ARGUMENT
DOCKET

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

DOCKET NO. 14-0207

STATE OF WEST VIRGINIA, *ex rel.* J.C., a minor, by and through his mother and next friend, MICHELLE COOK, et al,

Petitioners,

v.

THE HONORABLE JAMES P. MAZZONE, Lead Presiding Judge, Zoloft Litigation, Mass Litigation Panel, and PFIZER, INC., ROERIG, a division of Pfizer, Inc., and GREENSTONE, LLC f/k/a Greenstone, LTD.

Respondents.

Underlying:
IN RE: ZOLOFT LITIGATION
Civil Action No. 14-C-7000

PFIZER INC. AND GREENSTONE LLC'S SUPPLEMENTAL REPLY BRIEF ON WRIT OF PROHIBITION

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SUMMARY OF ARGUMENT

Plaintiffs' supplemental brief in support of their petition presents no compelling reason to ignore the plain language of Rule 3(a) and the Mass Litigation Panel's analysis of the history and purpose of the rule. Plaintiffs fail to explain why this Court should restrict Rule 3(a) to so-called "administrative" purposes, even though the rule identifies no such limitation. They rely on Rule 20, but they do not confront the point that Rule 20 joinder should occur after filing, thereby obviating any potential conflict with Rule 3(a). As to the history and purpose of Rule 3(a), Plaintiffs' only response is that the Panel's opinion is not binding on this Court, but that misses the point: The Panel's experience in proposing Rule 3(a) and expertise in applying it make the Panel's opinion highly persuasive, and Plaintiffs have presented no contrary evidence to dispute the Panel's conclusions.

Plaintiffs rely principally on the idea that the Panel's interpretation of Rule 3(a) will harm mass litigation plaintiffs. However, Plaintiffs' argument directly conflicts with the Panel's analysis in its submission to this Court. The Panel thoroughly explains how Plaintiffs' interpretation would destroy the Panel's ability to properly and efficiently deal with mass litigation. Moreover, after five years of the Panel following the same interpretation of Rule 3(a), Plaintiffs fail to identify any example of the harm they posit. Indeed, the only supposed harm is removal, and – as the Panel noted in its submission – there is no right for an individual plaintiff to be in West Virginia state court simply because his case was filed alongside another plaintiff with a connection to West Virginia. Plaintiffs' interpretation is simply an invitation for plaintiffs with no connection to West Virginia to overwhelm the West Virginia courts. There is nothing in Rule 3(a) to suggest, let alone require, this unacceptable result. Accordingly, this Court should reject the writ of prohibition.

ARGUMENT

I. Plaintiffs Are Not Entitled to the Issuance of a Writ of Prohibition.

Plaintiffs once again ignore the limits on a writ of prohibition that make it "a drastic remedy to be invoked only in extraordinary situations." *State ex rel. Frazier v. Hrko*, 203

W. Va. 652, 657, 510 S.E.2d 486, 491 (1998) (internal quotation marks omitted). In particular, there are five factors to consider: (1) whether the petitioner has no other adequate means for relief; (2) whether the petitioner will be damaged or prejudiced; (3) whether the lower court's order is clearly erroneous; (4) whether the lower court's order manifests persistent disregard for the law; and (5) whether the lower court's order raises new and important legal issues. *See* Pfizer Inc. and Greenstone LLC's Supplemental Brief on Writ of Prohibition ("Resp. Supp. Br.") at 6-7. While Plaintiffs address the merits, they ignore the other factors, which support rejection of the writ because there is no prejudice to Plaintiffs; there was no persistent disregard for the law; and there is no new issue of law. *See id.* at 7. In any event, as discussed below, there is no "clear error" on the merits that would allow for a writ of prohibition.

II. The Panel Correctly Held That This Litigation Constitutes 25 Separate Actions.

A. The plain language of Rule 3(a) supports the Panel's interpretation.

The plain language of Rule 3(a) requires that unrelated plaintiffs bring their claims in separate cases, and not simply for the limited "administrative" purposes that Plaintiffs suggest. *See* Resp. Supp. Br. at 8-9. To begin with, Plaintiffs provide no rationale for why a supposedly "administrative" rule would be designated a rule of civil procedure and fail to mention any administrative limitations on its application. Plaintiffs argue that "Rule 3(a) says nothing about treating one complaint as multiple complaints for any purpose other than docketing, number, and collecting fees," Pet'r Supp. Br. at 12, but in fact the rule does not speak about "purposes" at all, but rather the simple fact that they are separate actions. Plaintiffs also argue that the rules of civil procedure are to be liberally construed, Pet'r Supp. Br. at 3-4, but the interpretation of Rule 3(a) Plaintiffs propose is extraordinarily narrow. It restricts Rule 3(a) to administrative purposes even though the terms of the rule express no such limitation. Under a liberal reading of that rule (or even just a plain-language reading of the rule), its requirement that unrelated plaintiffs have separate actions would be construed broadly for all purposes.

The language of Rule 3(a) is clear in requiring that each unrelated plaintiff be docketed as a "separate civil action." Plaintiffs assert that docketing is merely an administrative function that

"creates a sensible numbering and docketing system" to track fees but not to affect virtually anything else. Pet'r Supp. Br. at 8. However, docketing as a separate action is *in addition to* the numbering and fee requirements. And docketing as a separate action means that it *is* a separate action because the docket is the official manner of designating what is happening with a given case. *See, e.g.*, W. Va. R. Civ. P. 41 ("Any court . . . may, in its discretion, order such action to be struck from its docket; and it shall thereby be discontinued. . . . The court may, on motion, reinstate on its trial docket any action dismissed under this rule . . . ."); W. Va. R. Civ. P. 58 ("The clerk, forthwith upon receipt of the signed judgment, shall enter it in the civil docket as provided by Rule 79(a). The notation of a judgment in the civil docket as provided by Rule 79(a) constitutes the entry of the judgment; and the judgment is not effective before such entry."). Indeed, courts routinely use the phrase "docketed as a separate action," the same phrase used in Rule 3(a), to describe when a case should be considered separate from another case – and not just for administrative purposes, but for entirely separate proceedings.[1] In short, there is no support for Plaintiffs' counter-intuitive idea that a case docketed as a separate action should in fact be treated as the same action.

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[1] *See, e.g.*, *In re Gatlin*, 2013 WL 2250304, at *2 (Bankr. S.D. Miss. May 22, 2013) ("Pursuant to the order of the supreme court, the Amended Complaint was severed and docketed as a separate matter under a new case number (No. 251–07–135CIV). It was randomly assigned to Circuit Court Judge W. Swan Yerger."); *Wassouf v. United States*, 2011 WL 529815, at *2 (D.N.H. Feb. 7, 2011) ("[A]s the petition represents a collateral challenge that is civil in nature, it is properly docketed as a separate case."); *Catanzaro v. Harry*, 2011 WL 6885419, at *2 (W.D. Mich. Dec. 29, 2011) ("He completed two separate documents, one of which was a form habeas petition and the other of which was captioned principally as a civil rights complaint under 42 U.S.C. § 1983. Each was docketed as a separate legal action."); *United States v. Patlan*, 2005 WL 1924376, at *3 (S.D. Tex. Aug. 10, 2005) ("The remainder of his motion (*i.e.*, his third, fourth, and fifth claims) is hereby SEVERED and is TRANSFERRED [from the Corpus Christi division] to the Houston Division, where it should be docketed as a separate civil action."); *Rourk v. Cameron Appraisal Dist.*, 131 S.W.3d 285, 290 (Tex. App. 2004), *rev'd on other grounds*, 194 S.W.3d 501 (Tex. 2006) ("The order denying certification found that appellants had been misjoined and ordered that any cause of action which any of the thirty-four named and identified plaintiffs may wish to pursue against appellee should be separately docketed and tried as separate lawsuits.").

Plaintiffs rely on other rules of civil procedure for the proposition that Rule 3(a) does not convert a single complaint into multiple complaints for purposes of case processing. *See* Pet'r Supp. Br. at 4-7. However, this proposition is simply irrelevant to the issue at hand. To be sure, several rules do discuss the processing of complaints, but none suggests that a separate case requires a separate complaint. Plaintiffs argue that having one complaint for multiple cases would create a wasteful situation whereby each plaintiff would have to serve separate pleadings, motions, and other papers. However, if the cases meet the Rule 20 standard, they can be consolidated to avoid any such unnecessary filings and service. And if the cases do not meet the Rule 20 standard, then there should be separate filings and service.

Moreover, the rules make clear that the "action," not the complaint, is the unit that matters in how a case proceeds. *See, e.g.*, W. Va. R. Civ. P. 1 ("These rules govern the procedure in all trial courts of record in all actions . . . ."); *id.* 2 ("There shall be one form of action to be known as 'civil action.'"); *id.* 3 (titled: "Commencement of action."); *id.* 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."); *id.* 13(h) ("Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20."); *id.* 17 ("Every action shall be prosecuted in the name of the real party in interest."); *id.* 20(a) ("All persons may join in one action as plaintiffs if . . . ."). As the Panel explained, "Mass Litigation is not determined by the number of complaints filed. It is determined by the number of civil actions . . . ." Response of the Mass Litigation Panel to Petition for Writ of Prohibition ("Panel Br.") at 2. And Rule 3(a) makes clear that, regardless of the number of complaints, each unrelated plaintiff must be docketed as "a separate civil action." Indeed, the reason the circuit court *sua sponte* entered consolidation orders here (notwithstanding that the court agreed with Plaintiffs' interpretation of Rule 3(a)) was to create a single docket where things could be filed. Plaintiffs' focus on the complaint misses the point because the existence of an additional complaint makes no difference under the language of Rule 3(a) or in deciding whether there is actually more than one case for

jurisdictional purposes. *See* Resp. Supp. Br. at 12. Rather, the number of actions matters, and Rule 3(a) creates a separate civil action in the same sense as that term is used throughout the Rules of Civil Procedure, rather than (as required under Plaintiffs' interpretation) redefining "civil action" differently for different rules of civil procedure. Thus, the docketing as a separate action plainly signifies a separate case.

B. The history and purpose of the amendment to Rule 3(a) supports the Panel's interpretation.

As the Panel explained in its order, the purpose of Rule 3(a) was to direct courts to treat separate plaintiffs as bringing separate cases. App. 59. The Panel has now further explained that "Rule 3(a), as amended, allows the Panel to evaluate each separate civil action filed by unrelated plaintiffs in a multi-plaintiff complaint for dispositive issues"; it also "facilitates management and tracking of each civil action the Panel is charged with resolving, whether such resolution is by dismissal, summary judgment, trial or settlement." Panel Br. at 4. Plaintiffs contend that the purpose of Rule 3(a) merely concerned filing fees, Pet'r Supp. Br. at 13, but they cite nothing in support of this assertion. Thus, Plaintiffs' argument stands in direct opposition to the Panel, but with no factual basis for this opposition. Plaintiffs also do not dispute the Panel's expertise on this issue, arguing only that the Panel's views "are not controlling." *Id.* at 12.

To be sure, the Panel's views are not binding on this Court, but given the Panel's role in bringing about the amendment to Rule 3(a), those views are very instructive and should not be disregarded in the absence of *any* evidence demonstrating that the Panel is erroneous as to the purpose of the rule. Plaintiffs cite cases noting that the comments of a "single legislator" are not dispositive, *see* Pet'r Supp. Br. at 12 n.5, but the Panel's order and brief here do not come from a single person who voted on a statute. Rather, they come from the *entire* Panel that "proposed the amendment" to Rule 3(a) "after extensive discussions regarding Rule 3, and after reviewing numerous public comments regarding the proposed amendment." App. 59. Moreover, unlike legislators, the Panel are impartial decisionmakers that will often be charged with applying the rule to mass-tort scenarios. As such, the Panel is uniquely positioned to interpret the rule's

meaning and purpose, and this Court should defer to the Panel's interpretation given its firm grounding in the plain language of the rule.

III. The Panel's Interpretation of Rule 3(a) Promotes the Proper Functioning of the West Virginia Courts.

A. Rule 3(a) does not create a conflict with the standard for joinder under Rule 20.

Petitioners argue that the Panel's interpretation of Rule 3(a) conflicts with Rule 20, *see* Pet'r Supp. Br. at 9-11, but no such conflict exists. As Defendants explained, Rule 3(a) and Rule 20 can both be interpreted in accordance with their terms such that the claims of unrelated plaintiffs must begin as separate cases, and a court can then consolidate those cases if the standard for joinder is satisfied. *See* Resp. Supp. Br. at 10-11. Simply put, Rule 3(a) does not prevent or in any way impede joinder under Rule 20 after the plaintiffs are initially treated as bringing separate cases. Plaintiffs' response on this point is that Defendants "argue that in this case the joinder of multiple unrelated parties in a single complaint was improper under Rule 20, but Respondents' remedy for misjoinder is not found in Rule 3(a), but in W. Va. R. Civ. P. 21." Pet'r Supp. Br. at 14 n.6. Plaintiffs misunderstand Defendants' argument: Under Rule 3(a), Plaintiffs here could not join in a single action from the start, but after their actions were separately docketed, they would not have been precluded from seeking to join their separate claims in a single action under the Rule 20 joinder standard. Plaintiffs did not move for joinder under Rule 20, however, and the circuit court's consolidation orders were improper because they failed to apply the Rule 20 standard at all. That is why the Panel correctly vacated the consolidation orders.

Plaintiffs' *only* basis for a conflict between Rule 3(a) and Rule 20 is their assertion that "plaintiffs have the right under Rule 20 (both the federal rule and the West Virginia rule) to join together in the same suit at the time suit is filed." Pet'r Supp. Br. at 10 n.3 (citing *Grennell v. W. S. Life Ins. Co.*, 298 F. Supp. 2d 390, 395 (S.D.W. Va. 2004)). However, there is nothing in Rule 20 to suggest a right to joinder at the time the suit is filed. Indeed, such a right would

undermine the requirement of Rule 20 that joinder is allowed only when certain requirements are satisfied. Similarly, the only case Plaintiffs cite does not identify any such right, instead simply noting that "no such motion [for joinder] is required where, as in this case, multiple parties are joined at the time of the filing of a complaint." *Grennell*, 298 F. Supp. 2d at 395. This statement merely reflects the fact that, prior to the amendment to Rule 3(a) in 2008, unrelated plaintiffs could file their claims in a single action. Moreover, even if Plaintiffs' interpretation of Rule 20 were plausible, it is far from the most natural reading of the rule, and there is no reason for this Court to adopt an extreme interpretation of Rule 20 to create a conflict with Rule 3(a) where no conflict would otherwise exist. *See, e.g.*, *Richards v. Harman*, 217 W. Va. 206, 210, 617 S.E.2d 556, 560 (2005) ("statutes ha[ve] to be read 'in pari materia and any ambiguous provisions in the statutes should be interpreted in such a manner as to avoid conflict'").

B. The Panel's interpretation of Rule 3(a) ensures the Panel's proper authority to hear mass litigation.

Plaintiffs' interpretation of Rule 3(a) threatens the ability of the Panel to hear mass litigation, while Defendants' interpretation preserves it. *See* Resp. Supp. Br. at 11-14. Plaintiffs now suggest that "[c]ases with only one complaint with multiple plaintiffs cans [*sic*] still be transferred to the Panel under W. Va. Tr. Ct. R. 26.06," Pet'r Supp. Br. at 2, but that is *directly contrary* to the argument that Plaintiffs made below, where they stated that transfer could not occur for single-complaint actions. App. 116 (stating that the court should deny transfer to the Panel because "[t]his case . . . involves nineteen plaintiffs joined together under W. Va. R.C.P. 20(a) in a single complaint"); Supp. App. 130-31 (stating that then-Chief Justice Benjamin properly denied referral of the 19 cases "because the Complaint was one civil action, not two or more civil actions," but with the addition of the six new plaintiffs, this litigation can go before the Panel "because it is two Complaints").[2] Thus, while Plaintiffs apparently disavow the

[2] Plaintiffs also argue that "when a single complaint is filed with multiple, unrelated plaintiffs and it is later consolidated with a separate suit with additional plaintiffs, it 'does not constitute a new filing of the case' and contrary to Respondents' rationale, would not constitute separate complaints for purposes of their processing by the Panel." Pet'r Supp. Br. at 7. But

argument that they used to prevent the action here from going to the Panel (until a second complaint was filed for six additional plaintiffs), there is nothing to stop future plaintiffs from raising the same argument, and thereby improperly manipulating the Panel's jurisdiction based on the number of complaints filed. *See* Resp. Supp. Br. at 13. Furthermore, Rule 3(a) not only preserves the Panel's ability to hear cases, it ensures that the Panel can do so properly: as the Panel explained, it has already used Rule 3(a) in a number of cases to facilitate proper management of the litigation, and the rule is necessary to allow the Panel to conduct an independent analysis of each plaintiff's claims. *See* Panel Br. at 5-8.

There is no plausible basis for Plaintiffs' argument that the Panel's interpretation will negate the Panel's own ability to hear cases. Plaintiffs ignore the fact that the Panel has held the same interpretation of Rule 3(a) since 2008 and continues to hear a variety of multi-plaintiff actions. *See* Resp. Supp. Br. at 13 & n.1; *see also* Panel Br. at 9. Plaintiffs argue that "almost every multi-plaintiff complaint filed against non-resident defendants that normally would be litigated before the Panel will be removed to federal court," Pet'r Supp. Br. at 2, but Plaintiffs fail to recognize the other requirements for diversity (*e.g.*, diverse plaintiffs and the amount-in-controversy requirement) that prevent all such cases from being removed. And Plaintiffs fail to explain why removal is an injustice to be avoided if all of these requirements are satisfied. Indeed, this Court has recognized that it should respect federal jurisdiction, particularly where doing otherwise would encourage forum shopping. *See, e.g.*, *State ex rel. Small v. Clawges*, 231 W. Va. 301, 745 S.E.2d 192, 201 (2013) ("'We conclude that the Hatridge claims are so intertwined and so interdependent that federal jurisdiction of the [husband's] claim appropriately promotes and supports federal jurisdiction of the [wife's loss of consortium claim] or, perhaps more accurately, prevents separation of the two for forum shopping purposes.'") (quoting *Hatridge v. Aetna Cas. & Sur. Co.*, 415 F.2d 809, 816 (8th Cir. 1969)).

Defendants do not suggest that the number of complaints matters for purposes of transfer to the Panel; that was *Plaintiffs'* argument below.

The only harm Plaintiffs seem to identify is that, once removed, the cases are "subject to transfer to remote MDLs." Pet'r Supp. Br. at 2. However, if the locus of the claims is in West Virginia, then the MDL itself may be located in West Virginia. *See, e.g., In Re Ethicon, Inc., Pelvic Repair System Prods. Liability Litig.*, MDL No. 2327 (S.D.W. Va.). And if, as in this case, the vast majority of the plaintiffs and all of the defendants are outside of West Virginia, then there is a possibility they could be transferred to an MDL in another state, but that is hardly a miscarriage of justice. *See* Panel Br. at 8 ("If such a suit [with no connection to West Virginia] cannot survive in West Virginia state court as a single complaint, it should not be permitted under the guise of a multi-plaintiff complaint."). Indeed, it is consistent with this Court's admonition that West Virginia should not become a target for forum shopping. *See* Resp. Supp. Br. at 14. In contrast, Plaintiffs' interpretation would allow the Panel to be overrun with endless civil actions having absolutely no nexus to West Virginia, making West Virginia a mecca for mass tort litigation. *See* Panel Br. at 8-9. In any event, under Plaintiffs' interpretation, the removal analysis depends not upon some notion of fairness as to which court is best situated to decide the case, but upon the happenstance of whether there is a different, non-diverse plaintiff who brings a claim in the same complaint. And, more to the point, the federal courts' decision about whether or not to transfer a case to an MDL provides no basis to ignore the clear language of Rule 3(a).

In sum, West Virginia lawyers have chosen to prosecute the claims of West Virginians before the Panel. This litigation presents an example of an out-of-state lawyer who was not selected for an MDL, *see In re: Zoloft (Sertraline Hydrochloride) Products Liability Litigation*, MDL No. 2342 (E.D. Pa.), and chose West Virginia as an alternative forum for non-West Virginia cases that also qualify for MDL adjudication. Thus, the possibility of those cases going to the MDL is consistent with the proper functioning of the West Virginia courts.

IV. The Panel Correctly Decided to Vacate the Consolidation Orders.

Because the circuit court's orders presumed consolidation was proper without analysis of the Rule 20 requirements, they conflicted with Rule 3(a). *See* Resp. Supp. Br. at 14-15. Indeed, Plaintiffs do not dispute that if the Panel properly interpreted Rule 3(a), then it was correct to vacate the circuit court's orders of consolidation.[3]

V. All of the Cases Plaintiffs Cite on Rule 3(a) Are Inapposite or Unpersuasive.

There is no significant authority that conflicts with the Panel's decision. All of the cases Plaintiffs rely upon in support of their interpretation of Rule 3(a), *see* Pet'r Supp. Br. at 1 n.1, are cases that Defendants already established are inapposite or unpersuasive, *see* Resp. Supp. Br. at 15-19.[4] While Plaintiffs suggest that the Panel's decision "directly contradicts prior rulings in this case from the Wayne County Circuit Court," Pet'r Supp. Br. at 1, in reality *none* of the circuit's courts orders interpreted Rule 3(a), Resp. Supp. Br. at 15-16. Indeed, their only mention of Rule 3(a) came in passing with respect to two factual points in the order regarding

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[3] The only argument Plaintiffs make on this issue is their assertion that "[i]t is undisputed in this case that Petitioners meet both of these tests [for consolidation under Rule 20] and that the[y] properly joined their claims against the Respondents in a single complaint." Pet'r Supp. Br. at 11. However, Defendants have never made any such concession, and, in any event, this issue is not appropriate for resolution on a writ of prohibition (*see* Resp. Supp. Br. at 15); Plaintiffs do not contest this point.

[4] The only new authority Plaintiffs cite is the Litigation Handbook on West Virginia Rules of Civil Procedure. *See* F. Cleckley, R. Davis & L. Palmer, LITIGATION HANDBOOK ON WEST VIRGINIA RULES OF CIVIL PROCEDURE (4th ed. 2012). However, the Litigation Handbook says nothing about whether Rule 3(a) creates separate cases for unrelated plaintiffs. Plaintiffs rely on language that "when a circuit court clerk receives a complaint, which lists multiple plaintiffs, that complies with the rules of civil procedure . . . , the clerk must file the complaint." Pet'r Supp. Br. at 5 (quoting Litigation Handbook at § 3(a)[2]). But the filing of the complaint does not indicate whether the complaint creates separate cases. Moreover, the Litigation Handbook makes clear that "for the purpose of mass litigation cases a complaint naming more than one individual [unrelated] plaintiff . . . must be . . . docketed as a separate civil action . . ." Litigation Handbook § 3(a)[2]. The Litigation Handbook also belies Plaintiffs' argument that Rule 20 creates a right to joinder at the time of suit. *See id.* § 20[2] ("Joinder under Rule 20 is wholly procedural and does not create nor alter the substantive rights of the parties."); *id.* § 20(a)[2] ("Joinder under Rule 20(a) is permissive and is left to the sound discretion of the trial court.").

forum non conveniens. *Id.* at 16 n.2. Moreover, Plaintiffs argue that Rule 3(a) simply codified *Cable v. Hatfield*, 202 W. Va. 638, 505 S.E.2d 701 (1998), *see* Pet'r Supp. Br. at 7-8, but *Cable* enabled the courts to collect multiple fees in multi-plaintiff cases, so that there was no need for the amendment to Rule 3(a) if it was intended purely for administrative purposes, as Plaintiffs suggest. Instead, its history indicates that it was adopted for the reasons stated by the Panel.

CONCLUSION

This Court should deny Plaintiffs' petition for a writ of prohibition because Plaintiffs have not demonstrated that the Mass Litigation Panel exceeded its legitimate powers, and the Panel correctly held that Rule 3(a) creates separate civil actions.

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STATE OF WEST VIRGINIA, *ex rel.* J.C., a minor, by and through his mother and next friend, MICHELLE COOK, et al,	)	
Petitioners,	)	Underlying:
v.	)	IN RE: ZOLOFT LITIGATION
	)	Civil Action No. 14-C-7000
THE HONORABLE JAMES P. MAZZONE, Lead Presiding Judge, Zoloft Litigation, Mass Litigation Panel, and PFIZER, INC., ROERIG, a division of Pfizer, Inc., and GREENSTONE, LLC f/k/a Greenstone, LTD.	)	
Respondents.	)	

VERIFICATION

I, Michael J. Farrell, counsel for Respondents, in accordance with W. Va. Code § 53-1-3 and Rule 16(d)(9) of the West Virginia Rules of Appellate Procedure, hereby verify that I am familiar with these proceedings, and that the Supplemental Reply Brief constitutes a fair and correct statement of the proceedings in the civil action identified in this Supplemental Reply Brief, based upon information and belief.

Michael J. Farrell
Counsel for Respondents

Subscribed and sworn before me this 2nd day of May, 2014.

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CERTIFICATE OF SERVICE

I, the undersigned counsel, hereby certify that service of the foregoing "**Pfizer Inc. and Greenstone LLC's Supplemental Reply Brief on Writ of Prohibition**" has been made via hand delivery and certified mail on this 2nd day of May, 2014, addressed as follows:

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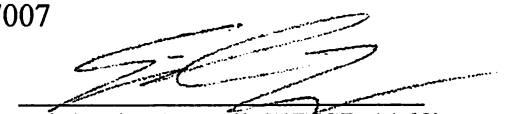

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