

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

*In re:* Allergan Biocell Textured Breast  
Implant Product Liability Litigation

This Document Relates to:  
*All Actions*

MDL No. 02921  
Case No. 2:19-md-02921  
The Honorable Brian R. Martinotti  
The Honorable Joseph A. Dickson

**CASE MANAGEMENT ORDER No. 18**  
**STIPULATION AND ORDER REGARDING PROPER PARTY DEFENDANT**

WHEREAS, Plaintiffs that are part of, or will become part of, MDL 2921 (“MDL”) have filed or may have filed cases naming Allergan USA, Inc. and Allergan, Inc., as well as other defendants, including: Allergan plc, AbbVie, Inc., McGhan Medical Corporation, and Inamed Corporation. (collectively, “Related Entities”);

WHEREAS Allergan USA, Inc., Allergan, Inc. and the Related Entities represent that Allergan USA, Inc. and Allergan, Inc. are the proper party defendants for lawsuits in this MDL;

WHEREAS Allergan USA, Inc., Allergan, Inc. and the Related Entities have represented to Plaintiffs that Allergan USA, Inc. and Allergan, Inc. are the proper party defendants, and that Allergan plc is a corporation incorporated under the laws of the Republic of Ireland, its headquarters and offices are located in Ireland; that it is a holding company that exists for the purpose of holding shares of other companies; that Allergan plc and its predecessor entities did not design, manufacture, market, sell, provide product warnings, engage in regulatory activities, or participate in the market discontinuation, with regard to the BIOCELL® textured breast implants and tissue expanders; and that Allergan plc does not produce, manufacture, market, or sell goods or services in the United States or anywhere else in the world;

WHEREAS Allergan USA, Inc. and Allergan, Inc. represent that they have sufficient financial resources to fund a settlement, or satisfy a judgment should one be entered in favor of

Plaintiffs in this litigation, and shall notify Plaintiffs upon learning that there is a material change that would impact their ability to satisfy any settlement or judgment entered in this litigation, and that the financial resources of the Related Entities shall be available to satisfy any settlement reached or judgment entered in this litigation should the financial resources of Allergan USA, Inc. and Allergan, Inc. be insufficient, without the need for Plaintiffs to obtain a judgment against any of the Related Entities, who will submit to the jurisdiction of the Court if the financial resources of Allergan USA, Inc. and Allergan, Inc. are insufficient to fund a settlement or judgment, and/or for the purpose of compelling payment of a settlement or judgment if same becomes necessary;

WHEREAS Allergan USA, Inc. and Allergan, Inc. represent that they have possession, custody and/or control of relevant evidence related to Biocell® textured breast implants and tissue expanders and will respond to discovery reasonably and properly requested by Plaintiffs in this MDL;

WHEREAS Allergan USA, Inc. and Allergan, Inc. represent that they will produce current employee witnesses for deposition or trial, upon reasonable and proper notice from Plaintiffs, without regard for which of the Related Entities is the employer of the witness, as if the witness was employed by Allergan USA, Inc. or Allergan, Inc., and shall provide the last known contact information for former employees of any of the Related Entities upon request, unless the former employee is represented by counsel for Allergan USA, Inc. or Allergan, Inc. and will cooperate with reasonable discovery requests as if a party; but the parties agree that Allergan USA, Inc. and Allergan, Inc. are entitled to otherwise raise any substantive objections they may have in response to Plaintiffs' request for a particular witness to appear for deposition or trial;

WHEREAS Allergan USA, Inc. and Allergan, Inc. agree that Plaintiffs may serve non-party discovery directed to the Related Entities in this MDL as if they were parties by serving Reed

Smith LLP. Allergan USA, Inc. and Allergan, Inc. will not assert any objection that service of discovery directed to the Related Entities on Reed Smith LLP is improper and will not insist on service in compliance with The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. Allergan USA, Inc. and Allergan, Inc. will respond to such discovery requests as if these entities have possession, custody and/or control of the requested evidence, assuming such evidence exists. Allergan USA, Inc. and Allergan, Inc. will not object to the discovery based on the fact that the Related Entities are not named parties to this litigation and, although Allergan USA, Inc. and Allergan, Inc. are not waiving any other objections they may have to such discovery, Allergan USA, Inc. and Allergan, Inc. will respond to such discovery in good faith;

WHEREAS, the parties agree that nothing herein shall be construed as a waiver by Allergan USA, Inc., Allergan, Inc. or the Related Entities of any substantive or procedural defense to the claims in this litigation, except to the extent recited herein;

NOW THEREFORE, in consideration of the promises and mutual covenants contained herein, the parties agree as follows:

1. This Stipulation shall govern: (1) cases transferred to this Court by the Judicial Panel on Multidistrict Litigation, pursuant to its Order of December 18, 2019; (2) any tag-along actions subsequently transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 7.1 of the Rules of Procedure of that Panel; (3) all related cases originally filed in this Court, or transferred or removed to this Court; and (4) Plaintiffs' Master Personal Injury Complaint, Consolidated Class Action Complaint, and Short Form Complaint ("Master Complaints") filed in this MDL.

2. Plaintiffs stipulate and agree that the Master Complaint and Consolidated Class Action Complaint will proceed as to only Allergan USA, Inc. and Allergan, Inc. as defendants.

3. Allergan USA, Inc. and Allergan, Inc. stipulate that, in any case made part of this MDL on or before the date this Stipulation is fully executed, they will not assert any statutes of limitations, statutes of repose, notice or other time-related defenses or limitations, whether statutory, contractual, or otherwise, and whether at law, in equity, or otherwise (including the doctrines of waiver, laches, acquiescence or estoppel) (collectively, the “Time-Based Defenses”) based solely on an argument that a plaintiff named one or more Related Entities instead of Allergan USA, Inc. or Allergan, Inc., or vice versa. In addition, the statute of limitations shall be tolled as against the Related Entities on a going forward basis. This Stipulation shall not save, revive, or have any effect whatsoever on any plaintiff’s claim that otherwise was barred, limited, or extinguished by any Time-Based Defense. If a plaintiff seeks to add any of the Related Entities prior to trial in an MDL action or in a state court action, whether or not that action has been remanded from the MDL, the Related Entities may not object on the basis of timeliness or statute of limitations unless the same timeliness or statute of limitations defense exists for Allergan USA, Inc. or Allergan, Inc., and the addition of any of the Related Entities shall relate back to the date that the underlying action was filed by that plaintiff.

4. Allergan USA, Inc. and Allergan, Inc. stipulate that any document, statement, or testimony that would be admissible or usable at trial against a Related Entity if it were a party, shall be fully admissible or usable against Allergan USA, Inc. or Allergan, Inc. at any trial in these proceedings. As an example, a statement which would otherwise

qualify as an admission of a party opponent by Allergan plc and satisfy the requirements for admissibility pursuant to Fed. R. Evid. 801 et seq. shall also qualify as an admission of a party opponent by Allergan USA, Inc. and Allergan, Inc.

5. Allergan USA, Inc. and Allergan, Inc. and Related Entities stipulate that any documents, information, including ESI, and materials produced by the Dismissed Defendants will be certified to be authentic under Fed. R. Evid. 902(11) and/or (12) and meet the requirements of Fed. R. Evid. 803(6)(A)-(C), subject to the Protective Order and ESI Protocols in this MDL.

6. The Related Entities will follow preservation obligations as if they were parties to the litigation.

7. The Related Entities stipulate and agree that in the event Plaintiffs determine that it is necessary to name Allergan plc, AbbVie, Inc., Actavis, Inc., McGhan Medical Corporation, and/or Inamed Corporation as a party, based on information obtained in discovery or otherwise, for example if one or more of the Related Entities had more substantial involvement with the subject matter of the litigation than was represented in this stipulation, necessary discovery or trial testimony or evidence is not being provided in accordance with this stipulation, or if the assets of Allergan USA, Inc. and Allergan, Inc. are determined to be inadequate to pay a judgment or settlement in this litigation, the Related Entities will accept service of amended Master Complaints through counsel for Allergan USA, Inc. and Allergan, Inc., and will not object on the basis of timeliness or their lack of direct involvement in the litigation. All other defenses will be preserved. Plaintiffs agree to meet and confer with counsel for Allergan, Inc. and Allergan USA, Inc. in good faith prior to any efforts to amend the Master Complaints to name Allergan plc,

AbbVie, Inc., Actavis, Inc., McGhan Medical corporation, and/or Inamed Corporation as a party in the event Plaintiffs determine it to be necessary to do that.

8. This stipulation is signed on behalf of Allergan USA, Inc., Allergan, Inc. and the Related Entities, in consideration of the Plaintiffs' agreement not to name the Related Entities as defendants in the Master Complaints, and may be enforced against any of them, regardless of whether they are a named party.

9. The Related Entities will be deemed stricken from the Master Complaint and Consolidated Class Action Complaint without the need for the PSC to file Amended Complaints, and the Related Entities need not respond to the Master Complaint.

10. The parties stipulate to the entry of an Order by the Court directing Plaintiffs in individual cases to voluntarily dismiss Related Entities, without prejudice, from all pending lawsuits in this MDL within sixty (60) days and also directing that Related Entities not be named in future individual cases except in accordance with this stipulation.

Stipulated and agreed to this 14th day of September, 2020:

**CARELLA, BYRNE, CECCHI, OLSTEIN,  
BRODY & AGNELLO, P.C.**

**REED SMITH LLP**

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IT IS on this 15th day of September, 2020, **SO ORDERED.**



Hon. Brian R. Martinotti, U.S.D.J.