

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

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

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**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**

**CASE MANAGEMENT ORDER NO. 9
(PRELIMINARY DISCOVERY PLAN, PROCEDURES & SCHEDULE)**

A. SCOPE AND APPLICABILITY OF PLAN.

This Preliminary Discovery Plan, Procedures and Schedule (the “Plan”) is intended to conserve judicial and party resources, eliminate duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. The following protocols and limitations in this Case Management Order (“CMO”) shall apply to all cases in MDL-2973.

B. CASE-SPECIFIC DISCOVERY

1. Until further Order of this Court, all case-specific discovery shall be limited to a Plaintiff Fact Sheet (“PFS”) and a Defendant Fact Sheet (“DFS”) as set forth herein.

2. The parties contemplate the use of a PFS that shall be responded to by each Plaintiff in a lawsuit. The procedural requirements for completing that PFS, production of the relevant documents requested by the PFS, and completion and service of duly-executed authorizations for the release of relevant records shall be the subject of a separate CMO that the parties shall submit to the Court after meeting-and-conferring.

3. The parties further contemplate the use of a DFS that shall be responded to by each Defendant named in one or more lawsuits. The procedural requirements for completing that DFS and production of the relevant documents requested by the DFS shall be the subject of a separate CMO that the parties will submit to the Court after meeting-and-conferring.

4. No other case-specific discovery on Plaintiffs or by Plaintiffs shall be permitted absent subsequent order of this Court.

C. GENERAL DISCOVERY

1. There shall be no general discovery served or propounded on the Defendants in this MDL except that which is from the Plaintiffs' Co-Leads and/or authorized by the Plaintiffs' Co-Leads until further order of the Court.

2. An individual lawyer or *pro se* litigant, not part of the Plaintiff Steering Committee ("PSC"), may seek leave of the Court to propound its own general discovery on Defendants with a showing of good cause. Such discovery demands shall not be duplicative or in any way cumulative of discovery served by the PSC, and shall be subject to the limitations set forth in Part B regarding case specific discovery.

D. BELLWETHER DISCOVERY PLAN AND TRIAL

1. Until further order of this Court relating to a bellwether plan, the parties shall focus on general discovery as set forth above.

2. The parties shall present the Court with a bellwether plan, including a plan to select cases to serve as bellwether cases that will undergo additional discovery (beyond the PFS and DFS). The plan shall include a timeline by which the additional discovery will occur, as well as a plan and timeline for how the bellwether cases will be narrowed down to trial cases and undergo preparation for trial.

3. While the details of trial selection, including the bellwether process, are premature at this stage and the parties will endeavor to work out the details of the same by agreement, the Court contemplates that the first bellwether trial in this MDL will be held in or about **January 2023**, with subsequent bellwether trials to follow. Therefore, as the parties develop the bellwether process timeline, as well as any dispositive motion practice or similar schedule, they should be guided by this time frame.

Dated: May 13, 2021



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