

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY

3  
4 SENJU PHARMACEUTICAL CO., LTD.,  
5 BAUSCH & LOMB, INC., and  
6 BAUSCH & LOMB PHARMA CORP.,

7 Plaintiffs,

8 vs.

9 CIVIL ACTION  
10 NO. 14-3962 (JBS)

11 METRICS, INC., COASTAL  
12 PHARMACEUTICALS, INC., MAYNE  
13 PHARMA GROUP LIMITED, and  
14 MAYNE PHARMA (USA), INC.

15 Defendants.

16 UNITED STATES COURTHOUSE  
17 ONE JOHN F. GERRY PLAZA  
18 4TH AND COOPER STREETS  
19 CAMDEN, NEW JERSEY 08101  
20 FRIDAY, OCTOBER 3, 2014

21 B E F O R E: THE HONORABLE JEROME B. SIMANDLE  
22 CHIEF JUDGE  
23 UNITED STATES DISTRICT JUDGE

24 A P P E A R A N C E S:

25 PEPPER HAMILTON, LLP  
BY: MELISSA ANNE CHUDEREWICZ, ESQUIRE  
301 Carnegie Center  
Suite 400  
Princeton, New Jersey 08543-5276  
(609) 452-0808  
chudereviczm@pepperlaw.com  
ATTORNEYS FOR PLAINTIFFS

LISA MARCUS, RMR, CRR  
CERTIFICATE # 1492  
OFFICIAL U. S. REPORTER

1 THE COURT: So next Thursday would be October 9th for  
2 the supplemental brief of the defendant. And then six days  
3 after that would be the 15th for the supplemental brief of the  
4 plaintiff. And I will enter an Order with these kind of  
5 bookkeeping dates in it. And the issue, of course, just so  
6 the record is not confused, is any additional case citations  
7 that support or negate the proposition that service upon the  
8 registered agent of an out of state corporation is sufficient  
9 to confer not only service but also personal jurisdiction.

10 Okay?

11 MR. GAUDET: Nothing further from us, your Honor.

12 Thank you.

13 MR. HASFORD: Thank you, your Honor.

14 THE COURT: All right. So where does that leave us  
15 with regard to Coastal Pharmaceuticals, Mayne Pharma Group  
16 Limited, and Mayne Pharma USA, Inc.?

17 Let me ask a question of Mr. Hasford. Whether you're  
18 in agreement with the defendant's position that Coastal  
19 Pharmaceuticals is really not anything other than a d/b/a, do  
20 you agree with that?

21 MR. HASFORD: Well, it appears, your Honor, that  
22 they've conceded that Coastal Pharmaceuticals is a d/b/a of  
23 Metrics. Coastal Pharmaceuticals is identified on documents  
24 that they submitted to the FDA in connection with their ANDA,  
25 so we may very well need discovery, jurisdictional discovery

1 to determine the full extent of the relationship there.

2 THE COURT: Well, I think that the defendants are  
3 saying, Mr. Gaudet, correct me if I am wrong, that Coastal  
4 Pharmaceuticals is not a juridical party, it's not anything  
5 other than a trade name.

6 Is that right?

7 MR. GAUDET: That's correct, your Honor. The only  
8 type of registration that we're aware of is a registration to  
9 do business in certain states under the trade name but  
10 referencing back to Metrics, Inc., which is the jurisdictional  
11 capable party, so to speak, and so our view is simply Coastal  
12 Pharmaceuticals would necessarily rise and fall with Metrics,  
13 Inc.

14 THE COURT: And you're representing it's not  
15 incorporated in any state?

16 MR. GAUDET: Yes, your Honor.

17 MR. HASFORD: So we're fine with that, your Honor.  
18 They've represented that Coastal is a d/b/a of Metrics and  
19 we're fine with that representation as being one and the same.

20 THE COURT: So may I enter an Order that dismisses  
21 without prejudice the claims against Coastal Pharmaceuticals  
22 without prejudice to pursuing any such claims against Metrics?

23 MR. HASFORD: Of course.

24 THE COURT: Or language to that effect.

25 MR. HASFORD: With the understanding, your Honor,

1 that Metrics is in fact Coastal. In other words, we would --  
2 if your Honor entered that kind of an order, we would want to  
3 ensure that Coastal remained bound by any judgment as to  
4 Metrics as though they're one and the same.

5 THE COURT: Well, does Metrics agree that Coastal is  
6 a trade name for Metrics?

7 MR. GAUDET: Yes. As a d/b/a, absolutely. And, your  
8 Honor, if there were some judgment, it would certainly cover,  
9 you know, certainly entity in privity, in fact the same  
10 entity, so we don't have any problem with relief ultimately  
11 reaching Coastal Pharmaceuticals as well to the extent that  
12 that is something that one can even speak of.

13 MR. HASFORD: We're fine with that, your Honor.

14 THE COURT: Then any relief against Metrics would  
15 reach Coastal as well. And, of course, the Court is accepting  
16 the defense representation that Coastal is not incorporated in  
17 any state. And so I will enter an Order that hopefully will  
18 clarify things. It means we're down to three parties  
19 defendant in this case, we have Metrics, Inc., Mayne Pharma  
20 Group Limited, and Mayne Pharma USA, Inc. It seems that  
21 there's no further discovery needed as to Metrics, Inc., it's  
22 a legal issue.

23 Should we put the discovery question aside until I  
24 decide the Metrics issue?

25 MR. GAUDET: Your Honor, that would very much be our

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, LISA MARCUS, Official Court Reporter for the United States District Court for the District of New Jersey, Certified Shorthand Reporter and Notary Public of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcription of my original stenographic notes to the best of my ability of the matter hereinbefore set forth.

S/Lisa Marcus, CSR  
LISA MARCUS  
Official U. S. Reporter  
N.J. Certificate No. XI01492

DATE: October 7, 2014