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June 14, 2012

The Honorable John W. Herron
Administrative Judge
First Judicial District of Pennsylvania
Philadelphia Court of Common Pleas
Room 300, City Hall
Philadelphia, PA 19107

Dear Judge Herron:

I am writing in response to the Court's request for comment regarding *General Court Regulation No. 2012-01, In re: Mass Tort and Asbestos Programs* and, specifically, regarding the proposed deferral of Punitive Damages.

Paragraph 3 provides that "(a)ll punitive damage claims in mass tort claims shall be deferred". Deferral with no time limit will have the practical effect of eliminating claims for punitive damages altogether despite the fact that the right to recover punitive damages in appropriate cases is well-recognized under Pennsylvania law. See, e.g. *Hutchinson v. Luddy,* 582 Pa. 114, 870 A.2d 766 (2005).

Since much of the evidence relevant to the establishment of basic liability is also relevant to a claim for punitive damages, the deferral of claims for punitive damages will result in retrials of much of the basic cases before different juries, duplicating the time by the court and expenses incurred by the parties, thus, creating an additional backlog and imposing an oppressive burden on the plaintiffs' right to pursue a claim for punitive damages. This provision violates the right to trial by jury contained in Article 1, section 6 of the Pennsylvania Constitution, and also violates the guarantee that "(t)he courts shall be open and that every man for an injury done him ...shall have remedy by due course of law, ...without denial or delay" contained in Article 1, Section 11 of Pennsylvania Constitution. See, *Matos v. Thompson,* 491 Pa. 385, 387-88, 421 A.2d 190. 191 (1980), in which the Supreme Court held that the Pennsylvania Health Care Services Malpractice Act of 1975, requiring pre-trial arbitration of medical malpractice actions, was unconstitutional because it "failed in its goal to render expeditious resolution to medical

malpractice claims and consequently imposes an oppressive burden upon the right to jury trial guaranteed by our state constitution."

I thank you for your consideration of my comment.

Respectfully yours,

MICHAEL F. BARRETT

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Enclosures