

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

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

:

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

: MDL No. 2973

:

**THIS DOCUMENT RELATES TO:
ALL CASES**

:

: JUDGE BRIAN R. MARTINOTTI

: JUDGE EDWARD S. KIEL

:

MDL CASE MANAGEMENT ORDER NO. 2

The Court, having held the initial MDL Case Management Conference (“CMC”) on January 8, 2021, and for good cause shown, enters the following Order:

I. STATUS OF LITIGATION AND COORDINATION

As of January 8, 2021, 169 cases alleging products liability claims relating to use of Elmiron have been filed and served (141 in the District of New Jersey and 28 in New Jersey and Pennsylvania state courts).

II. ENTERED CASE MANAGEMENT ORDERS

Ten Case Management Orders (“CMO”) have been entered on the MDL docket and adopted for this litigation per MDL CMO No. 1 (December 18, 2020):

1. DNJ Case Management Order No. 1. This CMO confirms the issues discussed during the August 26, 2020 telephonic CMC.
2. DNJ Case Management Order No. 2. This CMO addresses initial disclosures, service of documents, and plaintiff medical records and authorizations.
3. DNJ Case Management Order No. 3. This CMO confirms the issues discussed during the September 15, 2020 telephonic CMC.

4. DNJ Case Management Order No. 4. This CMO confirms the issues discussed during the October 7, 2020 telephonic CMC.
5. DNJ Case Management Order No. 5. This CMO addresses the dismissal of the Named Bayer Defendants, as defined in the Order.
6. DNJ Case Management Order No. 6. This CMO addresses the production of physically and electronically stored information.
7. DNJ Case Management Order No. 7. This CMO confirms the issues discussed during the October 26, 2020 telephonic CMC.
8. DNJ Case Management Order No. 8. This CMO confirms the issues discussed during the November 16, 2020 telephonic CMC.
9. Protective Order. The parties' protective order ensures that protection is afforded to those materials so entitled and addresses any inadvertent production of documents or information protected from disclosure by the attorney-client privilege, work-product immunity, or other applicable privilege.
10. Privilege Order. This CMO governs privileged materials and privilege logs.

III. LEADERSHIP & ORGANIZATION

- A. A proposed Plaintiffs leadership structure, constructed in accordance with the Court's directives to focus on diversity, including diversity with respect to ethnicity, gender, experience, and geography, was submitted to the Court on January 13, 2021. Any and all comments or objections shall be submitted to the Court on or before January 20, 2021 (i.e. within seven days of said request.)
- B. Plaintiffs' counsel does not object to the Janssen Defendants' proposed leadership structure, and therefore the Court appoints: **Kristen Fournier** and **Bruce Hurley** of King & Spalding as MDL Lead Counsel, **Michael C. Zogby** of Faegre Drinker as MDL Liaison Counsel, and **Richard Bernardo** of Skadden as Janssen Defendants' MDL Discovery Counsel.

- C. The parties are encouraged to provide opportunities to diversify, to have other attorneys appear before the Court and gain experience in MDL practice, and to so advise the Court if an attorney is arguing a motion or appearing for the first time on an issue.

IV. ORGANIZATION & EFFICIENCY

- A. **State-Federal Coordination.** The parties have been meeting and conferring with attorneys in state court jurisdictions to coordinate content and entry of orders, avoid duplicative efforts and inconsistent processes, and conserve judicial resources to the extent practicable. The parties will update the Court regarding these efforts at the next CMC.
- B. **Motion Practice.** As ordered by the Court in MDL CMO No. 1, all previously filed motions not filed to the MDL Master Docket directly are administratively terminated.
- C. **Case Management-Related Issues.** The parties will continue to meet and confer, with guidance from the Court, on various foundational case management issues that will likely arise, and will report back to the Court at the next CMC.
- D. **Discovery.** The parties will continue to meet and confer on various discovery issues, including but not limited to those listed below, and report back at the next CMC:
1. **Fact Sheets.** Plaintiffs and Defendants have made significant progress on drafting a form and model Plaintiff Fact Sheet (“PFS”) and Defense Fact Sheet (“DFS”). The parties shall update the Court regarding timing and submission of proposed forms at the next CMC.

2. **Depositions.** Plaintiffs conducted a Rule 30(b)(6) deposition of the Janssen Defendants' witness per DNJ CMO No. 5 on November 11, 2020, which was not completed, and the parties are meeting and conferring to schedule another date for a 30-minute follow-up and continued examination. The parties also are meeting and conferring regarding additional Rule 30(b)(6) depositions, and shall coordinate those efforts with the state court liaison to cross notice in any state actions. The parties are also meeting and conferring regarding a remote deposition protocol to govern the conduct of depositions in this matter during the pandemic for so long as necessary, and shall report on status during the next CMC.
3. **Written Master Discovery Requests.** Plaintiffs propounded on the Janssen Defendants a proposed master set of discovery requests, including interrogatories and document demands, on November 13, 2020. Pursuant to MDL CMO No. 1, those Requests were stayed. With the entry of this Order, the discovery stay set forth in MDL CMO No. 1 and applicable to these discovery demands is hereby lifted. The parties shall update the court on status and timing for objections and responses at the next CMC.
4. **Document Productions.** On October 23, 2020, November 13, 2020, and December 11, 2020, the Janssen Defendants produced the first three installments of their rolling production. The parties will meet and confer to address the timing and scope of the continued productions until discovery is completed, and the parties continue to meet and confer on overall document production issues.

5. **Discovery Stay.** As discussed during the January 8, 2021 CMC, the discovery stay set forth in MDL CMO No. 1 shall be lifted as of the entry of this Order so that discovery may proceed.

E. Status of Various Defendants.

1. **Teva Defendants.** The vast majority of plaintiffs who named Teva Pharmaceuticals USA, Inc. have agreed to dismiss Teva Pharmaceuticals USA, Inc.,¹ via stipulation with agreed to terms and protections for all parties. The parties also continue to meet and confer on the potential dismissal of additional Teva entities, and shall report on the status of their discussions at the next CMC.
2. **Bayer Defendants.** DNJ CMO No. 5 has resulted in the dismissal of the Named Bayer Defendants, as defined in the Order, for all presently filed cases, as well as any matters filed or transferred to this Court going forward.

F. Extension and Stay. Defendants' initial entries of appearance and deadlines to answer or otherwise plead remain tolled until further Court order, to be discussed at the next CMC.

V. FUTURE CASE MANAGEMENT CONFERENCE DATES.

A. The Court intends to schedule CMCs on the second Wednesday of each month throughout 2021, as follows:

- February 10;
- March 10;
- April 14;

¹ The Teva Defendants include: (1) Teva Pharmaceuticals USA, Inc.; and (2) Teva Branded Pharmaceutical Products R&D, Inc.

- May 12;
- June 9;
- July 14;
- August 11;
- September 8;
- October 13;
- November 10; and
- December 8.

1. For the February 10, 2021 conference, each member of the Court-appointed PSC, including Plaintiffs' Liaison Counsel, as well as Defense Liaison Counsel, shall appear via Zoom at **11:00 a.m.** All other counsel shall appear via dial-in (to be circulated) at **12:00 p.m.**, unless otherwise provided by the Court. Counsel shall email their intention to attend the conference to Mr. Zogby, at michael.zogby@faegredrinker.com, by February 5, 2021.

2. Virginia E. Anello of Douglas & London, P.C. and Michael C. Zogby of Faegre Drinker shall meet and confer on the process and technology for future conferences, and provide a recommendation on remote options before the next conference.

Dated: January 15, 2021



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