

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:08-MD-01928-MIDDLEBROOKS/JOHNSON

IN RE TRASYLOL PRODUCTS)
LIABILITY LITIGATION — MDL-1928)
)
This Document Relates to:)
)
See Exhibit A)
)
_____)

MARCH 16, 2012 PTO NO. 31 ORDER TO SHOW CAUSE

Pretrial Order (“PTO”) No. 31 provides that defendants may advise the Court of cases that they contend have not been properly served, and further provides that the Court will dismiss such cases without prejudice unless plaintiffs respond and show cause why such cases should not be dismissed. In accordance with PTO No. 31, defendants have submitted an Unserved Cases List, *see* Exhibit A, filed March 16, 2012 (D.E. 12222 in 1:08-md-01928; D.E. 34 in 9:11-cv-81202) that indicates that timely service has not been effected in those cases. It is, therefore,

ORDERED that the plaintiff(s) in each case listed in Exhibit A, shall SHOW CAUSE why the case should not be dismissed without prejudice for lack of personal jurisdiction and/or for failure to serve defendants within the time permitted by Federal Rule of Civil Procedure 4(m). In responding to this Order, plaintiff(s) shall proceed as follows:

A. Plaintiff(s) shall file a response to this Order within fourteen (14) days, as calculated pursuant to Local Civil Rule 7.1(c)(1)(A), of the entry of this Order on the Court’s electronic public docket. Any such response shall include a memorandum of law, not to exceed twenty pages in length, as well as any supporting evidence.

B. If plaintiff(s) contend(s) that the case was timely, properly served, then in such response:

1. If plaintiff(s) effected service under PTO Nos. 4 (D.E. 60 in 1:08-md-01928) (May 22, 2008) and 11 (D.E. 700 in 1:08-md-01928) (Feb. 4, 2009), plaintiff(s) shall submit proof of mailing and a return receipt demonstrating service on defendants; or

2. If plaintiff(s) effected service pursuant to Federal Rule of Civil Procedure 4, plaintiff(s) shall submit a form of proof permitted by Rule 4(*l*).

C. In a case in which service has not been completed or in which service was accomplished more than 120 days after the complaint was filed, plaintiff(s) must include within the above-referenced memorandum a motion for an extension of time in which to serve defendants. Plaintiff(s) need not meet and confer with counsel for defendants pursuant to Local Civil Rule 7.1(a)(3) prior to filing such motion.

1. Any such motion must ask this Court to grant an extension of time in which to serve pursuant to Rule 4(m) and must either demonstrate, with competent proof, that “good cause” existed for the failure timely to serve the complaint, or must provide specific reasons, supported by Eleventh Circuit authority, explaining why this Court should exercise its discretion to permit plaintiff(s) additional time properly to serve the complaint.

2. If any plaintiff contends that dismissal without prejudice would cause any of plaintiff’s claim(s) to be barred in a refiled case by the statute of limitations, such plaintiff shall state the bases for that conclusion, including citations to the

applicable statute(s) of limitation, relevant caselaw as appropriate, and a statement of facts supporting the date on which plaintiff contends the claim(s) accrued. If plaintiff fails to demonstrate both:

(a) that the claim(s) was/were timely when filed, and

(b) that the claim(s) would be untimely in a refiled case,

the Court will not evaluate limitations issues any further with respect to that plaintiff's claim(s).

For each memorandum of law filed by a plaintiff or plaintiffs as called for in this Order, defendants may file a corresponding memorandum of law in response, which shall not exceed twenty pages in length. Any such response shall be filed within fourteen (14) days, as calculated pursuant to Local Civil Rule 7.1(c)(1)(A), of the entry on the Court's electronic public docket of the plaintiff's/plaintiffs' memorandum. Further briefing by any party will not be permitted absent a motion showing good cause for leave to file an additional brief.

If the plaintiff/plaintiffs in each case listed in Exhibit A does/do not respond to this Order within the time required, the Court will dismiss the case without prejudice upon the filing by defendants of a Notice of Failure to Comply with PTO No. 31 Order to Show Cause. Defendants need not meet and confer with counsel for plaintiff(s) pursuant to Local Civil Rule 7.1(a)(3) prior to providing the Court with any such notice.

DONE and ORDERED in Chambers, at West Palm Beach, Florida, this 23rd day of May, 2012.



DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE

Exhibit A

PTO No. 31 List of Unserved Cases

No.	Case Caption	Case Specific No.	Counsel for Plaintiff(s)
1	<i>Bright v. Bayer Corporation, et al.</i>	9:11-cv-81202	Neil D. Overholtz Email: Noverholtz@awkolaw.com Aylstock, Witkin, Kreis Overholtz, PLLC 17 East Main Street Pensacola, FL 32502