

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

**IN RE: ELMIRON (PENTOSAN
POLYSULFATE SODIUM)
PRODUCTS LIABILITY
LITIGATION**

Case No. 2:20-md-02973 (BRM)(ESK)

MDL No. 2973

**JUDGE BRIAN R. MARTINOTTI
JUDGE EDWARD S. KIEL**

**THIS DOCUMENT RELATES TO:
ALL ACTIONS**

AMENDED CASE MANAGEMENT ORDER NO. # 6
(Direct Filing – Stipulated)

The parties hereby submit this Stipulated Order regarding direct filing in the MDL.

I. Scope of Order

This Order applies to actions asserting retinal injuries associated with the use of Elmiron and/or medical screening/monitoring claims related to Elmiron that are directly filed in MDL No. 2973. This Order only applies to claims brought by U.S. residents. This Order does not replace or alleviate a plaintiff’s obligation to serve defendants with his/her complaint.

II. Direct Filing of Cases into MDL No. 2973

A. Direct Filing. To eliminate delays associated with transfer of cases filed in or removed from other federal district courts to this Court, and to promote judicial efficiency, any plaintiff whose case would be subject to transfer to MDL No. 2973 may file his or her case directly into MDL No. 2973 by filing in the District of New Jersey pursuant to this Order. Any complaint that is filed directly in the District of New Jersey pursuant to this Order shall be filed as a new civil action through the courts electronic filing system. At the time of filing, the complaint shall bear the caption set forth in section II(B) below and come with a civil cover sheet and Designation of Forum discussed in Section II(C) below. The civil cover sheet shall specify under the “Related

Case(s)” section that this case relates to MDL 2973. Once the case is filed, it shall be assigned an individual civil case number. After review by the Clerk of Court’s office, the case will be automatically consolidated in MDL 2973.

B. Caption. Any complaint that is directly filed in MDL No. 2973 before this Court pursuant to this Order shall bear the following caption:

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

IN RE: ELMIRON (PENTOSAN POLYSULFATE
SODIUM) PRODUCTS LIABILITY LITIGATION

MDL No. 2973
Case No. 2:20-md-02973 (BRM)(ESK)

_____ ,

Plaintiff,

vs.

_____ ,

Defendants.

JUDGE BRIAN R. MARTINOTTI
JUDGE EDWARD S. KIEL

DIRECT FILED COMPLAINT
PURSUANT TO CASE
MANAGEMENT ORDER NO 6

Civil Action No: _____

C. Use of Form for Designation of Forum. Any plaintiff who wishes to directly file a complaint in MDL No. 2973 pursuant to this Order must complete and attach as Exhibit A to the complaint a “Designation of Forum” in the form attached hereto as **Exhibit 1** and made available at <https://www.njd.uscourts.gov/elmiron-pentosan-polysulfate-sodium-products-liability-litigation>. The Designation of Forum shall be filed contemporaneously with the Complaint. The Complaint shall be filed as the Main Document and the Designation of Forum filed as an

Attachment to the Main Document along with the Civil Cover Sheet and Proposed Summonses.¹

With regards to venue, each plaintiff shall use the Designation of Forum to designate the federal district and division in which the action could have been brought but for the present Order permitting direct filing in the District of New Jersey (the “Designated Forum”). The Designated Forum shall be the presumptive place of remand absent a showing by Plaintiffs or Defendants that the place of remand should be elsewhere pursuant to Section K below.

1. **Failure to Provide a Designate Forum Designation.** Any Plaintiff who fails to file a Designation of Forum shall be notified by Defendants’ designee via email with a copy of said notice sent via email to PEC leadership at Missing.Forum-Designation@DouglasandLondon.com. A Complaint will be deemed filed pursuant to this Order on the date the Complaint is filed with the Court, even if a Designation of Forum is not filed with the Complaint.
2. The Designation of Forum shall be filed via ECF and identified on the docket as an “Exhibit (to Document)” that can be found under the Filing Category “Other Documents” and shall identify the Complaint as the document to which it relates.
3. If a Designation of Forum has not been filed within thirty (30) days of Notice from Defendants, Defendants shall submit a list of all such cases to the Court in connection with the monthly case management conference agenda that the parties complete and compile jointly. From that point, Plaintiffs shall have

¹ Should the Designation of Forum inadvertently not be filed as an attachment to the Complaint such that it needs to be filed as a separate document, it should be filed as an “Exhibit (to Document)” that can be located under the Filing Category “Other Documents” and should identify the Complaint as the document to which it relates.

until the following monthly conference (after being identified to the Court as having a missing Designation of Forum form) to show cause why their complaint should not be dismissed without prejudice or to file the Forum Designation in advance of the case management conference when the response to the order to show cause would be due. Failure to respond to the order to show cause or file the missing Designation of Forum will result in said case being dismissed without prejudice by the Court on the date of the conference.

4. Any case that has been previously dismissed without prejudice for failure to include a Designation of Forum that is refiled by the same law firm without a Designation of Forum may be identified by Defendants' counsel as a "Second Failure to Designate Forum" and subject to immediate dismissal with prejudice absent good cause shown at the next case management conference.
5. Under no circumstances is the Plaintiffs Steering Committee responsible for the filings of the Designation of Forum in an individual Plaintiff's case. The filing of the Designation of Forum is the responsibility of the attorney and/or law firm for the individual Plaintiff.

D. Named Plaintiff. Cases directly filed in MDL No. 2973 pursuant to this Order shall not name more than a single plaintiff in the complaint, provided however that any such case may include more than one plaintiff for purposes of any loss of consortium claim and/or any wrongful death and survival claim(s) as permitted by law.

E. Pretrial Proceedings Only; No *Lexecon* Waiver. Each case directly filed in MDL No. 2973 pursuant to this Order will be filed in MDL No. 2973 for pretrial proceedings only, consistent with the Judicial Panel on Multidistrict Litigation's December 15, 2020 Transfer Order. Plaintiffs' and Defendants' agreement to this Order does not constitute a waiver under *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998) by either party for any specific case or globally as to this MDL.

F. Jurisdiction and Venue. The inclusion of any action in MDL No. 2973 pursuant to this Order does not constitute a determination by this Court that jurisdiction or venue is proper in this District. Further, Defendants agree that that no motion to dismiss shall be filed alleging that the District of New Jersey is an improper venue or lacks jurisdiction for purposes of these MDL proceedings. Defendants reserve all rights and defenses relating to venue, personal jurisdiction, or other grounds based on the Designated Forum identified in the Designation of Forum, which shall not be raised until the conclusion of this MDL. Should Defendants be successful in any jurisdictional motion that they have preserved, Plaintiffs shall be permitted to re-file their case in a court of competent jurisdiction using the original date the complaint was filed.

G. Master Answer. Each Defendant shall file a Master Answer within sixty (60) days of the entry of this Order. The Master Answer shall contain a general denial of all allegations, which will be deemed to be an appropriate pleading pursuant to Rule 7 and in good faith pursuant to Rule 8(b)(3). The general denial shall not be introduced as evidence against any Defendant in any future trial of an action involving retinal injuries associated with the use Elmiron and/or medical screening/monitoring claims related to the use of Elmiron. Upon the filing of the Master Answer, the defendant shall be deemed to have answered all cases pending in, filed in, or subsequently transferred to the MDL.

The Master Answer shall also plead the party's affirmative defenses. However, the Master Answer is not intended to and shall not waive any applicable defenses available to any Defendant, including any objections to service, jurisdiction or venue, and any defenses to any state law claims.

H. Notices of Appearance. Defendants must file a Notice of Appearance in each action pending in, filed in, or subsequently transferred to the MDL: (1) within fourteen (14) days from the date of this Order for a pending action; (2) within thirty (30) days of the service of any Complaint filed pursuant to this Order; or (3) within thirty (30) days of an action being transferred to the MDL or filed in the District of New Jersey not pursuant to this Order.

I. Voluntary Dismissal of Cases. Because Defendant shall be deemed to have answered in all cases upon filing of a Master Answer, cases may only be voluntarily dismissed against such Defendant by order of the Court pursuant to Rule 41(a)(2) or a stipulation pursuant to Rule 41(a)(1)(ii), except that a complaint filed directly in this MDL may be voluntarily dismissed upon notice by Plaintiff within 21 days of the filing of the complaint, or before Defendants' file a Notice of Appearance, whichever is later.

J. Bellwether Pleadings. The parties anticipate that a bellwether process will be implemented in this MDL, the details of which, including case selection, will be addressed in a future CMO. Within thirty (30) days after the bellwether pool is selected, Plaintiffs in the selected cases may serve Amended Complaints and Designations of Venue. Within 30 days of the filing of the Amended Complaint, Defendants shall either answer or seek leave of the Court to file a 12(b)(1), (b)(2) or (b)(6) motion as to any of the aforementioned Amended Complaints, which leave Plaintiffs reserve the right to oppose.

K. Transfer for Trial to Designated Forum. Upon determination by this Court that a case that was directly filed in MDL No. 2973 pursuant to this Order should be transferred, this

Court, pursuant to 28 U.S.C. § 1404(a), will transfer the case to the Designated Forum as set forth in the Designation of Forum, absent an agreement of the parties to remand the case to a different district or absent a showing by plaintiff or defendants that the place of remand should be elsewhere. Nothing contained in this Order shall preclude the parties from agreeing, at a future date, to try cases filed pursuant to this Order in the District of New Jersey.

L. Statute of Limitations. Defendants stipulate and agree that the filing of a complaint directly in MDL No. 2973 pursuant to this Order shall stop the running of any statute of limitations, statute of repose or prescriptive or preemptive period as if the complaint had been filed in a Court of appropriate jurisdiction and venue, even if an ultimate determination is made following the conclusion of this MDL that the Designated Forum lacked personal jurisdiction or venue over Defendants.

M. Choice of Law. Filing a case directly in MDL No. 2973 pursuant to this Order will not determine the choice of law, including the statute of limitations. Any choice of law issues will be decided at a later date.

N. No Waiver as to Service. Defendants' agreement to this Order shall not constitute an appearance by or for any Defendant not properly served pursuant to Fed. Rule. Civ. P. 4, nor shall any references to "Defendants" herein constitute an appearance by or for any Defendant not properly served.

O. Attorney Admission. In accordance with Case Management Order 1, Section 6, any attorney admitted to practice and in good standing in any United States District Court is admitted *pro hac vice* in this litigation and association of co-counsel for purposes of filing and/or litigation, including direct filing, is not required.

P. Electronic Filing. All complaints must be filed electronically absent extraordinary circumstances, as required by Local Civil Rule 5.2. An individual PACER account is required to register to e-file on the District of New Jersey's CM/ECF system. Prior to any plaintiff's lawyer filing a complaint directly in MDL No. 2973, that attorney must register for e-filing with the District Court of New Jersey through PACER. Information can be found at **<https://www.njd.uscourts.gov/cmecf-information>**. Further, all attorneys must familiarize themselves with the District of New Jersey's Electronic Case Filing Policies and Procedures as Amended April 3, 2014, which can be found at **<http://www.njd.uscourts.gov/sites/njd/files/PoliciesandProcedures2014.pdf>**, and the Instructions for Filing a Civil Complaint that can be found at **<http://www.njd.uscourts.gov/sites/njd/files/efile.complaint.removal.appeal.pdf>**.

Q. Signature Block. When electronically filing the pleadings, the signature block shall follow the below format:

RESPECTFULLY SUBMITTED,

s/s Jane Doe
NAME OF LAW FIRM
ADDRESS
TELEPHONE
FAX
EMAIL@EMAIL.com
Attorney for Plaintiff

R. Filing Fees. Internet credit card payments shall be required for all complaints and made online through Pay.gov. Plaintiff's counsel will be prompted to pay the required filing fee at the time of the filing of the complaint. Information regarding filing fees can be found at **<http://www.njd.uscourts.gov/sites/njd/files/efile.complaint.removal.appeal.pdf>**.

IT IS SO ORDERED, this 26th day of April 2021.

/s/Brian R. Martinotti

HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE