



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN RE: PROTON PUMP INHIBITORS
PRODUCTS LIABILITY LITIGATION

C.A. No. N17C-07-001 PPI

THIS DOCUMENT RELATES TO:
ALL CASES

**[PROPOSED] CASE MANAGEMENT ORDER NO. 1 (MASTER DOCKET
AND SCHEDULING)**

This Order, entered by agreement of the undersigned Plaintiffs' counsel and counsel for Defendants: AstraZeneca Pharmaceuticals LP; AstraZeneca LP; Pfizer Inc.; Takeda Pharmaceuticals America, Inc.; Takeda Pharmaceuticals International Inc.; Takeda Pharmaceuticals U.S.A., Inc.; Valeant Pharmaceuticals International Inc.; Wyeth LLC; Wyeth-Ayerst Laboratories; and Wyeth Pharmaceuticals Inc. (collectively "Defendants"), applies to all personal injury, including wrongful death, product liability cases alleging use of proton pump inhibitors ("PPIs") (sold under various names including, *inter alia*, Nexium®, Prilosec®, AcipHex®, Dexilant®, Esomeprazole, Lansoprazole, Nexium 24HR, Omeprazole, Pantoprazole, Prevacid®, Prevacid®24HR, Protonix, Rabeprazole, Sodium Bicarbonate, and Zegerid) and kidney injury filed in the Delaware Superior Court (hereinafter "Delaware PPI Actions"). All Delaware PPI Actions shall be coordinated for all pretrial purposes but shall be tried individually.

This Order seeks to promote judicial efficiency between the Delaware PPI Actions and other litigations involving PPIs, including the pending federal court multi-district litigation, *In Re: Proton-Pump Inhibitor Products Liability Litigation*, MDL No. 2789 (D.N.J.), as well as any other consolidated state court litigations (collectively the “Other Consolidated Actions”). The parties shall regularly exchange information regarding all the various jurisdictions in which PPI cases were or are filed. The parties agree to seek full cooperation and coordination with the Other Consolidated Actions to prevent duplication of efforts and the orderly prosecution of these actions.

In light of the number of cases and parties involved, the Court has determined that special case management measures will promote efficient prosecution of these actions. Toward that end, this Order addresses certain case-management matters such as the filing and service of papers and discovery. Case-specific pretrial deadlines and trial dates as well as any other issues that the Court or, upon motion, the Parties deem appropriate for subsequent case management orders shall be addressed in separate orders.

Except as otherwise provided herein or in a separate order of the Court, these actions shall be subject to the Delaware Superior Court Civil Rules. All counsel involved in these cases in any respect, including without limitation, counsel appearing as counsel of Record and those being admitted *pro hac vice*,

shall conduct themselves in accordance with the Delaware Lawyers' Rules of Professional Conduct. Further, all such counsel are encouraged to obtain a copy of, become familiar with, and be guided by the Principles of Professionalism for Delaware Lawyers in their dealings with each other and with the Court in these matters.

I. PLEADINGS AND CAPTIONS

The Prothonotary has created a master docket, which shall be titled *In re: Proton Pump Inhibitors Products Liability Litigation, C.A. No. N17C-07-001 PPI*. Orders, pleadings, motions and other documents that are generally applicable to the Delaware PPI Actions shall thereafter include the caption *In re: Proton Pump Inhibitors Products Liability Litigation, C.A. No. N17C-07-001 PPI* and shall be filed and docketed only in the master docket bearing the case number reflected above. If the filing pertains to all Delaware PPI Actions, the filing need only contain (a) the master docket name and docket number, and (b) an indication that the filing pertains to "ALL CASES." The parties are instructed to file documents relating to less than all PPI cases in the individual dockets for each matter. If the filing pertains to less than all PPI cases, each filing shall contain a caption that includes (a) the master docket name and docket number, and (b) the case name(s) and docket number(s) for every individual action to which the filing specifically relates.

II. AVOIDANCE OF UNNECESSARY DUPLICATION

The parties shall use reasonable efforts to avoid or minimize duplicative motions, briefs, and discovery to the extent consistent with the parties' individual interests. The Court recognizes that it is customary and proper for defendants and their counsel in cases such as this to undertake joint defense activities. Communications, discussions, and information sharing among counsel in connection with Defendants' joint efforts and joint meetings in this litigation shall not constitute a waiver of attorney-client, work product, trade-secret, or other protections to the extent such protections may otherwise apply. Cooperative efforts among defense counsel shall be for the purpose of litigating these cases in an organized fashion, shall not be discoverable, and shall not be communicated to the trier of fact. If a party withdraws from any cooperative efforts, prior communications between that party and other parties and work product shared by or with the departing party will not be deemed to have lost the protection of the attorney-client, work product, or any other privilege. Cooperation among parties for purposes of this litigation shall not constitute evidence of conspiracy, concerted action, or any other wrongful conduct.

III. DISCOVERY

A. Coordination with Other Consolidated Actions

1. This Court and the parties are mindful of the desire for the efficiencies to be gained through the non-duplication of discovery between the Delaware PPI Actions and discovery taking place in the Other Consolidated Actions. Accordingly, the parties shall not seek duplicative discovery between this action and discovery already taken in the Other Consolidated Actions.

2. Therefore, upon entry of both a Stipulated Protective Order (“Protective Order”) governing these proceedings and an Order governing the production of electronically stored information (“ESI Order”), Defendants shall make available in this litigation all non-case specific discovery materials and responses already produced in the Other Consolidated Actions.¹ Defendants shall have a duty to seasonably update their production in the Delaware PPI Actions within 10 (ten) days of additional non-case specific discovery produced in Other Consolidated Actions. Defendants may produce such materials and responses in the same format produced in any of the Other Consolidated Actions (which may be done electronically and in a manner agreed to between Plaintiffs’ and Defendants’ technical advisors). Non-case specific discovery materials and

¹ Discovery that is not applicable to all plaintiffs, for example documents relating to region-specific sales representatives and region-specific marketing, shall not be considered non-case specific discovery but may be produced with non-case specific discovery at the election of Defendants.

responses produced in Other Consolidated Actions subsequent to the entry of a Protective Order and ESI Order in the Delaware PPI Actions may be produced by Defendants in the Delaware PPI Actions in the same manner. Such production will be subject to the Protective Order entered in the Delaware PPI Actions. Plaintiffs shall not seek duplicative discovery in the Delaware PPI Actions, and shall limit additional discovery to non-duplicative matters.²

3. In order to avoid duplication of efforts and to promote the non-duplication of discovery between this proceeding and the Other Consolidated Actions, upon entry of this Order, any future depositions noticed in the Other Consolidated Actions (other than depositions relating to matters specific to individual cases (case-specific depositions)) will be cross-noticed in the Delaware PPI Actions by the Defendants. The parties shall meet and confer before the service of any deposition notices in these proceedings directed to non-case specific discovery. All non-case specific depositions shall be coordinated with the Other Consolidated Actions to avoid duplication of discovery.

² In instances where Defendants have produced non-case specific discovery materials and responses in the Delaware PPI Action prior to the production of such materials in the Other Consolidated Actions, the parties agree that the use of such non-case specific discovery materials in the Other Consolidated Actions is not objectionable simply on the basis that such materials were produced in the Delaware PPI Action. Plaintiffs shall not seek duplicative discovery in the Other Consolidated Actions of non-case specific discovery materials produced in the Delaware PPI Action.

B. Written Discovery and Document Production

1. Each Plaintiff in these proceedings shall complete without objection, verify, and serve upon Defendants' Counsel the Plaintiff Fact Sheet ("PFS"), including medical record authorizations and requested documents; the PFS and procedures governing the PFS process will be the subject of a subsequent order.

2. Each Defendant in these proceedings shall complete without objection, verify and serve upon Plaintiffs' Counsel the Defendant Fact Sheet ("DFS"), including all requested documents; the DFS and procedures governing the DFS process will be the subject of a subsequent order.

3. Other than PFSs, DFSs, and case-specific discovery (including medical records collection and depositions, including of healthcare providers), there shall be no additional written discovery or document production in the Delaware PPI Actions without express agreement of the Parties or leave of Court for good cause. All case-specific discovery and deadlines for such case-specific discovery will be governed by subsequent orders.

C. Expert Discovery

Expert discovery shall be governed by the Delaware Superior Court Civil Rules. All case-specific pretrial deadlines related to expert discovery, including the deadline to file any *Daubert* motions and briefing schedule relating thereto,

will be governed by separate scheduling orders. All *Daubert* motions shall be subject to, and conform with, the requirements of Superior Court Civil Rule 107.

D. Electronically Stored Information

Any production of Electronically Stored Information (“ESI”) will be governed by an ESI Order. The procedure governing submission of a proposed ESI Order shall be set forth in a future Case Management Order.

IV. MOTIONS AND HEARINGS

A. Dispositive Motions

1. All dispositive motions shall be noticed for hearing at the Court’s convenience. Upon completion of the briefing of any motion, counsel for the parties shall contact the Court’s secretary to arrange a time and date for a hearing.

2. All dispositive motions shall be accompanied with an opening brief supporting the motion.

3. Subject to the requirements of this Order, any party may file an answering brief to a dispositive motion. Unless an alternative schedule has been agreed to by the parties or ordered by the Court, such answering brief shall be filed and served thirty (30) days after any service of the motion.

4. Reply briefs may be filed fourteen (14) days after responses are received, but no later than five (5) business days before any hearing on the motion.

5. All briefs on dispositive motions shall conform to the requirements of Superior Court Civil Rule 107, except as otherwise set forth herein.

B. All Other Motions

1. All motions shall be accompanied by a memorandum supporting the motion. Unless otherwise ordered, a memorandum in support of a motion shall not exceed ten (10) pages, exclusive of tables and appendices.

2. Any party may file a response to a motion, not to exceed ten (10) pages, exclusive of tables and appendices. Such a response shall be filed and served no later than fifteen (15) business days after service of the motion.

3. The moving party may then file a reply, not to exceed five (5) pages, exclusive of appendices. The reply shall be filed and served no later than ten (10) business days after service of the response.

C. Joinders in Motions

1. If a party files a joinder or memorandum adopting or supporting a motion or opposition of another party that asserts additional factual or legal issues or support, it must do within four (4) business days from the date the main motion or opposition is filed. Any party may file a separate joinder that does not assert any additional factual or legal issues (“non-substantive joinders”) provided it is served within three (3) business days after receipt of the motion or opposition and does not exceed three (3) pages.

2. If a party has not been served in a case at the time a motion is filed but is later served while the motion is pending, that party may file a joinder to the motion if the joinder is filed (1) on or before that party's deadline to respond to the complaint, and (2) before the Court issues a ruling on the motion.

D. Motions and Hearings in Specific Delaware PPI Actions

Separate scheduling orders may be issued for the actions governed by this Order. To the extent such scheduling orders contain specific provisions governing certain types of motions, such as motions for summary judgment, those specific provisions govern over conflicting provisions in this Order.

IT IS SO ORDERED this _____ day of _____, 2018.

The Honorable Eric M. Davis