
IN RE: ELMIRON PRODUCTS LIABILITY
LITIGATION

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION: BERGEN COUNTY
CASE NO. 638
MASTER DOCKET NO.: BER-L-

CIVIL ACTION

INITIAL CASE MANAGEMENT ORDER

FILED

FEB 25 2022

RACHELLE L. HARZ
J.S.C.

All prior orders remain in full force and
effect except as modified by this Order

THIS MATTER having been assigned to the Bergen County Vicinage pursuant to the Supreme Court's Order of December 7, 2021; and this Court, having conducted an informal video conference with Chris Seeger, Esq., and James Murdica, Esq., on February 24, 2022, and for good cause shown,

IT IS on this 25th day of February 2022,

ORDERED:

1. Preamble. The court asserts its expectation that professionalism, courtesy, and civility will endure throughout these proceedings. The Manual for Complex Litigation, Fourth, §10.21 states the spirit in this language:

Judicial involvement in managing complex litigation does not lessen the duties and responsibilities of the attorneys. To the contrary, complex litigation places greater demands on counsel in their dual roles as advocates and officers of the

court. The complexity of legal and factual issues makes judges especially dependent on the assistance of counsel.

The certification requirements of R. 1:4-8(a) reflect some of the attorneys' obligations as officers of the court. Because of the high level of competence and experience that attorneys ordinarily bring to this type of litigation, the court is confident that its objective will be achieved without judicial intervention.

2. Effect of this Order

a. Applicability. This order applies to all Elmiron Products Liability Litigation actions centralized for coordinated management in the Bergen County Vicinage pursuant to the Supreme Court Order of December 7, 2021 and all those hereinafter filed or transferred to the Bergen County Vicinage. The actions are centralized to avoid duplication and to prevent conflicts. These actions are not consolidated. Each action will retain its own docket number. A master docket number for administrative purposes shall be assigned to this action by the Civil Division Manager.

b. Transfer of Files. All court files including pleadings, motions, and other papers shall be transferred from the original vicinage of venue to the Civil Division Manager of the Bergen County Vicinage as soon as practicable.

c. Stay. All motions pending in any vicinage are stayed until further order of this court.

3. Initial Conference. All parties shall appear for a conference with the undersigned on March 9, 2022 at 11:00 o'clock AM via zoom in coordination with the Federal Court

MDL Case Management Conference. Any counsel who are not included in the MDL zoom conference list shall supply their email addresses to briana.martinotti@njcourts.gov, Law Clerk to Judge Harz, who will forward said addresses to the zoom coordinator of the MDL conference. At the conclusion of the March 9, 2022 conference, counsel will advise this Court regarding specific issues concerning this MCL which will be addressed either at that time or at another scheduled date and time.

- a. Attendance. To minimize costs and facilitate a manageable conference, parties are encouraged, but not required, to attend the conference, and parties with similar interests are expected to agree to the extent practicable on a single attorney to act on their joint behalf at the conference. A party will not, by designating an attorney to represent its interests at the conference, be precluded from other representation during the litigation. Attendance at the conference will not waive objections to jurisdiction, venue, or service.
- b. Service List. This Order is being e-mailed to Chris Seeger, Esq., James Murdica, Esq., Ellen Relkin, Esq., Michael Zogby, Esq., Richard Bernardo Esq., and Kristen Fournier, Esq. These attorneys are requested to forward a copy of this order to all other attorneys who should be notified of the conference.
- c. Other Participants. Persons who are not named as parties in this litigation but may later be joined as parties or are parties in the related litigation pending in other federal and state courts are invited to attend in person or by counsel.
- d. Agenda. Counsel are encouraged to advise the court at least seven (7) days prior to the initial case management conference of any items that should be included on the agenda.

4. Preparations for Conference.
 - a. Procedures for Complex Litigation. Counsel are expected to be prepared at the conference to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation.
 - b. Initial Conference of Counsel. Before the conference, counsel shall meet and confer—in person, by telephone conference, or by video conference—and seek consensus to the extent possible with respect to the items on the agenda, including a proposed discovery plan and a suggested schedule for joinder of parties, amendments to pleadings, motions, and trials.
 - c. List of Affiliated Companies and Counsel. To assist the court in identifying any problems of recusal or disqualification, counsel will submit to the court no later than seven days prior to the conference a list of any companies affiliated with the parties and any counsel associated with the litigation not already identified.
5. Interim Measures. Until otherwise ordered by the court:
 - a. Discovery of Digital Information Including Computer-Based Information and Electronically Stored Information.
 - i. Duty to Investigate and Disclose. Prior to the conference, counsel shall review with the client the client's information management systems, including computer-based and other digital systems, in order to understand how information is stored and how it can be retrieved. To determine what must be disclosed pursuant to

Paragraph 5(a) of this Order, counsel shall further review with the client the client's information files, including currently maintained computer files as well as historical, archival, back-up, and legacy computer files, whether in current or historic media or formats, such as digital evidence that may be used to support claims or defenses. Counsel shall also identify a person or persons with knowledge about the client's information management systems, including computer-based and other digital systems, with the ability to facilitate, through counsel, reasonably anticipated discovery.

- ii. Duty to Notify. A party seeking discovery of computer-based or other digital information shall notify the opposing party as soon as possible and identify as clearly as possible the categories of information that may be sought. A party may supplement its request for computer-based and other digital information as soon as possible upon receipt of new information relating to digital evidence.
 - iii. Duty to Meet and Confer. During the meetings required by Paragraph 4(b) of this order, the parties shall confer and attempt to agree on computer-based and other digital discovery matters.
- b. Preservation of Records. The parties already have an agreement in place regarding preservation of records.
- c. Duty to Preserve
- i. The parties already have an agreement in place regarding the duty to preserve.

- d. Protective Order. The parties already have a protective order in place.
 - e. Document Depositories. The parties have already agreed on issues pertaining to the establishment and operation of a document depository program.
6. Later Filed Actions. This Order shall apply to related actions later filed in or transferred to this court.
 7. Lead and Liaison Counsel Appointments. It is this court's intention to appoint Kristen Fournier, Esq., Ellen Relkin, Esq., Michael Zogby, Esq., and Chris Seeger, Esq., as lead and liaison counsel on March 9, 2022. This court will entertain objection to these appointments by letter to be submitted to this court prior to March 7, 2022.
 8. Internet Notice. All orders, notices, and other pertinent documents filed with the Court common to the entire litigation shall be available on the Judiciary Web Page for Multicounty Litigation Center, which may be accessed at <https://www.njcourts.gov/attorneys/mcl/index.html>. It is incumbent upon all counsel to regularly review the MCL web page for all orders and updates.
 9. Appearance Pro Hac Vice. Attorneys must be admitted to practice and in good standing in New Jersey; those not admitted to appear *pro hac vice* in this litigation may not participate.
 - a. Appearances *pro hac vice* are limited to three (3) counsel per party in each action, subject to adjustment for good cause. This number does not apply to attorneys being admitted *pro hac vice* for the sole purpose of taking depositions.
 - b. An attorney seeking to appear *pro hac vice* shall apply by formal notice of motion or by consistent order with supporting affidavit and proposed form

of order in compliance with R. 1:21-2. Motions for *Pro Hac Vice* Admission filed with consent of opposing counsel shall be decided at the earliest convenience of the court without the need to be heard on the regular motion calendar.

- c. *Pro hac vice* counsel may try the action but shall not be designated trial counsel under R. 4:25-4. No proceedings shall be adjourned because *pro hac vice* counsel is not available.
- d. All pleadings, motions, and correspondence to the court must be submitted by New Jersey Counsel unless the court specifically waives this provision.
- e. Out-of-state attorneys representing plaintiffs must certify that all retainer agreements with clients in the subject litigation do not, and in the future will not, violate any provisions of the New Jersey Rules of Court. Out-of-state attorneys representing plaintiffs must abide by the same retainer agreement requirements applicable to New Jersey attorneys; R. 1:21-7(c) and R. 1-21-7(d) are applicable to the calculation of attorneys' fees and expenses for the settlement or judgment of any case or cases in this litigation.
- f. Out-of-state attorneys seeking permission to speak on behalf of a corporate defendant must certify as to any prior involvement with that corporation or its related entities, including the capacity in which the attorney was involved. Further, the attorney must include in the affidavit a statement of the good faith belief that the attorney would not be involved with policy or management decisions that would require the attorney to be called as a witness in any matter before the court.

- g. Counsel permitted to appear *pro hac vice* shall be required to make annual payments to the Disciplinary Oversight Committee (R. 1:20-1(b)), the New Jersey Lawyers' Fund for Client Protection (R. 1:28-2(a)), and the New Jersey Lawyers Assistance Program (R. 1:28B-1(e)).
- h. The following conditions shall apply to the admission to appear *pro hac vice* of any attorney in these matters:
 - i. Counsel permitted to appear *pro hac vice* shall abide by the New Jersey Rules of Court, including all disciplinary rules of the Courts of the State of New Jersey.
 - ii. Counsel permitted to appear *pro hac vice* shall consent to the appointment of the Clerk of the Supreme Court of New Jersey as an agent upon whom service of process may be made for all actions against their firm that may arise out of their participation in this matter.
 - iii. Counsel permitted to appear *pro hac vice* must be accompanied by a member of the New Jersey Bar at all proceedings, unless specifically waived by the court.
 - iv. Discovery proceedings, motions, trial, and any other court proceedings will not be adjourned due to the inability of *pro hac vice* counsel to be in attendance.
 - v. All pleadings, briefs, and other papers filed with the court shall be signed by an attorney of record authorized to practice in this State,

who shall be held responsible for them, the conduct of the cause, and the attorney permitted to appear *pro hac vice*.

- vi. Counsel permitted to appear *pro hac vice* must notify the court immediately of any matter affecting the standing at the Bar of any State in which they are admitted or of any other jurisdiction.
- vii. Counsel permitted to appear *pro hac vice* shall continue to comply with Rules 1:20-1(b), 1:28-2(a), and 1:28B-1(e) on an annual basis and shall submit affidavits of compliance within thirty (30) days of such compliance.
- viii. Permission to appear *pro hac vice* shall be automatically terminated for failure to make any required annual payment, upon appropriate notification from the Administrative Office of the Courts that the annual payment has not been made. Proof of such payment, after filing proof of the initial payment, shall be made no later than February 1 of each year.
- ix. Noncompliance with any of the requirements of *pro hac vice* admission shall constitute grounds for removal.
- x. A copy of the Order granting, denying, extending, or revoking permission to appear *pro hac vice* shall be served on all parties within 7 days of its entry.

10. Captions, Pleadings, and Fees.

- a. All parties shall file individual actions on e-courts. **No pleadings shall contain any personal identifiers.** Filing fees shall be paid pursuant to the Rules of Court and N.J.S.A. 22A:2-6 and -7.
- b. Each action shall be limited to one plaintiff or a related household of plaintiffs.
- c. All pleadings, all motion papers, and all correspondence shall add the designation "MCL" after the docket number indicating MultiCounty Litigation and under the caption Civil Action shall add the title of this litigation, "In Re: Elmiron Products Liability Litigation."
- d. The Bergen County Vicinage shall maintain a master docket and case file caption under "In Re: Elmiron Products Liability Litigation." The master file number will be assigned by the Civil Division Manager. All orders, pleadings, and other papers filed are deemed filed and docketed as to each individual action.
- e. The individual actions are not consolidated, but they shall be managed as a coordinated group, according to mass tort principles.
- f. Upon receipt of an electronically filed Complaint, wherein the data entered by Plaintiffs' Counsel does not accurately reflect the physical pleading, the Clerk is granted the authority to update the data in the Judiciary's Automated Case Management System ("ACMS") to accurately reflect what is listed on the physical pleading absent a subsequent court order.

11. Case Management Conferences.

- a. The court will conduct conferences, anticipated to be held every 45 to 60 days, and in addition the parties may request status, scheduling, and case management conferences to assess the progress regarding relevant issues. Reasonable notice of all such conferences will be provided to all counsel of record.
- b. All parties shall appear for the first formal conference with the undersigned on March 9, 2022, as set forth in paragraph 3 above.**
- c. Counsel shall submit an agenda for the Case Management Conference seven (7) days prior to the Case Management Conference. Same shall be submitted by email to Briana Martinotti at briana.martinotti@njcourts.gov and to Judge Rachelle L. Harz at rachelle.harz@njcourts.gov.**
- d. All conferences or parts thereof will be on the record and recorded. Anyone desiring a transcript may order one directly from the Bergen County Transcription Department.
- e. All counsel are required to comply with the provisions of each Order whether or not he or she was in attendance at the conference giving rise to the order.

12. Motions.

- a. All motions are to be filed on e-courts. All motion papers shall include a return date and schedule in accordance with the Rules of Court. Courtesy copies for the judge are required.
- b. Any motion that is applicable to more than one case – including motions that seek permission to appear *pro hac vice* – shall be noted on the first page by listing each docket number affected or if all, the notation, “Applicable to All Cases” with a schedule of the cases affected attached to the Notice of Motion. Filing fees associated with motions shall be paid pursuant to the Rules of Court and N.J.S.A. 22A:2-6 and 7. A separate fee shall be required for each docket number affected by a motion.
- c. Movants shall file each notice of motion, supporting documents, and proposed form of order on e-courts. A courtesy copy shall be supplied to the court.
- d. A proposed form of order shall be submitted for each docket number affected.
- e. No dispositive motions pursuant to R. 4:46 shall be filed before discovery is complete, except by permission of the court.
- f. Counsel shall not file any discovery motions without first meeting and conferring with each other to try to resolve any discovery dispute. If the issue cannot be resolved, then in that event, the court will address same at the next scheduled case management conference. Counsel should include such an issue on their Agenda.

g. Counsel may correspond to the court via e-mail:

i. briana.martinotti@njcourts.gov– Judge Harz’s Law Clerk¹

ii. Jamie.Colaneri@njcourts.gov– Judge Harz’s Team Leader

February 25, 2022



Rachelle Lea Harz, J.S.C.

¹ Please note this is the MultiCounty Litigation Law Clerk assigned to this MCL changes on a yearly basis on September 1. For an updated contact please visit the MultiCounty Litigation Website or call chambers at 201-221-0700 ext. 25612.