**UNITED STATES DISTRICT COURT**
**DISTRICT OF NEW JERSEY**

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| DEBORAH FELLNER,<br><br>Plaintiff,<br><br>v.<br><br>TRI-UNION SEAFOODS, L.L.C.,<br>d/b/a CHICKEN OF THE SEA,<br><br>Defendant | **Civil Action No. 06-688 (DMC)(JAD)**<br><br>**Returnable AUGUST 19, 2012** |

**PLAINTIFF'S REPLY BRIEF IN SUPPORT OF THE PRO HAC VICE ADMISSION OF STEPHEN G. GRYGIEL**

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## INTRODUCTION

Plaintiff has filed a motion for the *pro hac vice* admission of Stephen G. Grygiel. Opposing that usually unopposed motion, Defendant fails to provide any legitimate reason for denying it. Defense counsel Kenneth A. Schoen's Affidavit cites no authority whatsoever for the novel standards he argues the court should apply to deny this *pro hac vice* application. The reason counsel can muster no authority is obvious. Counsel has chosen to completely ignore L. Civ. R. 101.1 and, having created his own standards, asks this court to adopt them in a sheer *ipse dixit.* This approach is as unsettling as it is unsupported. See *Ghaleb v. U.S. Ship Management*, 2005 WL 1225177, 5 (D.N.J. 2005) ("defendant's hardline approach to [the application for *pro hac vice* admission of] Mr. Matthews, a member of the bar for 55 years, is also somewhat unsettling." Honorable Mark J. Falk, U.S.M.J who formerly presided over the instant case.).

Federal courts, including those in this District, liberally grant *pro hac vice* admissions. Mr. Grygiel's application meets all of the requirements of L. Civ. R. 101.1. This court should grant Mr. Grygiel's admission *pro hac vice*.

## LEGAL ARGUMENT

### I. IN FEDERAL COURTS, PRO HAC VICE ADMISSION IS LENIENTLY GRANTED

"Typically, a liberal approach is taken by federal courts in all jurisdictions in allowing out-of-state attorneys to practice in federal courts of jurisdictions where they are not admitted to the bar." *Kohlmayer v. National R.R. Passenger Corp.*, 124 F.Supp.2d 877, 880 (D.N.J. 2000). "[A]lthough at one time pro hac vice status was considered to be granted and held at the grace of the court, we believe that in this era of interstate practice of law, such a notion cannot be applied too literally or strictly." *Johnson v. Trueblood*, 629 F.2d 302, 303 (3d Cir. 1980). "Generally, motions for pro hac vice admission are granted as a matter of course." *Kampitch v. Lach*, 405 F.Supp.2d 210, 215 (D.R.I. 2005).

In the District of New Jersey, L. Civ. R. 101.1 governs *pro hac vice* admission. "L. Civ. R. 101.1 confers broad discretion to a court in admission of pro hac vice counsel." *Koch Materials Co. v. Shore Slurry Seal, Inc.*, 208 F.R.D. 109, 122 (D.N.J. 2002). The rule reads:

> Any member in good standing of the bar of any court of the United States or of the highest court of any state, who is not under suspension or disbarment by any court and is ineligible for admission to the bar of this Court under L. Civ. R. 101.1(b), may in the discretion of the Court, on motion, be permitted to appear and participate in a particular case.

L. Civ. R. 101.1(c)(1). Therefore, the only requirements Mr. Grygiel is required to meet to appear *pro hac vice* in this case, are (1) to be a member in good standing of a bar of the highest court of any state, and (2) not be suspended or disbarred by any court. As his declaration shows, Mr. Grygiel is admitted to practice in Delaware, New York, Maine and Massachusetts. (Decl. Grygiel ¶ 3.) Mr. Grygiel is not under suspension or disbarment in any court. Nor has he ever been disciplined in any jurisdiction. (Decl. Grygiel ¶ 4.) Therefore, Mr. Grygiel has satisfied all

of the prerequisites to be admitted *pro hac vice* in this case. See also *In re Evans*, 524 F.2d 1004, 1007-08 (5th Cir. 1975) ("An applicant for admission pro hac vice who is a member in good standing of a state bar may not be denied the privilege to appear except on a showing that in any legal matter, whether before the particular district court or in another jurisdiction, he has been guilty of unethical conduct of such a nature as to justify disbarment of a lawyer admitted generally to the bar of the court.").

Defendant's opposition makes no reference at all to L. Civ. R. 101.1. Wishing away the liberal approach taken by all federal courts including the District of New Jersey in granting applications for *pro hac vice* admission, Defendant argues, with citation to precisely zero authority, that this court should require a showing of "good cause." (Decl. Kenneth A. Schoen ¶ 7.) By the end of his Declaration, defendant's counsel has upped the already insupportable ante yet higher, now claiming - again without any support in statutes, case law, rules or local rules - that a "compelling reason" is required for a *pro hac vice* admission. Defendant's opposition proffers no support for this unilateral rewriting of the governing rule, nor any reason why this Court should invent and apply a previously unknown "good cause" or "compelling reason" standard. (Decl. Kenneth A. Schoen ¶ 13.)

Defendant also argues a laundry list of criteria (not present in L. Civ. R. 101.1) that this court should require of Mr. Grygiel without citing any support whatsoever that any of the suggested requirements have ever been adopted in this district or any federal court: "case involves a complex field of law in which he is a specialist" (Decl. Kenneth A. Schoen ¶ 8); "long-standing attorney-client relationship with the Plaintiff" (Decl. Kenneth A. Schoen ¶ 9); "lack of local counsel with adequate expertise in the field involved" (Decl. Kenneth A. Schoen ¶ 10); "case implicates any law from a jurisdiction where Mr. Grygiel is licensed with which he

has any expertise" (Decl. Kenneth A. Schoen ¶ 11); and "need for extensive discovery or other proceedings in a foreign jurisdiction...in which he is licensed" (Decl. Kenneth A. Schoen ¶ 12).

Defendant's opposition to Mr. Grygiel's *pro hac vice* application is not just legally baseless but equitably estopped. A traditionally lenient standard permitted the admission of Defendant's counsel, John Kiernan, *pro hac vice* in this case. (ECF nos. 7 and 12). A review of Mr. Kiernan's Affirmation (ECF no. 7-2) and the Affirmation of Scott Goldstein in support of Mr. Kiernan's *pro hac vice* admission (ECF no. 7-4) reveal that Mr. Kiernan's application satisfies none of the requirements Defendant asks this Court to require of Mr. Grygiel.

First, the cause of action in this case is brought pursuant to the New Jersey Product Liability Act. Mr. Kiernan is admitted to practice only in Massachusetts. Neither Mr. Kiernan nor Mr. Goldstein declares that Mr. Kiernan is a "specialist" in New Jersey law or the NJPLA. Mr. Kiernan's profile on his firm's web site is devoid of any references whatsoever to any experience litigating cases brought under the New Jersey Product Liability Act.[1]

Second, neither Mr. Kiernan nor Mr. Goldstein affirms that Mr. Kiernan has a "long-standing attorney-client relationship" with the Defendant. Rather, both Mr. Kiernan and Mr. Goldstein merely affirm that Defendant has "asked" that Mr. Kiernan represent it in this action. (See ECF No. 7-2, Aff. of Kiernan ¶ 3) (ECF No. 7-4, Aff. of Goldstein ¶ 4).

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[1] Senior lawyers' profiles on a firm's website likely do not encompass the totality of the attorneys' experience and knowledge. Nevertheless, defense counsel Kenneth A. Schoen in his Declaration has referred to Mr. Grygiel's web site profile as the totality of Mr. Grygiel's experience and knowledge. (Decl. of Kenneth A. Schoen ¶ 8.) No such standard was applied to the *pro hac vice* application of defense counsel, John Kiernan. Defendant is judicially estopped from arguing that a different and more rigorous standard be applied to the *pro hac vice* application of Mr. Grygiel.

Third, neither Mr. Kiernan nor Mr. Goldstein affirms that there is "a lack of local counsel with adequate expertise in the field involved" nor could they. Both Mr. Schoen and Mr. Goldstein represent and have appeared on behalf of the Defendant in this action, are admitted to practice in the State of New Jersey and in the District of New Jersey, and are a partner and an associate at the same firm with John Kiernan. Therefore, the Defendant is already represented by able counsel with adequate expertise in New Jersey law without the *pro hac vice* admission of John Kiernan.

Fourth, neither Mr. Kiernan nor Mr. Goldstein affirms that this case "implicates any law from a jurisdiction where [Mr. Kiernan] is licensed," namely, Massachusetts. Nevertheless, in his declaration, Mr. Schoen criticizes Mr. Grygiel because this case does not implicate law from a jurisdiction where Mr. Grygiel is admitted to practice. (Decl. of Kenneth A. Schoen ¶ 11.)

Fifth, neither Mr. Kiernan nor Mr. Goldstein affirms that "there is need for extensive discovery or other proceedings in a foreign jurisdiction ... in which he is licensed to practice," namely, Massachusetts. Yet, Mr. Schoen, in his declaration, criticizes Mr. Grygiel because this case does not require discovery from a jurisdiction where Mr. Grygiel is admitted to practice. (Decl. of Kenneth A. Schoen ¶ 12.)

In sum, Defendant urges this Court to adopt a far more stringent approach in ruling on Mr. Grygiel's *pro hac vice* application than the Court employed in granting the *pro hac vice* application of Mr. Kiernan. Because the Defendant was successful in its application for the *pro hac vice* admission of John Kiernan under a more lenient standard, Defendant is judicially

estopped from arguing that a different and more rigorous standard be applied to the *pro hac vice* application of Mr. Grygiel.[2]

Additionally, Mr. Schoen has set forth in his declaration (without any support whatsoever and all evidence to the contrary) that Plaintiff's counsel is seeking the *pro hac vice* admission of Mr. Grygiel for the sole purpose of "conducting a fishing expedition for a future class action lawsuit." (Decl. of Kenneth A. Schoen ¶ 6.) Again Mr. Schoen offers no support whatsoever in his declaration for his accusation. Nor could he. Plaintiff's counsel entered into an agreement long ago and ***voluntarily*** to dismiss the class allegations in the complaint. (ECF No. 13.) If Plaintiff and her counsel intended to pursue this case as a class action, the class action claims would not have been dismissed ***voluntarily***. Furthermore, as this Court is well aware, Plaintiff's document demand and interrogatory requests do not include any demands or requests for class discovery. As such, Mr. Schoen's accusations are untrue, absurd and meritless.[3]

Finally, when this case was first filed, Khalid Elhassan, Esq. was an associate of this firm and represented the Plaintiff in this case. Mr. Elhassan was admitted *pro hac vice*. (See ECF No. 10.) Because Mr. Elhassan is no longer an associate at this firm, Plaintiff requests that Mr. Grygiel assist counsel in the prosecution of her case.

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[2] Judicial estoppel is a tool used by courts to prevent "a party from playing fast and loose with the courts by adopting conflicting positions in different legal proceedings (or different stages of the same proceeding)." *In re Teleglobe Communs. Corp.*, 493 F.3d 345, 377 (3d Cir. 2007). Judicial estoppel is appropriate where the party to be estopped convinced a court to "accept [i.e., relied upon] its earlier position." *U.S. v. Pelullo*, 399 F.3d 197, 223 (3d Cir. 2005) (quoting *Montrose Medical v. Bulger*, 243 F.3d 773, 778 (3d Cir. 2001)).

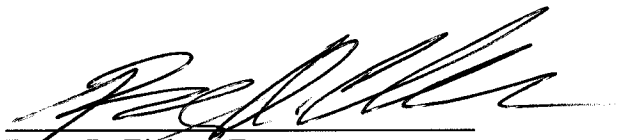
[3] Noticeably absent from Mr. Schoen's Declaration is a statement declaring that if any of the statements he makes are willfully false, he is subject to punishment.

## CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that the Court grant the *pro hac vice* admission of Stephen G. Grygiel.

Dated: August 07, 2012

Respectfully submitted,

By: 

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