

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE: BENICAR (OLMESARTAN)	*	MDL 2606
PRODUCTS LIABILITY LITIGATION	*	
	*	
THIS DOCUMENT RELATES TO	*	JUDGE ROBERT B. KUGLER
ALL CASES	*	
	*	MAG. JUDGE JOEL SCHNEIDER

**PROPOSED JOINT AGENDA AND REPORT
FOR 21 JULY 2015 STATUS CONFERENCE**

1. **Report on Docket.**
2. **Report on State Court Litigation.**
3. **Timely Service of Domestic Defendant Complaints.**

DEFENSE POSITION: While the defense is aware of 390 complaints that have been filed with the Court, only 205 of those complaints have been served on Defendants. As of the last conference on June 30, the clerk stated that 500 cases had been filed, but only 79 had been served on defendants. Defendants submit that the Court should address the growing backlog of unserved complaints, which only serves to delay the preparation of cases and the plaintiffs' to serve complete and substantive Plaintiff Fact Sheet responses. Defendants submit that under these circumstances, the time to serve a Plaintiff Fact Sheet should run from the date of filing of the Complaint, not the date of service.

PLAINTIFF POSITION: The Court's Order regarding the timing for service of Plaintiff Fact Sheets ("PFS") was the product of contested briefing and argument, and should not be modified. Moreover, the Defendants offer no compelling basis on which to modify that Order.

4. Entry of Plaintiff Fact Sheet.

On July 7, 2015, pursuant to this Court's order, the parties submitted a final version of the Plaintiff Fact Sheet, with exhibits, agreed upon by the parties.

5. Defendant Fact Sheet Briefing.

The parties submitted simultaneous briefs concerning the Defendant Fact Sheet on July 14, 2015, pursuant to the Court's briefing schedule.

6. State-Federal Coordination.

DEFENSE POSITION: The Court and the parties should identify opportunities and continue to work in an effort to ensure coordination between the MDL and the New Jersey Consolidated Litigation, including coordination of discovery requests and depositions.

PLAINTIFF POSITION: The subject of coordination with state court litigation has been discussed multiple times. Plaintiffs do not believe that further coordination needs to be specifically addressed at this time.

7. Discovery and ESI Issues.

a) Entry of ESI Protocol

The final version of the ESI Protocol was filed on July 15, 2015.

b) Search Term Update

DEFENDANTS' POSITION: In response to Defendants' June 30, 2015 request for a cumulative set of proposed search terms, Plaintiffs served a new list of 189 terms, along with qualifiers for the first time, on July 9, 2015, and then immediately requested a meet and confer. Upon receipt of Plaintiffs' new list, the Defendants began the process of reviewing and evaluating the latest requests. The Defendants are continuing to try to work on the iterative process of negotiating and testing potential keyword search terms coupled with

potential search term qualifiers to work with the Plaintiffs to agree on a single set for use in identifying and narrowing relevant documents for production. To that end, and now that the ESI Protocol and related issues have been resolved, Defendants sent an initial response on the new search terms on July 15, 2015, and the parties had a meet and confer session on July 16, during which they discussed sampling issues and individual search terms, and Defendants are continuing to identify search results to share with Plaintiffs along with a proposed set of search terms and appropriate qualifiers identifying what would be reasonable. Defendants will be prepared to update the Court at the conference. Defendants agree with Plaintiffs that Court intervention should not be necessary.

PLAINTIFF POSITION: Plaintiffs served an updated list of search terms with qualifiers on July 9, despite the fact that the Defendants had not, and still have not, provided an explanation for their position that their “test searches” showed certain terms included by Plaintiffs produced irrelevant and non-responsive documents. After serving the updated list of search terms, Plaintiffs made several efforts to speak with Defendants on this issue, but the Defendants were not available to speak on this issue until July 16, 2015. Following that call, Plaintiffs served a letter clarifying and providing the rationale for certain search terms in response to issues raised by the defense, on July 17, 2015. The parties are now actively discussing the outstanding search terms issues, and the Defendants’ responses to the discovery requests related to the ESI and electronic discovery, which are not fully responsive. Defendants have offered assurances that they intend to cooperate to complete this process within the next two to three weeks. Plaintiffs are hopeful that these issues can be resolved in that time frame without the need to involve the Court. The parties intend to meet and confer

right up to the conference date, and Plaintiffs will be prepared to provide the Court an update on this process at that time.

c) ESI Written Discovery

DEFENDANTS' POSITION: Defendants served responses to Plaintiffs' Rule 34 ESI discovery requests with 74 subparts on June 25, 2015. On July 16, 2015, Plaintiffs' counsel said they wanted to discuss the responses and Defendants expect that a call will be scheduled when Plaintiffs are ready.

PLAINTIFFS' POSITION: Defendants' responses to the discovery requests related to the ESI and electronic discovery are not fully responsive. Plaintiffs are hopeful that the issues can be resolved through the meet and confer process. Plaintiffs will be prepared to present the status of this discovery at the case management conference.

d) Outstanding Discovery Issues

DEFENDANTS' POSITION: Defendants submit that there are no pending discovery disputes relating to ESI or other issues before the court, and therefore the morning hearing to address discovery disputes to be briefed and filed by July 17 is not needed on July 21, 2015. To the extent there are issues to be raised at the afternoon hearing, they should be specifically identified and discussed in advance of the hearing.

PLAINTIFFS' POSITION: To the extent the parties have not covered any outstanding discovery issues with Magistrate Judge Schneider in the morning hearing, the parties will be prepared to address such issues with the Court in the status conference.

8. Status of Court Website.

Dated: July 17, 2015

Respectfully Submitted,

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