrants an award of punitive damages.

65. Plaintiff pleads this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, including but not limited to the State of Alabama, as may be determined by choice of law principles regardless of whether arising under statute and/or common law.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

**COUNT VI**  
**NEGLIGENCE**

66. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

67. Defendants had a duty to exercise reasonable care in the manufacture, labeling, sale and distribution of Tylenol, including a duty to assure that the product did not cause

unreasonable, dangerous side-effects to users.

68. Defendants failed to exercise ordinary care in the manufacture, sale, warnings, quality assurance, quality control, and distribution of Tylenol in that Defendants knew or should have known that the drugs created a high risk of unreasonable harm.

69. Defendants were negligent in the design, manufacture, advertising, warning, marketing and sale of Tylenol in that, among other things, they:

a. Failed to use due care in designing and manufacturing Tylenol so as to avoid the aforementioned risks to individuals;

b. Failed to accompany the drug with proper warnings regarding all possible adverse side effects associated with its use, and the comparative severity and duration of such adverse effects. The warnings given did not accurately reflect the symptoms, scope or severity of the side effects;

c. Failed to provide adequate training and instruction to medical care providers for the appropriate use of Tylenol;

d. Placed an unsafe product into the stream of commerce; and,

e. Were otherwise careless or negligent.

70. Despite the fact that Defendants knew or should have known that Tylenol caused unreasonable, dangerous side-effects which many users would be unable to remedy by any means, Defendants continued to market Tylenol to consumers, including the medical community and Decedent.

71. Defendants' conduct, as described above, was extreme and outrageous. Defendants risked the lives of the consumers and users of their products, including Decedent, with the knowledge of the safety and efficacy problems and suppressed this knowledge from the

general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting consuming public. Defendants' outrageous conduct warrants an award of punitive damages.

72. Plaintiff pleads this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, including but not limited to the State of Alabama, as may be determined by choice of law principles regardless of whether arising under statute and/or common law.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

**COUNT VII**  
**NEGLIGENT MISREPRESENTATION**

73. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

74. Prior to Decedent's first dose of Tylenol and during the period in which he ingested Tylenol, Defendants misrepresented that Tylenol was a safe and effective means of relieving pain.

75. Defendants also failed to disclose material facts regarding the safety and efficacy of Tylenol, including information regarding increased adverse events and harmful side-effects.

76. Defendants had a duty to provide Decedent, physicians, and other consumers with true and accurate information and warnings of any known risks and side effects of the pharmaceuticals they marketed, distributed and sold.

77. Defendants knew or should have known, based on prior experience, adverse event reports, studies and knowledge of the efficacy and safety failures with Tylenol that their

representations regarding Tylenol were false, and that they had a duty to disclose the dangers of Tylenol.

78. Defendants made the representations and failed to disclose the material facts with the intent to induce consumers, including Decedent, to act in reliance by purchasing Tylenol.

79. Decedent justifiably relied on Defendants' representations and nondisclosures by purchasing and ingesting Tylenol.

80. Defendants' misrepresentations and omissions regarding the safety and efficacy of Tylenol was the direct and proximate cause of Decedent's injuries.

81. Defendants' conduct, as described above, was extreme and outrageous. Defendants risked the lives of the consumers and users of their products, including Decedent, with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting consuming public. Defendants' outrageous conduct warrants an award of punitive damages.

82. Plaintiff pleads this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, including but not limited to the State of Alabama, as may be determined by choice of law principles regardless of whether arising under statute and/or common law.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

**COUNT VIII**  
**BREACH OF EXPRESS WARRANTY**

83. Plaintiff incorporates by reference each preceding and succeeding paragraph as

though set forth fully at length herein.

84. Defendants expressly warranted that Tylenol was safe and effective to members of the consuming public, including Decedent.

85. Members of the consuming public, including consumers such as Decedent, were intended third-party beneficiaries of the warranty.

86. Defendants marketed, promoted and sold Tylenol as a safe product.

87. Tylenol does not conform to these express representations because it is not safe and has serious side-effects, including acute liver failure and death.

88. Defendants breached their express warranty in one or more of the following ways:

a. Tylenol as designed, manufactured, sold and/or supplied by the Defendants, was defectively designed and placed in to the stream of commerce by Defendants in a defective and unreasonably dangerous condition;

b. Defendants failed to warn and/or place adequate warnings and instructions on Tylenol;

c. Defendants failed to adequately test Tylenol; and,

d. Defendants failed to provide timely and adequate post-marketing warnings and instructions after they knew the risk of injury from Tylenol.

89. Decedent reasonably relied upon Defendants' warranty that Tylenol was safe and effective when he purchased and ingested the medication.

90. Decedent's injuries were the direct and proximate result of Defendants' breach of their express warranty.

91. Defendants' conduct, as described above, was extreme and outrageous. Defendants risked the lives of the consumers and users of their products, including Decedent,

with knowledge of the safety and efficacy problems and suppressed this knowledge from the general public. Defendants made conscious decisions not to redesign, re-label, warn or inform the unsuspecting consuming public. Defendants' outrageous conduct warrants an award of punitive damages.

92. Plaintiff pleads this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, including but not limited to the State of Alabama, as may be determined by choice of law principles regardless of whether arising under statute and/or common law.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

**COUNT IX**  
**FRAUD**

93. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

94. Prior to Decedent's ingestion of Tylenol and during the period in which Decedent actually ingested Tylenol, Defendants fraudulently suppressed material information regarding the safety and efficacy of Tylenol, including information regarding potential liver failure. Furthermore, Defendants fraudulently concealed the safety information about the use of acetaminophen. As described above, acetaminophen has several well known serious side-effects that are not seen in other forms of pain relievers. Plaintiff believes that the fraudulent misrepresentation described herein was intentional to keep the sales volume of Tylenol.

95. Defendants fraudulently concealed the safety issues associated with Tylenol in order to induce physicians to recommend its use to patients, including the Decedent.



96. At the time Defendants concealed the fact that Tylenol was not safe, Defendants were under a duty to communicate this information to Decedent, physicians, the FDA, the healthcare community, and the general public in such a manner that they could appreciate the risks associated with using Tylenol.

97. Defendants, at all times relevant hereto, withheld information from the FDA which they were required to report.

98. Decedent and prescribing physicians relied upon the Defendants' outrageous untruths regarding the safety of Tylenol.

99. Decedent and his physicians were not provided with the necessary information by the Defendants, to provide an adequate warning to the Decedent.

100. Tylenol was improperly marketed to Decedent and his physicians as the Defendants did not provide proper instructions about how to use the medication and did not adequately warn about the medications' risks.

101. As a direct and proximate result of Defendants' malicious and intentional concealment of material life-altering information from Decedent and Decedent's physicians, Defendants caused or contributed to Decedent's injuries.

102. It is unconscionable and outrageous that Defendants would risk the lives of consumers, including Decedent. Despite this knowledge, the Defendants made conscious decisions not to redesign, label, warn or inform the unsuspecting consuming public about the dangers associated with the use of Tylenol. Defendants' outrageous conduct rises to the level necessary that Plaintiff should be awarded punitive damages to deter Defendants from this type of outrageous conduct in the future and to discourage Defendants from placing profits above the safety of patients in the United States of America.

103. Defendants widely advertised and promoted Tylenol as a safe and effective medication and/or as a safe and effective means of reducing pain.

104. Defendants had a duty to disclose material information about serious side-effects to consumers such as Decedent.

105. Additionally, by virtue of Defendants' partial disclosures about the medication, in which Defendants touted Tylenol as a safe and effective medication, Defendants had a duty to disclose all facts about the risks associated with use of the medication, including the risks described in this complaint. Defendants intentionally failed to disclose this information for the purpose of inducing consumers, such as Decedent, to purchase Defendants' dangerous product.

106. Had Decedent been aware of the hazards associated with Tylenol, Decedent would not have ingested the product that led proximately to Decedent's adverse health effects, including his acute liver failure and death.

107. Defendants' advertisements regarding Tylenol made material misrepresentations to the effect that Tylenol was a safe and effective medication, which misrepresentations Defendants knew to be false, for the purpose of fraudulently inducing consumers, such as Decedent, to purchase such product. Decedent relied on these material misrepresentations when deciding to purchase and ingest Tylenol.

108. Upon information and belief, Plaintiff avers that Defendants actively and fraudulently concealed information in Defendants' exclusive possession regarding the hazards associated with Tylenol with the purpose of preventing consumers, such as Decedent, from discovering these hazards.

109. Plaintiff pleads this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, including but not

limited to the State of Alabama, as may be determined by choice of law principles regardless of whether arising under statute and/or common law.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

**COUNT X**  
**VIOLATION OF CONSUMER PROTECTION LAWS**

110. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

111. Decedent purchased and used Tylenol primarily for personal use and thereby suffered ascertainable losses as a result of Defendants' actions in violation of the consumer protection laws.

112. Unfair methods of competition or deceptive acts or practices that were proscribed by law, including the following:

- a) Representing that goods or services have characteristics, ingredients, user benefits, or quantities that they do not have;
- b) Advertising goods or services with the intent not to sell them as advertised; and,
- c) Engaging in fraudulent or deceptive conduct that creates a likelihood of confusion or misunderstanding.

113. Defendants violated consumer protection laws through their use of false and misleading misrepresentations or omissions of material fact relating to the safety of Tylenol.

114. Defendants uniformly communicated the purported benefits of Tylenol while failing to disclose the serious and dangerous side-effects related to the use of Tylenol and of the

true state of Tylenol's regulatory status, its safety, its efficacy, and its usefulness. Defendants made these representations to physicians, the medical community at large, and to patients and consumers such as Decedent in the marketing and advertising campaign described herein.

115. Defendants' conduct in connection with Tylenol was also impermissible and illegal in that it created a likelihood of confusion and misunderstanding, because Defendants misleadingly, falsely and or deceptively misrepresented and omitted numerous material facts regarding, among other things, the utility, benefits, costs, safety, efficacy and advantages of Tylenol.

116. As a result of these violations of consumer protection laws, Decedent has incurred serious physical injury, pain, suffering, loss of income, loss of opportunity, loss of family and social relationships, and medical, hospital and surgical expenses and other expense related to the diagnosis and treatment thereof, for which Defendants are liable.

117. Plaintiff pleads this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, including but not limited to the State of Alabama, as may be determined by choice of law principles regardless of whether arising under statute and/or common law.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

**COUNT XI**  
**FRAUDULENT CONCEALMENT**

118. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

119. Prior to Decedent's use of Tylenol and during the period in which Decedent

actually used Tylenol, Defendants fraudulently suppressed material information regarding the safety and efficacy of Tylenol and the availability of an alternative feasible safer design, including but not limited to, information regarding a safe therapeutic dose for the use of Tylenol and the small margin of safety between the dose recommended by Defendants and a dose that was unsafe. Furthermore, Defendants fraudulently concealed the safety information about the use of Tylenol and Acetaminophen generally. Plaintiff believes the fraudulent misrepresentations and fraudulent concealment described throughout this Complaint was intentional so as to maintain the sales volume of Tylenol and Acetaminophen generally, strong, particularly in the face of new competition from other over the counter pain relievers.

120. Defendants intentionally concealed safety issues with Tylenol and Acetaminophen generally in order to induce physicians to recommend to patients, including Decedent, to purchase and use Tylenol.

121. At the time Defendants concealed the fact that Tylenol and Acetaminophen generally was not safe as designed and marketed by Defendants, Defendants were under a duty to communicate this information to physicians, the FDA, the healthcare community, and the general public in such a manner that they would appreciate the risks associated with using Tylenol and Acetaminophen, generally.

122. Decedent relied upon the Defendants' false and fraudulent misrepresentations and concealments regarding the safety, and dosing for the use of Tylenol.

123. As a direct and proximate cause of Defendants' malicious and intentional concealment of material and information, Defendants caused or significantly contributed to Decedent's injuries.

124. It is unconscionable and outrageous that Defendants would risk the lives of

consumers. Despite this knowledge, the Defendants made conscious decisions not to redesign, properly label, warn or inform the unsuspecting and consuming public. Defendants' outrageous conduct rises to the level that is appropriate that entitles Plaintiff to an award of punitive damages to deter Defendants from this type of outrageous conduct in the future and to discourage Defendants from placing profits above the safety of patients in the United States of America.

125. Defendants' fraudulent concealment tolled the statute of limitations because only Defendants knew the true dangers associated with the use of Tylenol as described herein, and Defendants did not disclose this information to the Decedent, doctors generally, the healthcare community and the general public. Without full knowledge of the dangers of Tylenol and Acetaminophen generally, Plaintiff could not evaluate whether a person who was injured by Tylenol had a valid claim

126. Plaintiff pleads this Count in the broadest sense available under the law, to include pleading same pursuant to all substantive law that applies to this case, including but not limited to the State of Alabama, as may be determined by choice of law principles regardless of whether arising under statute and/or common law.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for compensatory, treble, and punitive damages, together with interest, costs of suit, attorneys' fees, and all such other relief as the Court deems proper.

**V. JURY TRIAL DEMANDED**

Plaintiff demands that all issues of fact of this case be tried to a properly impaneled jury to the extent permitted under the law.

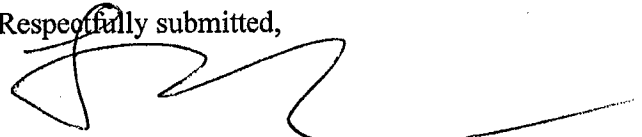
**VI. PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, for damages, including exemplary damages if applicable, to which she is entitled by law, as well as all costs of this action, interest and attorneys' fees, to the full extent of the law, whether arising under the common law and/or statutory law, including:

- a. judgment for Plaintiff and against Defendants, jointly and severally;
- b. damages to compensate Plaintiff for injuries sustained by the Decedent as a result of the use of Tylenol;
- c. damages for Decedent's past and future loss of income;
- d. damages to compensate Plaintiff for the physical pain and suffering of the Decedent;
- e. pre and post judgment interest at the lawful rate;
- f. exemplary, punitive and treble on all applicable Counts as permitted by the law;
- g. a trial by jury on all issues of the case;
- h. an award of attorneys' fees; and
- i. for any other relief as this Court may deem equitable and just, or that may

be available under the law of another forum to the extent the law of another forum is applied, including but not limited to all reliefs prayed for in this Complaint and in the forgoing Prayer for Relief.

Respectfully submitted,



Laurence S. Berman, Esquire  
Michael M. Weinkowitz, Esquire  
LEVIN, FISHBEIN SEDRAN & BERMAN  
510 Walnut Street, Suite 500

Philadelphia, PA 191016  
Telephone: (215) 592-1500  
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L.Berman@lfsblaw.com;  
MWeinkowitz@lfsblaw.com

Date: 12-11-12

**VERIFICATION**

I, Laurence S. Berman, Esquire, hereby state that I am the attorney in this action and verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that the statements therein are made subject to the penalties of 18 P.A. C.S.A. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
LAURENCE S. BERMAN

Date: 12-11-12