

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: TYLENOL (ACETAMINOPHEN) :
MARKETING, SALES PRACTICES AND : MDL - 2436
PRODUCTS LIABILITY LITIGATION :
 :
 :
 v. :
 :
 :
 MCNEIL-PPC, INC., ET AL., :
 Defendants. :

ORDER

AND NOW, this 26th day of April, 2013, it is hereby **ORDERED** that:

1. **APPLICABILITY OF ORDER.** This Order shall govern the practice and procedure in the actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to its order of April 1, 2013, all related actions originally filed in this Court or transferred or removed to this Court, and any “tag-along” actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 12 of the Rules of Procedure of the Panel, subsequent to the filing of the final transfer order by the Clerk of this Court.
2. **CONSOLIDATION.** The actions described in Paragraph One of this Order are CONSOLIDATED for pretrial purposes.
 - a. **FUTURE ACTIONS.** Any “tag-along” action later filed in, removed to or transferred to this Court, or related cases directly filed in the Eastern District of Pennsylvania, shall automatically be assigned to the undersigned and be consolidated with this action.

3. **INITIAL CONFERENCE.** An initial pretrial conference will be held for the purpose of addressing matters relating to pretrial and discovery proceedings in these cases. The conference shall be held on **Tuesday, May 21, 2013, at 10:00 a.m.**, in Courtroom 3B of the United States Courthouse, 601 Market Street, Philadelphia, Pennsylvania.

a. **GENERAL RESPONSIBILITIES OF COUNSEL.** Counsel are expected to familiarize themselves with the Manual for Complex Litigation, Fourth ("MCL 4th"), and be prepared at the conference to suggest procedures that will facilitate the expeditious, economical, and just resolution of this litigation.

b. **APPEARANCE AT CONFERENCE.** One attorney representing each party shall appear at the pretrial conference. To minimize costs and facilitate a manageable conference, parties with similar interests may agree to have an attending attorney represent their interest at the conference. Any party appearing through a designated attorney instead of its attorney of record shall serve written notice of such arrangement on the Court at Chambers (Room 3809) on or before **Wednesday, May 15, 2013**. By designating an attorney to represent its interest at the conference, a party will not be precluded from other representation during the litigation, nor will attendance at the conference constitute waiver of any objections to jurisdiction, venue or service.

c. **AGENDA.** The parties shall confer and submit a joint proposed agenda for the conference on or before **Wednesday, May 15, 2013**. In the

event the parties cannot agree on particular items, they shall include in the proposed agenda brief statements of their respective positions. The parties should be guided generally by reference to the items listed in MCL 4th Sections 22.6, 22.61, 22.62, and 22.63, insofar as they are applicable.

However, the proposed agenda must include these items: discovery plan, amendment of pleadings, and consideration of class action allegations and motions. The proposed agenda shall be submitted to the Court by filing the original and serving two copies on the Court at Chambers.

d. **POSITION STATEMENT.** Plaintiffs and defendant shall submit to the Court at Chambers, on or before **Wednesday, May 15, 2013**, a brief written statement of their preliminary understanding of the facts involved in this litigation and the critical legal and factual issues. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses, and may not be offered in evidence for any purpose in later proceedings. The parties' statements shall list all pending motions, as well as all related cases pending in state or federal court, along with their current status, including any discovery taken to date, to the extent known. The parties shall be limited to one such submission for all plaintiffs, and one such submission for defendant.

e. **PROPOSED CASE MANAGEMENT ORDER(S).** The parties shall confer and submit one or more joint proposed case management order(s), as appropriate, on or before **Wednesday, May 15, 2013**. In the event the parties cannot agree on particular items, they shall include in the proposed

order(s) brief statements of their respective positions. The proposed order(s) must include detailed provisions regarding discovery, including e-discovery, insofar as is practicable at this time.

f. **APPLICATIONS / NOMINATIONS.** It is the Court's intent to select liaison counsel for the plaintiffs and liaison counsel for the defendant to perform largely administrative functions, and to appoint a Plaintiffs' Steering Committee to conduct and coordinate the discovery stage of this litigation with the defendant's representatives.

i. The Court has received Plaintiffs' filing (Doc. No. 5) for membership and leadership positions. The Court invites any other plaintiffs' attorney to apply or nominate counsel for a leadership position on or before 12:00pm on **Wednesday, May, 15, 2013**. Defendants shall confer and submit three (3) candidates, if possible, for the position of liaison counsel. Each candidate's name shall be submitted to the Court with a current curriculum vitae and any other pertinent information for the Court to consider. Only attorneys of record in this litigation may apply. These applications will be considered at the case management hearing on Tuesday, May 21, 2013.

ii. Objections may be made to the appointment of any applicant. Objections must be in writing, and must be filed with the Clerk in the original on or before **Friday, May 17, 2013**. Objections must be succinct, and must be supported by necessary documentation. Any objection also must be served on

the Court and all counsel. Applicants may reply to any such objection lodged against them at the hearing on May 21, 2013.

4. **PROCEDURAL MATTERS.** Until abrogated or amended by subsequent order of this Court, the following procedures shall govern in this matter.

a. **PRIOR ORDERS.** Any Orders, previously entered by this Court or any transferor court shall remain in full force and effect unless modified by this Court upon application except as provided herein. All orders by transferor courts imposing dates for pleading or discovery are vacated.¹

i. All outstanding discovery proceedings in these actions are stayed until further order of this Court and the time requirements to perform any acts or file any papers pursuant to Rule 26 through 37 of the Federal Rules of Civil Procedure, are tolled until such time as a discovery schedule is established. No further discovery shall be initiated. Moreover, all pending motions must be re-filed in the master docket case file and re-noticed for resolution on a motion day after the initial conference.

ii. Self-executing discovery shall be stayed until further consideration, although the parties should be currently considering such obligations to produce discovery and their expectations of discovery to be produced by others.

b. **SERVICE.** The parties shall present to the Court at the initial conference a list of attorneys for purposes of service (Panel Attorney Service

¹ Defendant's Motions to Stay the Case (Doc. No. 5 & 6) are denied as moot.

List). The list shall include only one attorney for each party separately represented. The list shall include an office address, email address, fax number and telephone number for each attorney on the list. Any attorney who wishes to have his or her name added to or deleted from the Panel Attorney Service List may do so upon request to the Clerk and notice to all other persons on the service list. Service shall be deemed sufficient if made upon all attorneys on the Panel Attorney List.

c. **MASTER DOCKET FILE.** The Clerk of Court will maintain a master docket case file styled "In Re: Tylenol (Acetaminophen) Marketing, Sales Practices And Products Liability Litigation." When a pleading is intended to be applicable to all actions, this shall be indicated by the words: "This Document Relates to All Cases." When a pleading is intended to apply to less than all cases, this Court's docket number for each individual case to which the document relates shall appear immediately after the words "This Document Relates To."

d. **FILING.** Documents subsequent to the initial complaint shall be filed with the Clerk of this Court and not with the transferor court. All such pleadings shall be filed electronically through ECF. Counsel shall take steps to be registered as electronic filers in the Eastern District of Pennsylvania and to familiarize themselves with the Court's administrative procedures for filing as soon as practicable. All entries are to be made on the master docket sheet with a notation listing the cases to which the document applies.

i. Any document filed which is substantially identical to any other document filed in another of these actions shall be sufficient if it incorporates by reference the document to which it is substantially identical. Where counsel for more than one party plans to file identical documents counsel shall join the submission and file only one document on behalf of all so joined.

e. **DOCKETING.** When an action that properly belongs as a part of this MDL is hereinafter filed in the Eastern District of Pennsylvania or transferred here from another court, the Clerk of this Court shall:

1. File a copy of this Order in the separate file for such action;
2. Make an appropriate entry on the master docket sheet;
3. Mail the attorneys for the plaintiff in the newly filed or transferred case a copy of this Order;
4. Upon the first appearance of any new defendant, mail to the attorneys for such defendant a copy of this Order.

f. **APPEARANCES.** Counsel who appeared in a transferor court prior to transfer need not enter an additional appearance before this Court.

Moreover, attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation, and the requirements of Local Rules 83.2.6 and 83.2.7 are waived. Association of local counsel is not required.

g. **REMAND STIPULATIONS.** In the event a case is remanded, the parties shall furnish to the Clerk of Court a stipulation or designation of the contents of the record and furnish all necessary copies of any pleadings filed, so as to enable the transferee clerk to comply with the order of remand.

h. **PRESERVATION.** All parties and their counsel are reminded of their duty, consistent with the Federal Rules of Civil Procedure, to take reasonable measures to preserve documents, electronically stored information and things (i.e., in cases brought on behalf of decedents, tissue sample or other biological evidence) that are potentially relevant. Upon appointment of Plaintiffs' Steering Committee, counsel shall meet and confer as to the appropriate scope of preservation and, if unable to reach agreement, shall present their positions to the Court for resolution.

i. Counsel is advised to review and follow this Court's General Pretrial and Trial Procedures, which will govern unless modified by this Court.

5. **COMMUNICATION WITH THE COURT.** Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to opposing counsel.

6. **COMMUNICATION BETWEEN COUNSEL.** The Court recognizes that cooperation by and among plaintiffs' counsel and by and among defendant's counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between plaintiffs' counsel and among and between defendant's counsel shall not be deemed a waiver of the

attorney-client privilege or the protection afforded attorney work product, and cooperative efforts contemplated above shall in no way be used against any plaintiff by defendant or against defendant by any plaintiff. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or the attorney work product doctrine.

7. **STATUS CONFERENCE.** The Court anticipates scheduling a monthly status conference with counsel. Any counsel who cannot be present in person will be able to participate in the conference via telephone. The Court expects any counsel who intends to offer substantive comments at any conference to appear in person, reserving attendance by telephone for those attorneys who primarily intend to listen. Liaison counsel shall submit a joint written status report and agenda to the Court two business days prior to any conference.

BY THE COURT:



LAWRENCE F. STENGEL