IN THE SUPREME COURT OF THE STATE OF NEVADA

PHARMACIA & UPJOHN COMPANY LLC; WYETH; AND WYETH PHARMACEUTICALS, INC.,
Petitioners,
vs.
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE, AND THE HONORABLE ROBERT H. PERRY, DISTRICT JUDGE,
Respondents,
and
ARLENE ROWATT; PAMELA FORRESTER; AND JERALDINE SCOFIELD,
Real Parties in Interest.

No. 48118

FILED

OCT 30 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER DENYING PETITION FOR WRIT OF MANDAMUS

This original petition for a writ of mandamus challenges (1) a June 30, 2006 district court order that denied a motion to sever real parties in interests' trial and (2) a September 1, 2006 order that denied a motion for declaratory rulings on choice of law and trial severance matters.

Although the challenged orders each address trial severability and choice of law issues, the June 30 order primarily discusses trial severability, while the September 1 order focuses on choice of law issues. In challenging these orders, petitioner Pharmacia & Upjohn Company LCC, joined by Wyeth and Wyeth Pharmaceuticals, Inc., specifically requests that this court issue a writ of mandamus vacating the orders and directing the district court to set separate trials for real parties in interest, to apply Washington law to real party in interest Jeraldine Scofield's

claims, and to apply Oregon law to real party in interest Arlene Rowatt's claims.

A writ of mandamus is available to compel the performance of an act that the law requires, or to control an arbitrary or capricious exercise of discretion.[1] Mandamus is an extraordinary remedy, however—a petition for which is addressed to this court's sole discretion.[2]

First, with respect to the district court's decision to consolidate real parties in interests' trial, it appears that issues common to real parties in interest's claims outweigh, in terms of the amount of time and effort implicated by their presentation at trial, issues unique to each real party in interest, and thus militate in favor of a consolidated trial.[3] And the resolution of the issues common to real parties in interest is potentially dispositive of the underlying matter. Moreover, as the district court noted, petitioners' concerns of prejudice and jury confusion can be "addressed by the use of instructions to the jury, special interrogatories and verdict forms."[4] Thus, because any risk of prejudice and jury

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[1]See NRS 34.160; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

[2]See Poulos v. District Court, 98 Nev. 453, 455, 652 P.2d 1177, 1178 (1982).

[3]See NRCP 42; Hendrix v. Raybestos-Manhattan, Inc., 776 F.2d 1492, 1495 (11th 1995) (analyzing the federal counterpart to NRCP 42 and providing that the risks of unnecessary repetition and waste of time and effort weigh in favor of consolidating a trial, unless the attendant risks of prejudice and jury confusion cannot adequately be alleviated).

[4]See Hendrix, 776 F.2d at 1495. We note, moreover, that in their petition, petitioners succinctly fleshed out the issues unique to each real party in interest. It is unclear why petitioners could not make a similar presentation at trial.

confusion implicated by consolidating real party in interest's trial appears minimal and avoidable, we conclude that the district court did not manifestly abuse its discretion in consolidating real parties in interest's cases for the trial, and petitioners have not met their burden to demonstrate otherwise.[5]

Second, we note that a writ may be issued only when petitioner has no plain, speedy, and adequate legal remedy,[6] and that this court has consistently held that an appeal is an adequate and speedy legal remedy that will preclude writ relief.[7] Here, with respect to the district court's determination that Nevada law governs the underlying action, petitioners have not demonstrated that an appeal from any adverse final judgment would be inadequate.[8]

Accordingly, we are not satisfied that our intervention by way of extraordinary relief is warranted, and we

ORDER the petition DENIED.[9]

Becker, J.
Becker

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

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[5]See Pan v. Dist. Ct., 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

[6]NRS 34.170.

[7]See Pan, 120 Nev. at 224, 88 P.3d at 841.

[8]Id. at 228, 88 P.3d at 844.

[9]See NRAP 21(b).

cc: Hon. Robert H. Perry, District Judge
Kaye Scholer LLP
Snell & Wilmer, LLP/Las Vegas
Urquhart & De Santos, LLP
Lewis & Roca/Las Vegas
Lewis & Roca/Phoenix
White, Meany & Wetherall, LLP/Las Vegas
Washoe District Court Clerk