

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

**IN RE: INVOKANA (CANAGLIFLOZIN)
PRODUCTS LIABILITY LITIGATION**

:
: **MDL NO. 2750**
:
: Case No. 3:16-md-2750
:
: **JUDGE BRIAN R. MARTINOTTI**
: **JUDGE LOIS H. GOODMAN**
:

THIS DOCUMENT RELATES TO: ALL CASES

CASE MANAGEMENT ORDER #22

These matters, having been transferred to this Court by order of the Judicial Panel on Multidistrict Litigation pursuant to its order of December 7, 2016, merit special attention as complex litigation, the Court having entered an Initial Case Management Order [ECF No. 8] on December 21, 2016, setting forth the Court's parameters and expectations of counsel during the course of this litigation and having scheduled this initial case management conference, the Court having held a case management conference on September 7, 2017, with the Honorable Lois H. Goodman, U.S.M.J., also presiding, for good cause shown and for the reasons set forth on the record, the Court enters the following Order:

I. STATUS OF LITIGATION

A. As of August 31, 2017, 775 cases have been filed in this District with 637 complaints being served.

II. ORDERS ENTERED SINCE CASE MANAGEMENT ORDER #19

A. Case Management Order #20 [ECF No. 218] regarding Bellwether Selection entered July 27, 2017; and

- B. Case Management Order #21 [ECF No. 225] regarding Defendants' Corporate Disclosure Statements entered August 25, 2017.

III. CASE MANAGEMENT

- A. Court Appointment – It is the Court's continued intention to appoint a special master. Counsel shall continue to meet and confer regarding this appointment and shall report as to the status of same at the next case management conference.
- B. Mitsubishi Defendants – To date, the Mitsubishi Defendants have not been dismissed from the following member cases, and Plaintiffs are again reminded to dismiss the Mitsubishi Defendants pursuant to Case Management Order #7:
 - 1. *Lessard*, 16-9381 (Michael Hingle & Assocs.)
 - 2. *Williams*, 17-805 (Milstein Adelman Jackson Fairchild & Wade, LLP)
 - 3. *Sanford*, 17-1288 (Latham, Wagner, Steele & Lehman)
 - 4. *Aguirre*, 17-5940 (Milstein Adelman Jackson Fairchild & Wade, LLP)
- C. Plaintiff and Defense Fact Sheets and Implementing Order – Per CMO #18, entered June 16, 2017:
 - 1. For cases assigned to MDL as of May 3, 2017: Plaintiff Fact Sheets were due July 7, 2017. Plaintiff Steering Committee is instructed to remind Plaintiffs' counsel to supply its Plaintiff Fact Sheets to the defense.
 - 2. For cases assigned to the MDL after May 3, 2017: Plaintiff Fact Sheets are due within forty-five days of Defendants' Notice of Answer and Affirmative Defenses pursuant to CMO #14.
- D. Voluntary Dismissals after Answer – Upon the filing of a voluntary dismissal after an answer has been filed, the Court will so order the requested dismissal

without prejudice, which shall be automatically converted to a dismissal with prejudice in ninety days from entry of the order absent an appropriate application by the plaintiff.

- E. Aguirre, 17-5940 – The Court will issue a Severance Order pursuant to CMO #11.
- F. The Clerk shall remove from the docket the unnamed defendants listed in Exhibit A.
- G. The Court maintains its expectation to have the first trial scheduled for September 2018. The parties are ordered to use this proposed trial date when scheduling discovery and pre-trial orders.
- H. Any counsel filing an appearance in this MDL shall forward his or her contact information to liaison counsel.
- I. Telephonic Appearances – Counsel shall provide the court with a call-in number which the Court will activate prior to the conference. Counsel shall call in 10 minutes prior to the conference and keep their phone on mute.

IV. DISCOVERY AND PRE-TRIAL

- A. Judge Goodman shall preside over all discovery matters. Pursuant to Local Civil Rule 5.3, all motions to seal shall be filed as omnibus motions.
- B. Status of Discovery
 - 1. Production timeline – The parties previously agreed upon a timeline for waves of custodial production to be produced on a rolling basis by November 30, 2017. Counsel shall continue to meet and confer regarding supplementing previously provided non-custodial production, which will

be produced on a separate timeline. In the interim, Plaintiff shall continue to forward a list of prioritized non-custodial files for production.

2. Depositions – Three witnesses have been deposed in response to plaintiffs’ 30(b)(6) deposition notices. The parties shall meet and confer on the schedule for currently-requested depositions and submit a proposed order containing the names of witnesses and dates for depositions to Judge Goodman by September 14, 2017, for entry.

C. Bellwether discovery: A separate order will be issued.

V. GENERAL/SCHEDULING

A. The next case management conference is scheduled for October 12, 2017, at 11:00 a.m. Lead counsel and liaison counsel shall appear for the case management conference at 10:00 a.m.

B. The Court has scheduled the following case management conferences for 2018:

1. January 11, 2018
2. February 8, 2018
3. March 8, 2018
4. April 12, 2018
5. May 10, 2018
6. June 7, 2018
7. July 19, 2018
8. August 23, 2018
9. September 13, 2018
10. October 11, 2018

11. November 15, 2018

12. December 13, 2018

- C. Counsel is required to submit via email a joint agenda five (5) days prior to the next scheduled conference, which shall include an up to date list of Invokana cases pending in this Court. If there are any disagreements as to the agenda, counsel shall set forth each party's position.
- D. Counsel may contact *ex parte*, for the purpose of settlement discussions only, Judge Martinotti via email at brian_martinotti@njd.uscourts.gov or Judge Goodman via lhg_orders@njd.uscourts.gov.
- E. Counsel shall abide by Judge Martinotti's and Judge Goodman's submission and communication procedures, respectively, unless and until the Court so orders superseding rules for this litigation.

Dated: September 7, 2017

/s/Brian R. Martinotti
BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE

EXHIBIT A

Case Name	Case Number	Incorrect/Unnamed Defendants Improperly Served (not named in complaint)
Engel	17-2974	Janssen Ortho, Janssen Research & Development
Lozano	17-3758	Janssen Ortho, Janssen Research & Development
Rivas	17-2972	Janssen Ortho, Janssen Research & Development
Streiner	17-2892	Janssen Ortho, Janssen Research & Development

NOTE TO CLERK'S OFFICE: The following Defendants are properly named and should remain on the docket: (1) Janssen Pharmaceuticals, Inc.; (2) Johnson & Johnson; and (3) Mitsubishi Tanabe Pharm Corp. (*dismissed*)