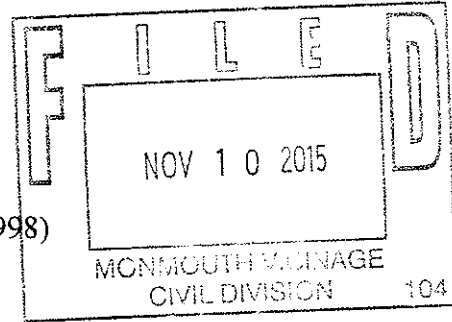


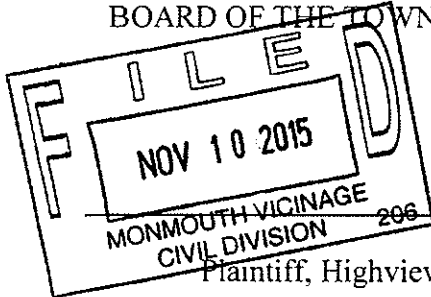
BISGAIER HOFF, LLC
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By: Richard J. Hoff, Jr., Esq. (NJ Bar No. 015811998)
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Attorneys for Plaintiff Highview Homes, LLC



HIGHVIEW HOMES, LLC,
Plaintiff,

v.

TOWNSHIP OF HAZLET and PLANNING
BOARD OF THE TOWNSHIP OF HAZLET,
Defendants.



SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY
LAW DIVISION

DOCKET No.: 4224-15

Civil Action

**COMPLAINT IN LIEU
OF PREROGATIVE WRITS**

(Mount Laurel)

Plaintiff, Highview Homes, LLC (“Highview”), a limited liability company organized under the laws of the State of New Jersey, with its principal place of business located at 280 Highway 35 South, Suite 150, Red Bank, NJ 07701, by way of Complaint says:

INTRODUCTION

1. This is an exclusionary zoning suit brought by Highview, which is the developer of the property involved in this litigation. The suit alleges that the Township of Hazlet (“Hazlet” or “Township” or “Defendant”) and the Planning Board of the Township of Hazlet (“Planning Board”) (collectively, “Defendants”) have failed to create sufficient realistic opportunities for the construction of safe, decent housing affordable to low- and moderate-income households and their fair share of the housing region’s need for such housing, and thereby are in violation of the New Jersey Constitution as construed by the New Jersey Supreme Court in Southern Burlington

County NAACP v. Township of Mount Laurel, 67 N.J. 151, appeal dism. and cert. denied, 423 U.S. 808, 96 S. Ct. 18, 46 L. Ed. 2d 28 (1975) (“Mount Laurel I”) and Southern Burlington Cnty. NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) (“Mount Laurel II”) (collectively, “Mount Laurel Doctrine”) and as implemented by the Legislature in the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq. and by the Council on Affordable Housing in its regulations, N.J.A.C. 5:91 through 5:93.

JURISDICTION

2. Jurisdiction over this litigation is established pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., and In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015).

PARTIES

3. Highview is a limited liability company organized under the laws of New Jersey with its principal place of business located at 280 Highway 35 South, suite 150, Red Bank, NJ 07701.

4. Defendant Township is a is a municipal corporation of the State of New Jersey, maintaining its principal office at 1766 Union Avenue in the Township of Hazlet, County of Monmouth, State of New Jersey.

5. Defendant Planning Board is the Township’s municipal agency responsible for formulating the Housing Element and Fair Share Plan of the municipal Master Plan and for reviewing certain applications for development as set forth in the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (“MLUL”).

FACTUAL BACKGROUND

Mount Laurel Doctrine

6. Pursuant to the Mount Laurel Doctrine, the New Jersey Supreme Court recognized that each municipality, including the Township, has a constitutional obligation to create a realistic opportunity for its “fair share” of the region’s need for affordable housing opportunities for low- and moderate-income households.

7. The New Jersey Legislature enacted the New Jersey Fair Housing Act of 1985, N.J.S.A. 52:27D-301, et seq. (“FHA”), to implement the Mount Laurel doctrine, and the FHA created a State agency, the Council on Affordable Housing (“COAH”).

8. Under the FHA, COAH was tasked with determining a methodology to establish the municipal fair share obligation and the methods to comply with that obligation.

9. Since 1986, COAH has promulgated two (2) Rounds of valid affordable housing obligations.

10. During each Round, COAH assigned each New Jersey municipality, including the Township, a present and prospective need for affordable housing.

11. The First Round, N.J.A.C. 5:92, addressed the time period from 1987 through 1993.

12. The Second Round, N.J.A.C. 5:93, was cumulative in nature and addressed the time period from 1987 through 1999.

13. Five years after the conclusion of the Second Round, COAH revised its methodology for calculating the Mount Laurel Obligation for the period 1999 and beyond, i.e., the Third Round, which was commonly referred to as the “growth share” methodology.

14. The growth share methodology was rejected by the Superior Court – Appellate Division in two separate opinions, In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1 (App. Div. 2007), and In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462 (App. Div. 2010), aff'd, 215 N.J. 578 (2013).

15. The Supreme Court affirmed the Appellate Division’s decision in In re Adoption of N.J.A.C. 5:96 and 5:97, supra, and directed COAH to adopt Third Round methodology consistent with the methodology utilized by COAH for the First and Second Rounds.

16. Despite the Supreme Court’s directive, COAH failed to adopt the necessary regulations for the Third Round.

17. On March 10, 2015, the Supreme Court issued an Opinion and Order establishing procedures for municipal compliance with the Third Round Mount Laurel Obligation. In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”).

18. Pursuant to the Mount Laurel IV, any municipality that had previously filed a petition for substantive certification with COAH is deemed to be a “participating jurisdiction” and can voluntarily institute a declaratory action in the Superior Court, which seeks approval of its revised Housing Element and Fair Share Plan addressing that municipality’s outstanding Mount Laurel Obligation for the Third Round period 1999-2025.

19. The Supreme Court issued a 90-day stay of its Mount Laurel IV decision in order to “allow[] all parties to prepare for the actions authorized pursuant to that Order.”

20. Following the 90-day stay, municipalities had an additional 30 days in which to file actions if they so chose, on notice and opportunity to be heard, to affirmatively seek

determination that their affordable housing plans are constitutionally compliant under the Mount Laurel Doctrine.

The Township's Mount Laurel Compliance

21. The Township cumulative Mount Laurel Obligation for the Second Round (1987-1999) was established at a total of 407 units.

22. Based upon calculations provided by the Fair Share Housing Center ("FSHC"), the Township's Third Round Mount Laurel Obligation stands at no less than 713 units.

23. The Township's Third Round Mount Laurel Obligation may exceed the projections of the FSHC.

The Township is Not Protected from This Lawsuit

24. The Township did not participate in the COAH process prior to the Supreme Court's decision in Mount Laurel IV.

25. The Township did not institute any action before COAH prior to the Supreme Court's decision in Mount Laurel IV.

26. Pursuant to Mount Laurel IV, the Township is not a "participating jurisdiction" and could not have voluntarily instituted a declaratory action in the Superior Court seeking approval of its revised Housing Element and Fair Share Plan addressing its outstanding Mount Laurel Obligation for the Third Round period 1999-2025.

27. To Highview's knowledge and belief, the Township has not adopted a Third Round Housing Element and Fair Share Plan in response to Mount Laurel IV.

28. In light of the foregoing, Defendants are not entitled to any protection from the filing of this lawsuit.

Highview's Proposed Inclusionary Development within the Township

29. Highview is the contract purchaser of an approximately 17 acre parcel located at 910 Highway 36, which is also known and designated as Block 68.13, Lot 26 and Block 69.01, Lot 8, according to the Township's tax and assessment map ("Property").

30. The proposed development for the Property is not permitted by the existing zoning.

31. Highview desires to construct an inclusionary development that will set aside a substantial amount of units within that development for occupancy by low income and moderate income households (the "Inclusionary Project").

32. Highview has attempted to voluntarily seek a rezoning of the Property to provide for the Inclusionary Project, but the Township has not indicated a willingness to revise its zoning regulations to allow for the Inclusionary Project.

33. The Property is available, approvable, developable and suitable for an inclusionary development pursuant to the N.J.S.A. 52:27D-307, as well as COAH's regulations, N.J.A.C. 5:93-1.3.

34. As a result, Highview seeks the Court's intervention to award a builder's remedy for the inclusionary development of the Property.

COUNT ONE - THE TOWNSHIP AND PLANNING BOARD

Violation of Mount Laurel Doctrine – Fair Share Obligation Second Round (1987-1999)

35. Highview incorporates each and every allegation set forth above as if set forth herein.

36. As set forth above, pursuant to the Act and COAH Rules, the Township was deemed by COAH in 1994 to have a cumulative, Second Round, Fair Share Obligation, exclusive of a rehabilitation obligation, of 407 units of affordable housing.

37. In accordance with Mount Laurel II, the Act, COAH Rules and the MLUL, the Planning Board had an affirmative obligation to develop an appropriate housing element and the Township has an affirmative obligation to adopt an appropriate fair share plan to satisfy the Township's Second Round, Fair Share Obligation of 407 units of affordable housing.

38. The Township has failed to adopt a fair share plan that creates a realistic housing opportunity to meet the Township's Second Round, Fair Share Obligation of 407 units of affordable housing.

39. The Township has not received substantive certification from COAH or a judgment of repose from the Superior Court or otherwise complied with its constitutional obligation under the Mount Laurel Doctrine and, therefore, it is not entitled to protection from Mount Laurel litigation.

40. Plaintiff's Property is approvable, available, developable and suitable for the construction of Plaintiff's Project as set forth in Mount Laurel II, the Act and COAH Rules.

41. In accord with the Mount Laurel Doctrine, Plaintiff is entitled to a builder's remedy on Plaintiff's Property to satisfy, in part, the Township's Second Round, Fair Share Obligation.

WHEREFORE, Plaintiff demands judgment as follows:

- a. declaring the Township's land use ordinances unconstitutional and unlawful;
- b. enjoining and directing the Township to adopt a Fair Share Plan so as to provide a realistic opportunity for the satisfaction of the Township's Second Round and Third

Round Fair Share Obligation which plan shall include the Plaintiff's Inclusionary Project as proposed for Plaintiff's Property;

c. granting Plaintiff a builder's remedy on Plaintiff's Property for the construction of Plaintiff's Inclusionary Project;

d. enjoining and directing the Township and the Planning Board to cooperate with Plaintiff with regard to the approval of and construction of Plaintiff's Inclusionary Project on Plaintiff's Property;

e. enjoining and directing the Township to cooperate with Plaintiff and to take all necessary, reasonable steps to ensure that Plaintiff's Inclusionary Project obtains adequate water and sewer and that the Plaintiff's sanitary sewer and potable water facilities receive all appropriate approvals from all relevant agencies for construction, expansion and upgrading so as to be able to serve Plaintiff's Inclusionary Project on the Plaintiff's Property;

f. directing the appointment of a Special Master, who shall serve at the expense of the Township, to provide guidance and testimony with regard to the Township's compliance with the Mount Laurel Doctrine and attend meetings and hearings on Plaintiff's Preliminary and/or Final Applications, assist the parties in mediating any dispute and providing the Court with a report and testimony on any matter that is not resolved amicably, any denial of the Preliminary and/or Final Application or appeal from approval of the Preliminary and/or Final Application, as well as assist in obtaining the approvals necessary to have sanitary sewer and potable water services in Plaintiff's Inclusionary Project of the Plaintiff's Property;

g. awarding Plaintiff attorneys' fees, costs of litigation, court costs and pre- and post-judgment interest; and

h. granting Plaintiff such other relief as the Court deems just and equitable.

COUNT TWO - THE TOWNSHIP AND PLANNING BOARD

Violation of Mount Laurel Doctrine – Fair Share Obligation Third Round (2000-2025)

42. Highview incorporates each and every allegation set forth above as if set forth herein.

43. Despite COAH's failings with respect to the adoption of valid regulations to address the affordable housing period from 2000-2025, the Township's obligation to comply with the Mount Laurel Doctrine was not abated or relieved.

44. As early 2013, with the Supreme Court's decision in and In re Adoption of N.J.A.C. 5:96 and 5:97, 215 N.J. 578 (2013), the Township was on notice that its Third Round obligation would and could be calculated utilizing the Second Round Rules.

45. Upon the utilization of that methodology, the Township has an additional Fair Share Obligation of at least seven hundred thirteen (713) units.

46. In accordance with Mount Laurel II, Mount Laurel IV, the Act, COAH Rules and the MLUL, the Planning Board has an affirmative obligation to develop an appropriate housing element and the Township has an affirmative obligation to adopt an appropriate fair share plan to satisfy both the Township's Prior Rounds Obligation of 407 units of affordable housing and the Township's Third Round obligation of at least 713 units.

47. The Township has failed to adopt a Fair Share Plan or otherwise comply with its constitutional obligation under the Mount Laurel Doctrine to create a realistic housing opportunity to meet the Township's Second Round or Third Round Mount Laurel Obligations.

48. In accord with the Mount Laurel Doctrine, Plaintiff is entitled to a builder's remedy on Plaintiff's Property to satisfy, in part, the Township's Second Round and Third Round Mount Laurel Obligations.

WHEREFORE, Plaintiff demands judgment as follows:

- a. declaring the Township's land use ordinances unconstitutional and unlawful;
- b. enjoining and directing the Township to adopt a Fair Share Plan so as to provide a realistic opportunity for the satisfaction of the Township's Second Round and Third Round Fair Share Obligation which plan shall include the Plaintiff's Inclusionary Project as proposed for Plaintiff's Property;
- c. granting Plaintiff a builder's remedy on Plaintiff's Property for the construction of Plaintiff's Inclusionary Project;
- d. enjoining and directing the Township and the Planning Board to cooperate with Plaintiff with regard to the approval of and construction of Plaintiff's Inclusionary Project on Plaintiff's Property;
- e. enjoining and directing the Township to cooperate with Plaintiff and to take all necessary, reasonable steps to ensure that Plaintiff's Inclusionary Project obtains adequate water and sewer and that the Plaintiff's sanitary sewer and potable water facilities receive all appropriate approvals from all relevant agencies for construction, expansion and upgrading so as to be able to serve Plaintiff's Inclusionary Project on the Plaintiff's Property;
- f. directing the appointment of a Special Master, who shall serve at the expense of the Township, to provide guidance and testimony with regard to the Township's compliance with the Mount Laurel Doctrine and attend meetings and hearings on Plaintiff's Preliminary and/or Final Applications, assist the parties in mediating any dispute and providing the Court with a report and testimony on any matter that is not resolved amicably, any denial of the Preliminary and/or Final Application or appeal from approval of the Preliminary and/or Final

Application, as well as assist in obtaining the approvals necessary to have sanitary sewer and potable water services in Plaintiff's Inclusionary Project of the Plaintiff's Property;

g. awarding Plaintiff attorneys' fees, costs of litigation, court costs and pre- and post-judgment interest; and

h. granting Plaintiff such other relief as the Court deems just and equitable.

BISGAIER HOFF, LLC
Attorneys for Plaintiff
Highview Homes, LLC

A handwritten signature in black ink, appearing to read "R. Hoff, Jr.", is written over a horizontal line. The signature is stylized and somewhat cursive.

Richard J. Hoff, Jr., Esq.

Dated: November 10, 2015

DESIGNATION OF TRIAL COUNSEL

Pursuant to Rule 4:25-4, Richard J. Hoff, Jr., Esq., is hereby designated as trial counsel on behalf of Plaintiff Highview Homes, LLC.

BISGAIER HOFF, LLC
Attorneys for Plaintiff
Highview Homes, LLC

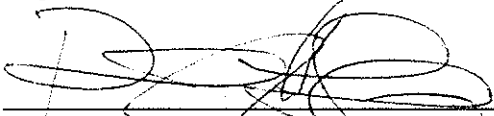

Richard J. Hoff, Jr., Esq.

Dated: November 10, 2015

RULE 4:5-1 CERTIFICATION




I hereby certify that the subject matter of the within controversy is not the subject of any other action in any court or arbitration proceeding to the best of my knowledge, information and belief and that no other action or arbitration proceeding is contemplated.

BISGAIER HOFF, LLC
Attorneys for Plaintiff
Highview Homes, LLC


Richard J. Hoff, Jr., Esq.

Dated: November 10, 2015

Appendix XII-B1

| | | | | | |
|--|---|--|---|-----------------------------|--|
|  | CIVIL CASE INFORMATION STATEMENT (CIS) | | FOR USE BY CLERK'S OFFICE ONLY | | |
| | | | PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA | | |
| | | | CHG/CK NO. | | |
| | | | AMOUNT: | | |
| | | | | OVERPAYMENT: | |
| | | | | BATCH NUMBER: | |
| ATTORNEY / PRO SE NAME Richard J. Hoff, Jr., Esquire | | TELEPHONE NUMBER (856) 795-0150 | | COUNTY OF VENUE Monmouth | |
| FIRM NAME (if applicable) Bisgaier Hoff, LLC | | | DOCKET NUMBER (when available) | | |
| OFFICE ADDRESS 25 Chestnut Street, Suite 3 Haddonfield, NJ 08033 | | | DOCUMENT TYPE Complaint | | |
| | | | JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | |
| NAME OF PARTY (e.g., John Doe, Plaintiff) Highview Homes, LLC, Plaintiff | | CAPTION Highview Homes, LLC v. Township of Hazlet, et al | | | |
| CASE TYPE NUMBER (See reverse side for listing) 701 | HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO | IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT. | | | |
| RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | IF YES, LIST DOCKET NUMBERS | | | |
| DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN | | | |
| THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE. | | | | | |
| CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION | | | | | |
| DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS | | | |
| DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input type="checkbox"/> No | | | | | |
| USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION | | | | | |
|  DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION | | | |
| WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | | IF YES, FOR WHAT LANGUAGE? | | | |
| I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b). | | | | | |
| ATTORNEY SIGNATURE:  | | | | | |



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|--|---|
| <ul style="list-style-type: none"> 271 ACCUTANE/ISOTRETINOIN 274 RISPERDAL/SEROQUEL/ZYPREXA 278 ZOMETA/AREXIA 279 GADOLINIUM 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL 282 FOSAMAX 285 STRYKER TRIDENT HIP IMPLANTS 286 LEVAQUIN 287 YAZ/YASMIN/OCELLA 288 PRUDENTIAL TORT LITIGATION | <ul style="list-style-type: none"> 289 REGLAN 290 POMPTON LAKES ENVIRONMENTAL LITIGATION 291 PELVIC MESH/GYNECARE 292 PELVIC MESH/BARD 293 DEPUY ASR HIP IMPLANT LITIGATION 295 ALLODERM REGENERATIVE TISSUE MATRIX 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS 297 MIRENA CONTRACEPTIVE DEVICE 601 ASBESTOS 623 PROPECIA |
|--|---|

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category Putative Class Action Title 59