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JUN 29 2010

Carol E. Higbee, P.J.Cv.

McDONNELL & ASSOCIATES, P.C.

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Attorneys for Defendant, N.V.E., Inc.

\_\_\_\_\_  
DONNA A. NATALI, :  
: Plaintiff, :  
: v. :  
IOVATE HEALTH SCIENCES GROUP, :  
INC., et al., :  
: Defendants. :  
\_\_\_\_\_

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
ATLANTIC COUNTY  
  
DOCKET NO. ATL-L-1499-10  
  
CIVIL ACTION


*Denying*  
**ORDER GRANTING DEFENDANT N.V.E., INC.'S  
NOTICE OF MOTION FOR CHANGE OF VENUE**

This matter having been opened to the Court by the Law Offices of McDonnell & Associates, attorneys for Defendant N.V.E., Inc., in accordance with R. 4:3-3 for an Order transferring the venue of this Action to the Superior Court, Law Division, Sussex County, and the Court having reviewed the moving papers, and any opposition thereto, and for good cause shown;

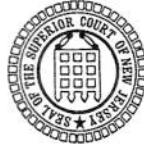
It is on this 29 day of June, 2010:

~~3. ORDERED that this action is hereby transferred to the Superior Court, Law Division, Sussex County, New Jersey, and~~  
*The request to change venue is denied for the reasons set forth in the attached memorandum.*

2. FURTHER ORDERED that a copy of this Order shall be served upon counsel for all other parties within seven (7) days of the date hereof.

  
CAROL E. HIGBEE, P.J.Cv.

Contested  
 Uncontested



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**NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON  
OPINIONS**

**SUPERIOR COURT OF NEW JERSEY  
COUNTIES OF  
ATLANTIC AND CAPE MAY**

CAROL E. HIGBEE, P.J.Cv.

1201 Bacharach Boulevard  
Atlantic City, NJ 08401-4527  
(609) 343-2190

**FILED**

**MEMORANDUM OF DECISION ON MOTION**  
**Pursuant to Rule 1:6-2(f)**

JUN 29 2010

**CASE:** Natali v. Iovate Health Sciences Group, Inc., et als **Carol E. Higbee, P.J.Cv.**  
**DOCKET #:** ATL-L-1499-10  
**DATE:** June 29, 2010  
**MOTION:** Change Venue to Sussex County  
**ATTORNEYS:** Josh Greenbaum, Esq. and Evan Caplan, Esq. – Defendants  
Ellen Relkin, Esq. - Plaintiff

Having carefully reviewed the papers submitted and any response received, I have ruled on the above Motion as follows:

**Factual and Procedural Background**

Plaintiff Donna A. Natali, a resident of Staten Island, New York, is the Administrator of the Estate of Douglas Robert Grell. Sergeant Grell served two tours of duty in Iraq and returned to the United States on April 3, 2008. While serving military duty in Iraq, Grell purchased Hydroxycut and Stacker at PX retail stores located in Iraq. One day after Grell returned from his second tour of duty in Iraq he passed away.

Natali, as Administrator of Grell's estate, filed suit in Atlantic County against the manufacturers of the Hydroxycut and Stacker products and retailer General Nutrition Centers ("GNC") alleging claims for wrongful death and survivorship, products liability, negligence, warranty, fraud, general business law, and punitive damages. Defendants Iovate Health Sciences Group, Inc., Iovate Health Sciences, U.S.A. Inc., Iovate Health Sciences Inc., Muscletech Research and Development, Inc., and Vitaquest International LLC were named for their involvement with Hydroxycut-products. NVE Inc. was named for its involvement with Stacker-brand products. Defendants GNC Corporation, GNC Oldco Corporation, General Nutrition Companies, Inc., and General Nutrition Centers, Inc. were named for their involvement in the sale of Hydroxycut and Stacker products in Iraq.

Iovate USA maintains its principal place of business in Delaware and New York. Iovate Group, Iovate, and Muscletech are Canadian corporations with their principal place of business in Canada. Vitaquest is a Delaware corporation with its principal place of business in West Caldwell, Essex County, New Jersey. NVE is a New Jersey corporation with its headquarters in Andover, New Jersey. The four GNC defendants are Delaware corporations with their principal places of business in Pittsburgh, Pennsylvania. None of the defendants were served with summons in Atlantic County.

Defendant NVE argues venue should be transferred to Sussex County for the convenience of the parties and witnesses and in the interests of justice. NVE argues that since it is a principal manufacturer its documents and witnesses will play a central role in this products liability action, and its presence in Sussex County should warrant consideration when looking at the convenience of the venue to the parties. NVE further argues that of the Hydroxycut-defendants, only Vitaquest has any connection with New Jersey and that is in Essex County. NVE argues that plaintiffs have no connection to Atlantic County and the defendants have no

more connection to Atlantic County than any other county in the state. NVE also argues that in the interest of justice the caseloads of the two venues should be considered and Atlantic County has a much greater caseload than Sussex County. NVE's final argument is that plaintiff's forum selection seems more designed to position the case for mass tort coordination than for the parties convenience.

Plaintiffs argue venue is properly laid in Atlantic County pursuant to R. 4:3-2(b) and NVE has failed to meet its burden of showing good cause to change venue based on an inconvenient forum. Plaintiffs also argue that in the interest of justice and efficiency this case should be maintained in Atlantic County because the Hydroxycut-defendants are defending multiple related cases in Atlantic County. Additionally, plaintiffs argue this litigation is particularly suited for coordination and should therefore remain in this county. With regard to each county's caseload, plaintiff points out that the discrepancy in the case loads is mainly due to the fact that the majority of the Atlantic County cases are related to mass-tort litigation.

#### **Legal Analysis**

Pursuant to R. 4:3-2(a)(3), venue in personal injury actions, such as the instant one, "shall be laid in the county in which the cause of action arose, or in which any party to the action resides at the time of its commencement, or in which the summons was served on a nonresident defendant." R. 4:3-2(b) provides, "For purposes of this rule, a corporation shall be deemed to reside in the county in which its registered office is located or in any county in which it is actually doing business." As NVE acknowledged, "all of the defendants, being manufacturers and retailers of nutritional products purchased and consumed nationwide, admittedly did business in Atlantic County, such that they are each 'deemed' residents pursuant to N.J.R. 4:3-2(b)." Def.'s Br. 4. Therefore, plaintiff properly laid venue in Atlantic County because all of the defendants are residents pursuant to R. 4:3-2(b).

Motions to change venue are governed by R. 4:3-3(a) which provides:

- (a) In actions in the Superior Court a change of venue may be ordered by the Assignment Judge or the designee of the Assignment Judge of the county in which venue is laid or by a judge of such county... (1) if the venue is not laid in accordance with R. 4:3-2; or (2) if there is a substantial doubt that a fair and impartial trial can be had in the county where venue is laid; or (3) for the convenience of parties and witnesses in the interest of justice...

Defendants argue venue should be changed pursuant to R. 4:3-3(a)(3) because Atlantic County is an inconvenient forum. When a motion is made pursuant to R. 4:3-3(a)(3), then the movant has the burden of demonstrating good cause for the change in venue. Pressler, Current NJ Court Rules, Comment on R. 4:3-3 (2010). The fact that some witnesses may have to travel from one end of the state to another does not ipso facto constitute good cause. Diodato v. Camden Cty. Park Comm'n, 136 N.J. Super. 324 (App. Div. 1975).

Defendant has failed to demonstrate good cause for a change of properly laid venue. Atlantic County is not an inconvenient forum for this matter. It was plaintiff's decision to file suit in Atlantic County and defendant has failed to demonstrate that decision creates such an inconvenience that in the interest of justice it should be changed. The fact that NVE is located in Sussex County is not enough to transfer venue. Defendants are doing business in Atlantic County and venue can and was properly laid in this county. Additionally, as plaintiff's counsel pointed out, depositions of many fact and expert witnesses will likely occur outside of Sussex County and all the counsel in this matter are based in Cherry Hill.

The case load of the two counties does not warrant a transfer in venue. While Sussex County has less active cases, a significant number of the active cases pending in Atlantic County are mass-tort related. The mass tort cases are most likely to be resolved *en masse* and not on an individual basis which makes a difference in assessing the burden on the court.

Additionally, while this motion was pending the Hydroxycut-defendants sought an order from this Court consolidating this case with the three other Hydroxycut cases pending in Atlantic County that were filed on or before June 15, 2010. After a case management conference held on June 25, 2010, those four pending hydroxycut-cases, including the present case, were consolidated for pre-trial purposes. This lends further support for this Court's decision to not transfer venue to Sussex County.

**Conclusion**

Defendant NVE's motion to change venue from Atlantic to Sussex County is denied.

  
\_\_\_\_\_  
CAROL E. HIGBEE, P.J.Cv.

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July 1, 2010

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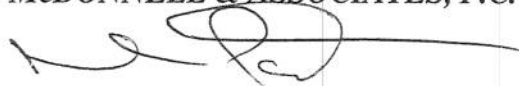
RE: *Natali a/a/p Grell v. Iovate Health Sciences Group, et al.*  
N.J. Law Division, Docket No. ATL-L-1499-10

Dear Ms. Relkin:

As you know, our firm represents Defendant N.V.E., Inc., in the above-referenced matter. Please find enclosed the Court Order and Memorandum Opinion denying our Motion to Transfer Venue, dated June 29, 2010, and received by this office today.

Thank you.

Very truly yours,  
**McDONNELL & ASSOCIATES, P.C.**



Roberto K. Paglione, Esquire

RKP.rp  
Enc.

cc: Evan B. Caplan, Esq.