

Sweeny, J.P., Catterson, Renwick, Freedman, Abdus-Salaam, JJ.

1843-

1844	Beverly Ann Avery, et al., Plaintiffs-Appellants,	Index 115492/07
		112530/06
		115493/07
	-against-	109837/06
		112531/06
	Pfizer, Inc.,	114267/06
	Defendant-Respondent.	109840/06
		115491/07
		155337/08
		112536/06
		112532/06
		109846/06
		112534/06
		109852/06
		112533/06
		109851/06
		107932/06

Mark Jay Krum, New York, for appellants.

Skadden, Arps, Slate, Meagher & Flom LLP, New York (Mark S. Cheffo of counsel), for respondent.

Order, Supreme Court, New York County (Martin Shulman, J.), entered June 17, 2008, which granted defendant's motion to dismiss plaintiff Charles M. Wilson's complaint on the ground of forum non conveniens, unanimously affirmed, without costs.

All of the above plaintiffs, except Charles M. Wilson, have stipulated to a conditional dismissal of their respective complaints based on the court's reasoning in dismissing Wilson's complaint, as they are similarly situated to Wilson. Wilson, who allegedly suffered injuries as a result of his use of defendant's drug Lipitor, is a resident of Georgia; his physician who

recommended and prescribed the drug, and on whose recommendation Wilson solely relied, lives in Georgia; Wilson ingested the drug in Georgia and suffered his injuries in Georgia; all of Wilson's treating physicians are in Georgia; and all of Wilson's witnesses are in Georgia. Under these circumstances, the court properly granted defendant's motion (see *Nicholson v Pfizer, Inc.*, 278 AD2d 143 [2000]; see generally *Islamic Republic of Iran v Pahlavi*, 62 N.Y.2d 474, 478-479 [1984], cert denied 469 US 1108 [1985]). Plaintiffs' "bare assertion[s]" of fraud (*Devore v Pfizer, Inc.*, 58 AD3d 138, 143 [2008], lv denied 12 NY3d 703 [2009]), allegedly committed at defendant's corporate headquarters in New York, are insufficient to create a substantial nexus with New York outweighing the compelling reasons for dismissal. We decline to disregard the traditional forum non conveniens factors in favor of a "mass tort litigation" approach (see e.g. *Matter of OxyContin II*, 23 Misc 3d 974 [Sup Ct, Richmond Co. 2009]). Nor do we find defendant's alleged delay in making this motion sufficient to warrant its denial.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: DECEMBER 22, 2009


DEPUTY CLERK