

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

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

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: **Case No. 2:20-md-02973 (BRM)(ESK)**  
: **MDL No. 2973**  
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**THIS DOCUMENT RELATES TO:  
ALL CASES**

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

**MDL CASE MANAGEMENT ORDER NO. 4**

The Court, having held a MDL Case Management Conference (“CMC”) on February 10, 2021, and for good cause shown, enters the following Order:

**I. STATUS OF LITIGATION AND COORDINATION**

As of February 10, 2021, 177 cases alleging products liability claims relating to use of Elmiron have been filed and served (152 federal and 25 in New Jersey and Pennsylvania state courts).

**II. ORDERS ENTERED SINCE LAST CASE MANAGEMENT CONFERENCE**

Two Case Management Orders (“CMO”) have been entered on the MDL docket since the last case management conference (January 8, 2021):

1. MDL Case Management Order No. 2. This case management order confirmed the issues discussed during the January 8, 2021 telephonic case management conference.
2. MDL Case Management Order No. 3. This case management order appoints Plaintiffs’ Leadership, including but not limited to Plaintiff’s Lead Counsel, Plaintiffs’ Liaison Counsel, a Plaintiffs Executive Committee, and a Plaintiffs Steering Committee.

### **III. PROPOSED CASE MANAGEMENT ORDERS**

The parties shall continue to meet and confer and actively discuss proposed orders and stipulations to advance the litigation, including:

- A. An Order addressing plaintiff fact sheets (“PFS”), defense fact sheets (“DFS”), and an online platform on which the fact sheets can be completed;
- B. An Order addressing Direct Filing;
- C. An Order addressing Master Pleadings; and
- D. A protocol governing remote depositions.

### **IV. DISCOVERY STATUS**

A. **Discovery of Electronically Stored Information.** This Court has previously issued DNJ CMO No. 6 setting forth the protocol governing the discovery and production of Electronically Stored Information (“ESI”). In an effort to further facilitate the efficient and effective discovery of such matter, the parties shall continue to meet and confer regarding one or more Rule 26(f) conferences, as well as a proposed Rule 30(b)(6) deposition. Whether vendors and internal client IT personnel should be included at the Rule 26(f) conference will be evaluated prior to the commencement of the Rule 26(f) conference. The parties shall include vendors or internal client IT personnel at the Rule 26(f) conference if a need for them is identified. By March 16, 2021, the parties shall submit to the Court a Joint Rule 26(f) Report outlining any additional discovery agreements reached by the parties as to ESI and detailing any remaining open issues as to the same.

## V. STATUS OF VARIOUS DEFENDANTS

A. **Teva Defendants.** The vast majority of plaintiffs who named Teva Pharmaceuticals USA, Inc. have agreed to dismiss Teva Pharmaceuticals USA, Inc.,<sup>1</sup> via stipulation with agreed to terms and protections for all parties. Plaintiffs Leadership shall continue to meet and confer with counsel for the Teva Defendants on the potential dismissal of additional Teva entities, and shall report on the status of their discussions at the next CMC.

B. **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.

## VI. EXTENSION AND STAY

Defendants' initial entries of appearance and deadlines to answer or otherwise plead remain tolled until further Court order.

## VII. MOTION PRACTICE

MDL CMO No. 1 administratively terminated all pending motions, except for *pro hac vice* admission motions, so that the parties could meet and confer regarding the dismissal of claims and certain named defendants.

## VIII. LEADERSHIP

At the request of plaintiffs' counsel, and without objection, **Stacy K. Hauer** of Johnson Becker shall be added to the Plaintiffs' Executive Committee based on entry of this Order.

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

**IX. FUTURE CASE MANAGEMENT CONFERENCE DATES**

The next case management conference is scheduled for **Wednesday, March 10, 2021**. For the March 10, 2021 conference, Liaison Counsel, Lead Counsel for Plaintiffs, and Lead Counsel for Defendants 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 March 5, 2021. Mr. Zogby and Ms. Anello shall meet and confer regarding submission of the proposed agenda and logistics for the conference.

Dated: February 16, 2021



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