

Another Expert Exclusion Order Secured by Colleen Hennessey and Team in New Jersey Accutane-IBD Litigation is Affirmed by the New Jersey Appellate Division

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In the wake of the Supreme Court of New Jersey's landmark decision in In re Accutane Litigation, 234 N.J. 340 (N.J. 2018), which dismissed 2,000 claims alleging Accutane caused Crohn's disease, the Appellate Division of the New Jersey Superior Court has affirmed a second trial court decision excluding plaintiffs' expert witnesses who sought to testify that Accutane was capable of causing ulcerative colitis. This affirmation will result in the dismissal of the remaining 3,000-plus Accutane-IBD lawsuits. A copy of the Accutane-ulcerative colitis decision can be found here: [link](#).

In the latest Accutane decision, the Appellate Division affirmed the trial court's finding that plaintiffs' expert opinions regarding the alleged relationship between Accutane and ulcerative colitis "slanted away from objective science and in the direction of advocacy." The trial court found that plaintiffs' experts rejected scientific norms by elevating lower forms of scientific evidence over the existing epidemiological evidence which did not support an association, let alone causation, between the ingestion of Accutane and the development of ulcerative colitis. In the case of ulcerative colitis, plaintiffs' experts were found to improperly rely on a single sub-finding in one epidemiological study that has not been replicated in the ten years since it was published. In a 31-page affirmance, the Appellate Division held that "[t]he trial judge did not abuse his discretion in barring the expert testimony in question. Instead, he engaged in the very same type of gatekeeping which the Supreme Court approved in its prior decision."

The New Jersey Supreme Court's 2018 Accutane-Crohn's decision ushered in a strengthened standard for admissibility of expert testimony by incorporating the rigorous federal *Daubert* factors into New Jersey's existing law on the admissibility of expert scientific testimony. Our prior news release on the 2018 Accutane-Crohn's decision can be found here: [link](#). That decision, and this most recent decision, are consistent with other *Daubert* victories secured in the Accutane litigation. A news post concerning Peabody & Arnold's role in securing a related Accutane-*Daubert* win, affirmed by the Nebraska Supreme Court, can be found here: [link](#).

The exclusion of the plaintiffs' experts at the trial court level was again spearheaded by Peabody & Arnold LLP partner, Colleen M. Hennessey, who has served as science counsel in the Accutane litigation. Colleen and Peabody & Arnold have devoted over a decade of work to the Accutane-IBD litigation with the goal of ensuring that scientific rigor prevails in pharmaceutical product liability litigation. They were also at the forefront of prior successful challenges to scientifically unsupported allegations that Accutane was associated with psychiatric side effects.