

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

**IN RE: TYLENOL (ACETAMINOPHEN)
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION**

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**MDL NO. 2436
2:13-md-02436
HON. LAWRENCE F. STENGEL**

***THIS DOCUMENT RELATES TO ALL
CASES***

CASE MANAGEMENT ORDER NO. 12
(Preliminary Discovery Plan)

I. SCOPE AND APPLICABILITY OF PRELIMINARY DISCOVERY PLAN

1. This Preliminary Discovery Plan (Plan) is intended to conserve judicial and party resources, eliminate duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. The Plan shall apply to all cases transferred to this court by the Judicial Panel on Multidistrict Litigation (Panel), pursuant to its Transfer Order of April 1, 2013, any tag-along actions transferred to this court by the Panel, and any related actions that have been or will be originally or directly filed in, transferred to, or removed to this court and assigned thereto as part of this MDL proceeding.
2. No party may conduct any initial discovery of another party not expressly authorized by the Plan absent further Order of the court or written agreement of the parties. This Order does not affect the obligations of the parties to comply with the previously entered Orders of this court governing Plaintiff Fact Sheet and Defendant Fact Sheet Discovery (CMO's 10 and 10(b), respectively).

3. This provision and this Order shall not preclude or govern third-party discovery.
4. This Order applies to Defendants, McNEIL-PPC, Inc., and Johnson & Johnson, only.

II. WAIVER OF INITIAL DISCLOSURE OBLIGATIONS AND INCORPORATION OF PENDING OR PREVIOUSLY SERVED DISCOVERY INTO THIS MDL

1. For all cases in this MDL, the parties are relieved from complying with the requirements of Federal Rule of Civil Procedure 26(a)(1).
2. Any request for discovery or notice of deposition served in a case before it was transferred to the MDL proceedings is deemed to be consolidated into the MDL and responses and/or supplementation of responses will apply to all cases in the MDL proceedings.

III. PLAINTIFF AND DEFENDANT FACT SHEET OBLIGATIONS

1. Discovery upon MDL Plaintiffs shall commence through utilization of a “Plaintiff Fact Sheet” (PFS) discovery process.
2. As set forth by CMO 10, a timely and complete PFS shall be considered to be the equivalent of a plaintiff’s interrogatory answers and responses to requests for production of documents.
3. If a plaintiff does not submit a timely and complete PFS within the time specified in this Order, defendants may send a Notice of Overdue Discovery letter to plaintiff’s counsel of record within ten (10) days after said deadline. The Notice of Overdue Discovery letter shall permit fourteen (14) days from the date of the letter for plaintiff to cure the overdue PFS. In the event a completed PFS is not provided within such 14-day period, defendants shall exercise reasonable efforts to meet and confer with plaintiff’s counsel for a period not to exceed five (5)

days. If, after the meet and confer process, the PFS remains overdue, defendants may move to dismiss plaintiff's case. Said motion shall be without prejudice, on Notice filed by ECF, and shall permit fourteen (14) days for Plaintiff to file an opposition, if any. Plaintiffs' Liaison Counsel shall be served, via email, with a copy of all Notice of Overdue Discovery letters and/or any motion to dismiss under this Section.

4. If defendants receive a PFS in the allotted time, but the PFS is not properly completed in defendants' view, defendants' counsel shall send to plaintiffs' counsel of record and Plaintiffs' Liaison Counsel a Notice of PFS Deficiency letter identifying the purported deficiencies. If plaintiff believes the PFS was properly completed, the parties shall meet and confer on the issue within fourteen (14) days of the plaintiff's receipt of such Notice. Subject to such meet and confer, plaintiff shall then have twenty (20) days from the date of the meet and confer to serve an amended or supplemental response or advise that he/she is not amending/supplementing the response, and defendants may file a motion to dismiss, without prejudice, after the expiration of the above deadlines.
5. Upon receipt of a PFS, defendants may file a Rule 12(b)-(c) or Rule 56 dispositive motion upon such grounds that include, but are not limited, to matters of law such as: lack of proper product identification, statute of limitations, improper party/representative, or lack of cognizability of claim(s) or damage(s) under applicable state or federal law. Such motion(s) shall be in addition to, and not in lieu of, any dispositive motions set by prior or subsequent Case Management Order for member actions and/or potential bellwether cases.

6. Discovery upon defendants related to individual plaintiffs shall commence through utilization of a “Defense Fact Sheet” discovery process governed by CMO 10(b). The defendants shall not withhold a DFS after receiving a PFS if the PFS contains the following “*Core-Criteria*” answers to the following questions in the PFS: (1) PFS Sect. I and II (identification of plaintiffs and case); (2) PFS Sect. III (Healthcare providers and pharmacies); (3) PFS Sect. VI (Tylenol/Acetaminophen Use); Sect. VII (Injuries and Damages), questions 1, 2(a), 2(b), 2(c), and 3); PFS Sect. X (plaintiffs has signed the Declaration) and PFS Sect. XI (A) question (copies of packaging, if any) and (B) (plaintiff has provided all signed Authorizations).

IV. GENERIC DISCOVERY FOR DEFENDANTS

1. It is understood that the Plaintiff Fact Sheet discovery process will serve as generic discovery for the defendants. Defendants will not serve additional generic written discovery without obtaining leave of court.

V. GENERIC DISCOVERY FOR PLAINTIFFS

1. The Plaintiffs’ Steering Committee (PSC) served Requests for Admissions on June 3, 2013. This set included 234 Requests for Admissions plus sub-parts. The PSC has asserted that the responses to the Requests for Admissions contain deficiencies and that a General Objection has been made to all of the Requests for Admissions and that Specific Objections has been made to 221 of the 234 Requests. The parties are therefore ordered to meet and confer within ten (10) days of this Order relating to the alleged deficiencies and relating to the dispute over discovery responses. If they are unable to resolve the dispute, they should

advise the court so that the court may, pursuant to CMO-6, schedule briefing and/or a hearing on the dispute and to rule.

2. Certain written discovery (Interrogatories and Requests for Production of Documents) has been served in New Jersey state court proceedings by various plaintiffs who are represented by various members of the PSC in this MDL. Also, in cases that were pending in federal court prior to the establishment of this MDL, various of the plaintiffs' counsel who are members of the PSC served written discovery in those federal cases that have now been transferred into this MDL. There shall be no duplication of written discovery. The PSC has served 219 Requests for Production and 49 Interrogatories. However, the PSC asserts that there are deficiencies to the responses to the prior served written discovery in the federal cases. The parties are therefore ordered to meet and confer within ten (10) days of this Order relating to the alleged deficiencies and relating to the dispute over discovery responses. If they are unable to resolve the dispute, they should advise the court so that the court may, pursuant to CMO-6, schedule briefing and/or a hearing on the dispute and to rule.
3. Additionally, the PSC asserts that the discovery directed to Johnson & Johnson only on July 31, 2013 has not been responded thereto. This set includes 25 Requests for Production and 22 Interrogatories. The parties are therefore ordered to meet and confer within ten (10) days of this Order relating to the alleged deficiencies and relating to the dispute over discovery responses from Johnson & Johnson. If they are unable to resolve the dispute, they should advise the court so

that the court may, pursuant to CMO-6, schedule briefing and/or a hearing on the dispute.

4. Given that written discovery has already been served and responded to in New Jersey state court proceedings and in individual federal court cases that have since been transferred to this MDL, the PSC will not serve additional generic written discovery, including Requests for Admissions, Interrogatories, or Requests for Production, upon Defendants J&J and McNeil without the PSC obtaining leave of court.
5. The PSC will serve Federal Rule of Civil Procedure 30(b)(6) notices and will meet and confer with defense counsel about the scope and content of such notice and scheduling.
6. Core case-specific discovery and the bellwether trial program will be addressed in a separately entered case management order.

VI. DEPOSITIONS

1. A Deposition Protocol will be governed by a separately entered case management order.

VII. COORDINATION WITH STATE COURTS

1. This Order is being entered in reliance on representations of lead counsel for the plaintiffs and defendants and counsel for plaintiffs in state court actions presently pending in California, New Jersey, and other state court actions that the parties in those state court actions, including those that may be filed after the date of entry of this Order: (a) intend to benefit from the efforts of coordination and cooperation set forth in this Order; (b) do not intend to request scheduling orders

that set earlier deadlines than any of those set forth in this Order; and (c) do not intend to engage in duplicative discovery, or additional discovery in relation to that set forth in this Order. Scheduling or discovery conflicts that arise in any state court proceedings may be brought to the attention of this court, and the court shall endeavor to coordinate with the presiding Judge(s) of such action(s) in an effort to resolve any such conflicts.

SO ORDERED this 1st day of October, 2013.

BY THE COURT:

/s/Lawrence F. Stengel
LAWRENCE F. STENGEL, J.