

	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: ATLANTIC COUNTY
IN RE PROTON-PUMP INHIBITOR LITIGATION	:	CASE NO: 631
	:	Civil Action
	:	MASTER CASE NO. ATL-L-1259-20
	:	
	:	<i>CASE MANAGEMENT ORDER NO. 2</i>

This matter having been opened to the Court at a Case Management Conference held via Microsoft Teams on July 29, 2020; in the presence of the attorneys for the plaintiffs and the attorneys for the defendants; and good cause appearing;

IT IS ON THIS 28th day of August, 2020,

ORDERED:

I. INITIAL PROVISIONS

A. Applicability

This Order applies to all cases previously filed and all those hereinafter filed or transferred to Atlantic County pursuant to the Supreme Court Order of November 6, 2019, establishing In Re Proton-Pump Inhibitor Litigation, MCL Case. No. 631 (“PPI MCL, Case No. 631”).

B. Continuing Obligations of CMO No. 1

Except as modified herein or any subsequent Case Management Order (“CMO”), the provisions of CMO. No. 1, entered July 8, 2020 by the Hon. Joseph L. Marczyk, P.J.Cv., continue in all respects, including the expectation that all counsel are to act in a courteous, professional manner at all times, and in the practices and procedures otherwise set forth in CMO No. 1.

II. PLAINTIFFS' AND DEFENDANTS' LEADERSHIP

A. Plaintiffs' Leadership

1. Appointment of Counsel

The Court appoints the following attorneys to serve as Liaison Counsel for Plaintiffs.

LIAISON COUNSEL FOR PLAINTIFFS:

Ellen Relkin, Esq.
Weitz & Luxenberg, P.C.
NJ Attorney ID No.: 006691985
220 Lake Drive East, Suite 210
Cherry Hill, New Jersey 08002
Tele.: 856.755.1115
erelkin@weitzlux.com

2. Designations, Future Changes in Leadership Structure

These designations are of a personal nature. This Court looks to these counsel to undertake personal responsibility to perform the designated functions and reserves the discretion to replace these counsel should they become unable or unwilling to do so, or should such other circumstances arise that warrant the same.

3. Duties and Responsibilities of Plaintiffs' Liaison Counsel

Plaintiffs' Liaison Counsel shall be charged with facilitating the administrative requirements of these pretrial proceedings. To the extent service is not otherwise achieved through eCourts, Plaintiffs' Liaison Counsel shall act as the primary recipients of the Court's orders on behalf of Plaintiffs, distributors of Plaintiffs' pleadings, notices, and motions to Defendants' Liaison Counsel, and shall coordinate service and filings. Plaintiffs' Liaison Counsel shall communicate with Plaintiffs' Leadership in MDL 2789 in an effort to promote efficiency and judicial economy. Plaintiffs' Liaison Counsel shall be reasonably available to communicate with the Court on administrative or procedural matters when necessary. Plaintiffs'

Liaison Counsel (or another member of her firm in the event of a schedule conflict) shall attend status conferences and such other hearings or conferences as they may occur.

4. Communication with Court

All communications from Plaintiffs with the Court should be through the Liaison Counsel or, as requested, by the Liaison Counsel's designee. If circumstances require direct correspondence with the Court by an individual counsel, copies of any such communications shall be simultaneously served upon the Liaison or as otherwise delegated.

5. No Waiver of Privilege

The Court recognizes that cooperation by and among plaintiffs' counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between plaintiffs' counsel shall not be deemed a waiver of the attorney-client privilege and/or the work product doctrine, if the privilege or doctrine is otherwise applicable, and all of such persons shall maintain the confidentiality of such communications. Cooperative efforts contemplated above shall in no way be used against any plaintiff by any defendant. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

6. Individual Claimants' Counsel Responsibility for Their Respective Clients.

Under no circumstances is Liaison Counsel responsible for filings, discovery, or any other issue or matter related to an individual plaintiff's case or claim. More specifically the Liaison Counsel is in no way responsible for the attorney-client relationship and the duties and responsibilities each individual attorney or law firm owe to their client(s) in the prosecution of their individual case(s).

B. Defendants' Leadership

1. Appointment of Counsel

The Court appoints the following attorneys to serve as Liaison Counsel for Defendants:

LIAISON COUNSEL FOR DEFENDANTS:

Natalie H. Mantell, Esq.
McCarter & English, LLP
NJ Attorney ID No.: 016342005
100 Mulberry Street, Four Gateway Center
Newark, NJ 07102
Tele.: 973.639.7926
nmantell@mccarter.com

2. Designations, Future Changes in Leadership Structure

These designations are of a personal nature. This Court looks to these counsel to undertake personal responsibility to perform the designated functions and reserves the discretion to replace these counsel should they become unable or unwilling to do so, or should such other circumstances arise that warrant the same.

3. Duties and Responsibilities of Defendants Liaison Counsel

Defendants' Liaison Counsel shall be charged with facilitating the administrative requirements of these pretrial proceedings. To the extent service is not otherwise achieved through eCourts, Defendants' Liaison Counsel shall act as the primary recipient of the Court's orders on behalf of Defendants, distributors of Defendants' pleadings, notices, and motions to Plaintiffs' Liaison Counsel, and shall coordinate service and filings. Defendants' Liaison Counsel shall be reasonably available to communicate with the Court on administrative or procedural matters when necessary. Defendants' Liaison Counsel (or another member of her firm in the event of a schedule conflict) shall attend status conferences and such other hearings or conferences as they may occur.

4. Communication with Court

All communications from Defendants with the Court should be through the Liaison Counsel or, as requested, by the Liaison Counsel's designee. If circumstances require direct correspondence with the Court by an individual counsel, copies of any such communications shall be simultaneously served upon the Liaison or as otherwise delegated.

5. Joint Defense Activities; No Waiver of Privilege

The Court recognizes that it is customary and proper for defendants and their counsel in cases such as this to undertake joint defense activities. Communications, discussions, and information sharing among counsel in connection with Defendants' joint efforts and joint meetings in this litigation shall not constitute waiver of attorney-client, work product, trade-secret, or other protections to the extent such protections may otherwise apply. Cooperative efforts among defense counsel shall be for the purpose of litigating these cases in an organized fashion, shall not be discoverable, and shall not be communicated to the trier of fact. If a party withdraws from any cooperative efforts, prior communications between that party and other parties and work product shared by or with the departing party will not be deemed to have lost the protection of the attorney-client, work product, or any other privilege. Cooperation among parties for purposes of this litigation shall not constitute evidence of conspiracy, concerted action, or any other wrongful conduct.

6. Individual Defendants' Counsel Responsibility for Their Respective Clients.

Under no circumstances is Liaison Counsel responsible for filings, discovery, or any other issue or matter related to an individual case or claim. More specifically the Defendants' Liaison Counsel is in no way responsible for the attorney-client relationship and the duties and

responsibilities each individual attorney or law firm owe to their client(s) in the defense of their case(s).

III. PRO HAC VICE ADMISSIONS

An attorney seeking to appear *pro hac vice* shall apply by formal notice of motion with supporting affidavit and proposed form of order, in compliance with R. 1:21-2 of the Rules Governing Courts of New Jersey.

IV. COORDINATION

This Order seeks to promote judicial efficiency between this MCL and other litigations involving PPIs, including the pending federal court multi-district litigation, *In Re: Proton-Pump Inhibitor Products Liability Litigation*, MDL No. 2789 (D.N.J.), as well as any other consolidated state court litigations (collectively, the “Other Consolidated Actions”). The parties agree to seek full cooperation and coordination with the Other Consolidated Actions to prevent duplication of efforts and the orderly prosecution of these actions. It is the Court’s intention and desire that, to the extent possible, the scheduling deadlines, case management orders, and discovery in this MCL will be coordinated with those entered by The Hon. Claire C. Cecchi, U.S.D.J. in the District of New Jersey.

V. **DISCOVERY**

A. **Provisions Regarding Document Preservation**

Each party is reminded of their obligations regarding the preservation of documents, records, and physical evidence, pursuant to CMO No. 1 of this Court and the Rules Governing the Courts of the State of New Jersey.

B. **Coordination with Other Consolidated Actions**

1. This Court and the parties are mindful of the desire for the efficiencies to be gained through the non-duplication of discovery between this MCL and discovery taking place in the Other Consolidated Actions. Accordingly, the parties shall not seek duplicative discovery between this MCL and discovery already taken in the Other Consolidated Actions.

2. In order to avoid duplication of efforts and to promote the non-duplication of discovery between this MCL and the Other Consolidated Actions, upon entry of this Order, any future depositions noticed in the Other Consolidated Actions (other than depositions relating to matters specific to individual cases (case-specific depositions)) will be cross-noticed in this MCL by Defendants. The parties agree that all company witness depositions that have previously taken place in the federal MDL and Delaware PPI litigation shall be deemed to have been cross-noticed in this MCL. To the extent the parties desire to notice any non-case-specific depositions in this MCL, the parties shall meet and confer before the service of any notices for such depositions. All non-case specific depositions shall be coordinated with the Other Consolidated Actions to avoid duplication of discovery.

3. The parties agree that the documents produced in the MDL will be considered to be produced in this MCL.

4. No additional discovery shall be conducted unless agreed to by the parties pending further order of the court.

VI. PROTECTIVE ORDER/ESI ORDER

The parties agree to be bound by the Protective Order entered in the *In Re: Proton-Pump Inhibitor Litigation*, MDL No. 2789, venued in the District of New Jersey. To the extent any document productions are made in this MCL, the parties agree to be bound by the ESI Order entered in the MDL, No. 2789.

VII. WAIVER OF SERVICE

Defendants' counsel will advise Plaintiffs' Liaison Counsel within seven (7) days of this Order whether Defendants consent to waive formal service, such that filing of pleadings via eCourts will constitute service on Defendants as required by the New Jersey Rules of Court or if they will agree to some other procedure to streamline service, including substituted service through alternative means such as those provided in CMOs 27 and 32 in MDL, No. 2789. In the event that a Defendant(s) do(es) not agree to initial service of process being effected by virtue of the filing of a complaint via eCourts or some other streamlined procedure, Plaintiffs shall be required to comply with the Rules Governing the State of New Jersey regarding proper and effective service of initial process.

VIII. EX PARTE SETTLEMENT COMMUNICATIONS

By consent of all parties, the Court may contact or be contacted on an *ex parte* basis regarding settlement issues.

IX. CASE MANAGEMENT CONFERENCE PROCEDURES

Until further notice, the Court will conduct quarterly Case Management Conferences. The next Case Management Conference is scheduled for November 6, 2020 at 2:00 p.m. Counsel may appear in person, by telephone or by Microsoft Teams or any such other means that the Court can reasonably accommodate.

X. DISCOVERY END DATE

The current discovery end date for all cases filed under Master Case Number ATL-L-1259-20 is September 1, 2021.



HONORABLE JOSEPH L. MARCZYK, P.J.Cv.