

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 2 SEPTEMBER 2015 STATUS CONFERENCE**

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

DEFENSE POSITION: Defendants request that the Court address the growing backlog of unserved complaints. As of August 28, the U.S. Daiichi defendants had been served with 355, about one third of the 1,034 complaints on file with the clerk's office. Pursuant to Fed. R. Civ. P. 4(m), plaintiffs are obligated to serve defendants with process within 120 days of filing their complaints. In the absence of good cause, failure to serve defendants within the 120-day time period, justifies a dismissal without prejudice. See FED. R. CIV. P. 4(m). To date, Defendants are aware of six plaintiffs who have failed to meet the 120-day deadline. The cases at issue are: Matheny v. Daiichi Sankyo, Inc., et al., No. 1:15-cv-2719; McMurray v. Daiichi Sankyo, Inc., et al., No. 1:15-cv-02820; Johnson v. Daiichi Sankyo, Inc., et al., No. 1:15-cv-2491; Darin v. Daiichi Sankyo, Inc., et al., No. 1:15-cv-02953; Moore v. Daiichi Sankyo, Inc., et al., No. 1:15-cv-03294; Mathis v. Daiichi Sankyo, Inc., et al., No. 1:15-cv-2909. Defendants submit that because plaintiffs have failed to properly serve defendants

within the 120-day time limit prescribed in Rule 4(m), their cases should be dismissed without prejudice.

Defendants sent the plaintiffs, at plaintiffs' invitation, a proposal for streamlined service of process on July 13. Plaintiffs rejected it out of hand. Considering that hundreds of complaints have been served properly on the U.S. Daiichi defendants, defendants believe that the failure to serve timely complaints is not with the procedure for service, but rather because the clock on the Plaintiff Fact Sheet begins to run upon service of the complaint and not on filing of the complaint.

PLAINTIFF POSITION: To Plaintiffs' knowledge, the actions listed above are the only cases in this MDL that may have an issue related to unserved complaints. Considering there are over one thousand complaints in this MDL, Plaintiffs do not agree that there is a growing backlog of unserved complaints.

In an effort to cure the apparent service deficiencies set out by Defendants, Co-Lead Counsel for Plaintiffs has reached out to those attorneys listed as counsel in each of the six cases. Based on communications with each of those attorneys, Plaintiffs expect that service in the six cases will be complete by September 2, 2015. Because Defendants are well-aware of the allegations in each of the six complaints and have filed a Master Answer that is "deemed as denial of all allegations" in those complaints, per CMO 7A, lack of service at this point has not prejudiced the Defendants in any way. Consequently, there is no reasonable basis for dismissal. Further, if Defendants wish to seek dismissal of the cases at issue, they should file motions seeking such relief and Plaintiffs' should be provided with an opportunity to respond.

On a related note, Plaintiffs strongly believe that further service issues could largely be avoided if Defendants would agree to accept service by email or certified mail, and provide

Plaintiffs with the names and addresses of those agents they would like to receive service of complaints in each unserved-MDL case. Plaintiffs believe this would be a benefit to both sides. However, despite multiple requests by Co-Lead Counsel, counsel for Defendants has not been willing to agree to a more efficient and streamlined method for service, and has failed to provide information regarding the designated agents for service of process.

4. Severance of Multi-Plaintiff Complaints.

DEFENSE POSITION: Pursuant to CMO No. 7, all counsel with multi-plaintiff complaints were ordered to serve a separate complaint and pay a new filing fee for each severed complaint. To date, the complaints have not been severed and plaintiffs' counsel have not served separate complaints on defendants. The complaints at issue are: David Conriquez, Pamela Askew, Rory Johnson-Smith, and Carl Monarch v. Daiichi Sankyo, Inc., et al., No. 1:15-cv-04148; Louis Verduzco, Michael Ewald, and Frances Mary Ewald v. Daiichi Sankyo, Inc., et al., No. 1:15-cv-2725.

PLAINTIFF POSITION: Co-Lead Counsel for Plaintiffs has contacted the firms listed as counsel in the above-listed cases. Pursuant to CMO No. 7, Plaintiffs' counsel are prepared to serve separate complaints and pay filing fees for each complaint. However, based on CMO No. 7, it is Plaintiffs' counsel's understanding that the Clerk of Court is to sever the cases first. This has not yet occurred.

5. Entry of Defendant Fact Sheet.

On August 14, 2015, pursuant to Case Management Order No. 8, and based on their inability to agree to a single submission, the parties submitted separate, competing versions of the proposed Defendant Fact Sheet.

6. ESI Issues.

a) ESI

The parties had an in-person meet and confer meeting with their technology consultants present relating to ESI discovery responses and additional requests from plaintiffs on August 5, 2015. The parties continue to meet and confer relating to ESI issues. The unresolved issues were addressed in briefs filed on August 28, 2015 and are to be addressed in the discovery hearing scheduled for September 2, 2015 at 10:00 am.

b) Search Term Update

The search terms were addressed in the ongoing ESI meet and confer and unresolved issues, including the need for Japanese search terms, were addressed in the briefs filed on August 28, 2015.

7. Discovery: “Macro” Issues.

The parties met and conferred in person on Wednesday, July 29, 2015, and held telephonic meet and confers on August 7, 2015, August 10, 2015, and August 11, 2015. During the meetings, defense counsel met with seven to eight plaintiff lawyers at a time to discuss the issues. The parties continue to meet and confer. To the extent they cannot agree on resolution of the macro discovery issues, they will abide by this Court’s briefing schedule as set forth in this Court’s Order dated July 23, 2015.

8. Bellwether Process.

DEFENDANTS’ POSITION:

Defendants have not yet seen Plaintiffs’ Proposal. Not a single Plaintiff Fact Sheet has been served, and the overwhelming majority of complaints have not been served. Until the Plaintiff Fact Sheets are served and the parties have a good understanding of what the inventory of cases looks like, it is premature to discuss a bellwether process.

PLAINTIFFS' POSITION:

Plaintiffs have prepared a proposed process for selecting bellwether cases that will make up a bellwether discovery pool and, upon narrowing that pool, a trial pool. Plaintiffs will provide Defendants' counsel with the proposal on August 31, 2015. The parties plan to meet and confer about the process and submit to the Court either a joint proposal or competing proposals before the status conference set for the end of September.

Dated: August 31, 2015

Respectfully Submitted,

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