

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF ILLINOIS**

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IN RE: PRADAXA (DABIGATRAN  
ETEXILATE) PRODUCTS LIABILITY  
LITIGATION

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)  
) 3:12-md-02385-DRH-SCW  
) MDL No. 2385  
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This Document Relates to: All Cases

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**DEFENDANTS' RESPONSE TO THE PSC'S SUPPLEMENTAL  
MOTION TO VACATE OR FURTHER MODIFY CMO 4**

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Defendants Boehringer Ingelheim Pharmaceuticals, Inc. and Boehringer Ingelheim International GmbH (together, "BI") agree with the PSC that the MDL is at its conclusion and the PSC should be disbanded. There is no need for a new PSC, and no attorney with a case remaining in the MDL has requested one. Along with the dissolution of the PSC, all confidential work product and discovery should be returned or destroyed. This is the logical consequence of disbanding the PSC and concluding the MDL, and it is the only course consistent with CMO 2—which was in place and relied upon when the Master Settlement Agreement was negotiated and executed. For remaining and future cases, any discovery will be preserved by BI and produced on a case-by-case basis as needed.

**ARGUMENT**

BI has no objection to the PSC's request to disband the PSC, provided the grant of such relief is conditioned on the PSC being ordered to return or destroy confidential and highly confidential documents, including all derivative materials and work product based on those documents. *See* Amended CMO 2 ¶ 19 (June 10, 2013). BI responds briefly to address the additional questions raised by the PSC in its motion.

**1. There is no basis for the creation of a new Plaintiff's Steering Committee.**

The PSC's question whether a new Plaintiff's Steering Committee should be constituted should be answered in the negative. No one with any cases remaining before this Court has asked for a new PSC to be formed, and the very basis for the PSC's motion is that the MDL is at its conclusion. The appointment of a new PSC is at odds with that. The few cases that remain in this MDL can be handled by the individual attorneys responsible for those cases.

The PSC refers to orders in the *BioMet* and *Ortho Evra* MDLs, but it does not support the formation of a new PSC. In the *BioMet* MDL, though cases had settled, there remained cases for discovery, dispositive motions, and bellwether trials after the settlements were finalized. *See* MDL 2391 Status Conf. Memo (N.D. Ind. Mar. 16, 2015), Ex. A. Similarly, in the *Ortho Evra* MDL, the Court's appointment of a new PSC marked a transition from workup of "pre-label" cases, which was largely complete, to "post-label" cases. *See* MDL 1742, CMO 38 (N.D. Ohio July 23, 2009), Ex. B. Here, by contrast, the MDL is truly at its conclusion. The handful of remaining cases will either be dismissed after CMO 78 motion practice or will be remanded for further proceedings. No remaining lawyer is responsible for more than one case, and no steering committee is required for these few remaining cases.

**2. Confidential discovery and work product should be destroyed or returned.**

The question of what to do with confidential discovery and work product has already been answered by the Court. CMO 2 requires that *all* confidential and highly confidential information—including discovery and attorney work product—be destroyed at the conclusion of the Pradaxa MDL. This CMO has been in place since 2012, and BI relied on it when negotiating and entering into the Master Settlement Agreement, which occurred *prior* to the service of expert reports. Indeed, the execution of the MSA in large part hinged on the fact that the settlement

occurred prior to the disclosure of expert reports, and the expert disclosure deadlines were repeatedly continued to permit the parties to finalize the settlement before expert reports were ever disclosed. With the expectation that the settlement would be effective (as it was) and that the expert reports would be destroyed at the conclusion of the MDL (as required under CMO 2 since they were never disclosed), the parties entered into the \$650 Million national settlement. Now, with this deal in hand and the MDL concluded, the Post-MSA Counsel<sup>1</sup> want to use PSC work product to pursue, as the PSC puts it, “a second wave of litigation.” This is at odds with the basic purpose of the global settlement and impedes this Court’s ability to effectuate settlements.<sup>2</sup>

BI adamantly opposes any provision of work product to the Post-MSA Counsel and incorporates its response to the PSC’s Motion for a Case Management Order Amending CMO 4 addressing this issue [Doc. 654]. Notably, the PSC agrees with BI that the Post-MSA Counsel are not entitled to their work product under the CMOs in place in this MDL. The PSC offers the apt analogy that paying a common benefit assessment for one set of cases does not buy a “lifetime membership” for any future case. BI and the PSC agree that participants in the common benefit fund received the benefit of their bargain, and that bargain is concluded by virtue of the conclusion of this MDL and the provisions of CMO 2. The only exception relates to the current cases on appeal before the Seventh Circuit, for which BI has no objection to placing work product in a “time capsule” as described by the PSC and as reflected in the

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<sup>1</sup> In their response to the PSC’s Motion to Vacate CMO 4 [Doc. 662], counsel refer to their clients as “Post MSA Plaintiffs.” BI reiterates that these attorneys do not represent any such plaintiffs before this Court, and there is only one such plaintiff in Connecticut.

<sup>2</sup> Permitting the draft expert reports prepared by the PSC to be distributed to other attorneys would likely also violate the PSC’s agreements with those experts, as those experts would not have anticipated that their reports would be distributed to unknown counsel for use in perpetuity.

proposed order submitted to the Court in connection with the PSC's prior motion to modify CMO 4 [Doc. 650].

The response filed by counsel representing the Plaintiffs with cases on appeal before the Seventh Circuit [Doc. 664], although at odds with the agreed position of the PSC and BI, should not impact this Court's ruling. The preservation of the PSC work product in a time capsule as proposed will provide these plaintiffs the benefit of their common benefit bargain in the event the cases are remanded. With that, one cannot credibly assert that the PSC needs to remain in existence.

BI reiterates that it is continuing to preserve its MDL discovery in accordance with the Orders of this Court and the Connecticut Court. BI will produce discovery materials as necessary on a case-by-case basis or, if appropriate, in a more coordinated manner if multiple cases are filed in Connecticut as the Post-MSA Counsel threaten. As a result, there will be no loss of discovery in the event this Court orders the destruction of the PSC's materials. It was the expectation of both BI and the PSC that CMO 2 would be followed after the completion of the MSA and the conclusion of this MDL, and the Post-MSA Plaintiffs' desire to continue this litigation in another forum should have no impact on such enforcement.

### **CONCLUSION**

BI does not oppose the PSC's motion to vacate CMO 4, provided the confidential and highly confidential materials, as well as derivative work product, in the possession of the PSC should be destroyed or returned at this time. BI opposes the appointment of a new Plaintiffs' Steering Committee.

Respectfully submitted, this 8th day of May, 2015.

/s/ Eric E. Hudson

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**CERTIFICATE OF SERVICE**

Pursuant to Local Rule 5.1 and Case Management Order No.1, Paragraph 5, I hereby certify that a copy of the foregoing document was filed through the Court's ECF system. Notice of this filing will be sent electronically to registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: May 8, 2015.

/s/ Eric E. Hudson  
Eric E. Hudson

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN RE: BIOMET M2a MAGNUM HIP	)	
IMPLANT PRODUCTS LIABILITY	)	CAUSE NO. 3:12-MD-2391
LITIGATION (MDL 2391)	)	
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MEMORANDUM OF MARCH 16, 2015 STATUS CONFERENCE

The parties provided a brief update regarding the status of mediation and settlements (see March 10, 2015 Joint Status Report [Doc. No. 2840]), and advised the court that:

(1) The mediation process outlined in ¶ 3 of the Settlement Agreement has been completed, and the parties are in the process of finalizing the pending settlements.

(2) The Plaintiffs' Steering Committee (PSC), including lead and liaison counsel, have requested that their appointments be terminated upon completion of the settlement process outlined in the January 31, 2014 Settlement Agreement and that a new PSC be appointed.

(3) New deadlines for discovery, dispositive motions, and bellwether trials will need to be established after settlements have been finalized and the remaining cases have been identified.

Following discussion, the court:



(1) DEFERRED ruling on the PSC's request for early termination and appointment of a new PSC, and advised the parties that it would: (a) enter an order inviting new applications for the PSC, and (b) reinstate the 2013 scheduling order [Doc. No. 1118] to begin 45 days after appointment of a new PSC, with dates to be adjusted to fit the pre-existing time limits;

(2) DIRECTED the parties to confer and file an updated report before the next status conference on the status of discovery and the Common Benefit Fund; and

(3) SET the next status conference for **Tuesday, April 21, 2015, at 9:30 a.m. (E.D.T.)**.

ENTERED: March 18, 2015

/s/ Robert L. Miller, Jr.  
Judge, United States District Court  
Northern District of Indiana



UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

IN RE: ORTHO EVRA PRODUCTS  
LIABILITY LITIGATION

N.D. OHIO Case No. 1:06-40000

MDL Docket No. 1742

This Document Relates To:

ALL CASES.

CASE MANAGEMENT ORDER NO. 38  
(APPOINTING NEW COUNSEL TO THE  
PLAINTIFFS' LEADERSHIP  
COMMITTEES)

This Court previously entered Case Management Order Nos. 1, 3, and 5 (Document Nos. 3, 9, and 30 respectively), appointing Plaintiff's Lead and Liaison Counsel, and various counsel as members of the Plaintiffs' Executive Committee ("PEC") and Plaintiffs' Steering Committee ("PSC"). The cases have been separated for discovery purposes into a "pre label" and "post label" track. The Court finds that the PEC and PSC have fulfilled their obligations as to the pre label cases and therefore the current PEC and PSC are relieved of their responsibilities with the appreciation of the Court.

As to all remaining and future cases (pre label or post label), the Court hereby appoints a new PSC consisting of:

Plaintiffs' Lead Counsel:

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Plaintiffs' Liaison Counsel:

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111 John Street, 14<sup>th</sup> Floor  
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Plaintiffs' Steering Committee:

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The Court expresses its gratitude to all counsel for their service to the MDL plaintiffs and the Court.

Lead and Liaison Counsel for Defendants shall remain unchanged.

**IT IS SO ORDERED.**

Dated July <sup>23</sup><sub>\_,</sub> 2009

s/ David A. Katz

DAVID A. KATZ  
U.S. DISTRICT JUDGE