

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

**IN RE: ELMIRON (PENTOSAN
POLYSULFATE SODIUM) PRODUCTS
LIABILITY LITIGATION**

:
: **Case No. 2:20-md-02973 (BRM)(ESK)**
: **MDL No. 2973**

THIS DOCUMENT RELATES TO:
ALL CASES

: JUDGE BRIAN R. MARTINOTTI
: JUDGE EDWARD S. KIEL

MDL CASE MANAGEMENT ORDER NO. 7

The Court, having held an MDL Case Management Conference (“CMC”) on April 14, 2021, and for good cause shown, enters the following Order:

I. STATUS OF LITIGATION AND COORDINATION

As of April 14, 2021, 209 cases alleging products liability claims relating to use of Elmiron have been filed and served (180 federal and 29 in New Jersey and Pennsylvania state courts).

II. ORDERS ENTERED SINCE LAST CASE MANAGEMENT CONFERENCE

Two Case Management Orders (“CMO”) have been entered on the MDL docket since the last CMC (March 10, 2021):

1. MDL Case Management Order No. 5. This CMO confirms the issues discussed during the March 10, 2021 telephonic CMC.
2. MDL Case Management Order No. 6. This CMO serves as the parties' stipulated Direct Filing Order, addressing the direct filing of complaints in this MDL.¹

¹ It has come to the Court's attention that certain plaintiffs' counsel are reaching out to the Clerk's Office with questions regarding submission of the Designation of Forum form to be filed pursuant to MDL CMO No. 6. The parties are to meet and confer, and submit a proposed amended Direct

In addition, on April 7, 2021, the parties submitted to the Court a proposed Preliminary Scheduling Order, which indicates that the first bellwether trial in this MDL will be held in or about January 2023. The Court will review this Order for entry.

III. PROPOSED CASE MANAGEMENT ORDERS

The parties shall continue to meet and confer and submit proposed orders to the Court regarding the following:

- A. The process for plaintiff fact sheets (“PFS”), defense fact sheets (“DFS”), implementation order, and a corresponding electronic vendor;
- B. Remote Deposition Protocol; and
- C. Science Day.

IV. DISCOVERY

On April 1, 2021, Janssen Defendants served Plaintiffs’ Leadership with their Responses to Plaintiffs’ First Set of Interrogatories. On April 9, 2021, Janssen Defendants served Plaintiffs’ Leadership with their Responses to Plaintiffs’ First Set of Requests for Production. On April 12, 2021, the parties submitted a joint Rule 26(f) Report to the Court. The parties are continuing to meet and confer on discovery issues and whether a Rule 30(b)(6) deposition is warranted to supplement the parties’ Rule 26(f) conferences.

A separate Rule 30(b)(6) deposition took place as to the Janssen Defendants on April 20 and April 21, 2021, and additional discovery continues against both the Janssen Defendants and

Filing Order, emphasizing the process with respect to attaching the Designation of Forum form to the Complaint. The Complaint shall be filed as the Main Document with the Designation of Forum Form as an Attachment to the Main Document along with the Civil Cover Sheet and Proposed Summons. (see CMO No. 6, para C; and the form is found here: https://www.njd.uscourts.gov/sites/njd/files/MDL2973_CMO6AttachmentA.pdf).

Teva Branded. The parties continue to meet-and-confer regarding outstanding discovery issues, and Rule 30(b)(6) deposition(s) on additional topics may be necessary on those unresolved issues and notices on those topics will be forthcoming from Plaintiffs' Leadership shortly.

V. STATUS OF TEVA DEFENDANTS

Teva and Plaintiffs' Leadership are meeting and conferring regarding potential dismissal, without prejudice, of a number of Teva-related entities, and they shall report on the status of their discussions at the next CMC. Plaintiffs' Leadership has identified that it needs to take at least one Rule 30(b)(6) deposition from the Teva-related entities.

VI. FEDERAL-STATE COORDINATION

The parties shall continue to work to coordinate processes and procedures between this MDL and those Elmiron cases filed in state courts, including the scheduling of Science Day.

VII. SCIENCE DAY

As stated in Section III.B., the parties continue to meet and confer on any issues related to Science Day and a proposed CMO addressing the logistics of Science Day. The Court is not opposed to a limited, in-person science day at a convenient date and time based upon implementation and application of the appropriate protocols based on DNJ, CDC, and federal guidelines and New Jersey state orders and directives.

VIII. NOTICES OF APPEARANCE AND MASTER ANSWER

Defendants' initial entries of appearance and Master Answer shall be entered in accordance with MDL CMO No. 6, the Direct Filing Order.

IX. APPOINTMENT OF SPECIAL MASTER

The Court hereby appoints the Honorable Robert L. Polifroni, P.J. Cv. (Ret.; Superior Court of New Jersey, Bergen County) as special master to address any disputed issues, which shall

be further defined as the litigation proceeds.

X. MOTION PRACTICE

MDL CMO No. 1 administratively terminated all pending motions, except for *pro hac vice* admission motions, so that the parties could meet and confer regarding the dismissal of claims and certain named defendants.

XI. FUTURE CASE MANAGEMENT CONFERENCE DATES

The next case management conference is scheduled for **Wednesday, May 12, 2021**. For the May 12, 2021 conference, Liaison Counsel, Lead Counsel for Plaintiffs, and Lead Counsel for Defendants shall appear via Zoom at 11:00 a.m. All other counsel shall appear via dial-in (to be circulated) at 12:00 p.m., unless otherwise provided by the Court. Counsel shall email their intention to attend the conference to Mr. Zogby, at michael.zogby@faegredrinker.com, by May 7, 2021. Mr. Zogby and Ms. Anello shall meet and confer regarding submission of the proposed agenda and logistics for the conference.

Dated: April 30, 2021

/s/Brian R. Martinotti

The Hon. Brian Martinotti, U.S.D.J.