

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: TYLENOL (ACETAMINOPHEN)
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION

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MDL NO. 2436

2:13-md-02436

HON. LAWRENCE F. STENGEL

*THIS DOCUMENT RELATES TO ALL
CASES*

CASE MANAGEMENT ORDER NO. 7

(Master Complaint, Short Form Complaint, Master Responsive Pleadings,
Direct Filing and Waiver of Service of Process For
Direct Filed Cases)

This Case Management Order is entered to promote efficiency and to eliminate the delays typically associated with the transfer of cases that had been filed in another federal court, or filed in a state court and then removed to another federal court, where such cases would then become part of this MDL 2436 as “tag-along” cases. Accordingly, it is **ORDERED** as follows:

I. GENERAL

1. The attached *Master Complaint and Jury Demand* (“*Master Complaint*”) naming only McNEIL-PPC, Inc., McNeil Consumer Healthcare Division of McNEIL-PPC, Inc. (“McNeil”) and Johnson & Johnson (“J&J”) (Exhibit “A”) as Defendants, the *Short Form Complaint* (Exhibit “B”) and the *Answer* of McNeil and J&J (Exhibit “C”) have been presented to the Court, and the Court **DIRECTS** that the Clerk file the same as the Master Pleadings in this MDL.

2. All factual allegations pled in the *Master Complaint* and all responses pled in the *Answer* of McNeil and J&J are deemed pled in any previously filed *Complaint* and any previously filed *Answer* for any case now pending in this MDL proceeding, and as to any *Short*

Form Complaint hereafter filed; provided, however, the *Master Complaint* is applicable only as against McNeil and J&J.

3. Each *Short Form Complaint* shall indicate those counts in the *Master Complaint* that are being asserted in the individual case and the specific consumer protection statute, if any, upon which the Plaintiff relies.

4. This Order does not preclude a Plaintiff from naming, in a *Short Form Complaint*, additional Defendants who are not named in the *Master Complaint*. Accordingly, if a Defendant not named in the *Master Complaint* is named as a Defendant in a *Short Form Complaint*, the specific facts supporting all allegations against that Defendant shall be pleaded in accordance with the Federal Rules of Civil Procedure on a separate sheet of paper attached to the *Short Form Complaint*. Any Defendant not named in the *Master Complaint* shall not be deemed to have waived any defense or objection to either the *Master Complaint* or any *Short Form Complaint*, including but not limited to defenses available under Federal Rule of Civil Procedure 12(b). In the event that any allegations of the *Master Complaint* are incorporated in a *Short Form Complaint* against any Defendant other than McNeil and J&J, then that Defendant may file an Answer to the *Short Form Complaint* containing a general denial of the allegations in the *Master Complaint*.

II. DIRECTLY FILED CASES¹

5. Subsequent to the filing of this Order, all actions initially filed directly in the Eastern District of Pennsylvania in MDL 2436 (the “MDL Proceedings”) pursuant to the direct filing procedures stated in this Case Management Order, against all Defendants named in the *Master Complaint*, McNeil and J&J, shall occur by the filing of the *Short Form Complaint*. If a *Short Form Complaint* is not utilized in a case naming only McNeil and J&J as Defendants, the

¹ A “Directly Filed Case” is a case filed in the Eastern District of Pennsylvania for inclusion in this MDL.

filed *Complaint* will be struck from the docket and the Plaintiff will be required to file a *Short Form Complaint*. In the event that a *Complaint* is struck requiring a *Short Form Complaint* to be filed thereafter, the *Short Form Complaint* shall be filed in the individual docket that was established for the case upon the filing of a non-*Short Form Complaint*, provided, however, that the date of the filing of the initial non-*Short Form Complaint* shall govern for the purposes of calculating the statute of limitations.

6. To file a new civil action *via* the CM/ECF system using a *Short Form Complaint*, a Plaintiff shall follow the instructions located on the Court's website at <http://www.paed.uscourts.gov/us01013.asp>. The Plaintiff shall simply substitute a *Short Form Complaint* for a regular *Complaint*. No special filing procedures are required.

7. In order to eliminate delays associated with a "tag-along" transfer to this Court of cases that might otherwise be first filed in a federal district court that is not this Court, or first filed in a state court located in the federal court district that would not result in the removal of that case to this Court, but removal to a different federal district court, and to promote judicial efficiency, any Plaintiff whose case if so filed and which would then be subject to a "tag-along" transfer to MDL 2436, may file his or her case directly in this MDL 2436 Proceeding in the Eastern District of Pennsylvania.

8. Cases directly filed in this Court pursuant to this Order shall not name more than a single Plaintiff in the case, provided, however, that any such case may include consortium plaintiff(s) as permitted by law and, in the event of a wrongful death action, the appropriate representative(s) of the Estate.

9. Each case filed directly in this MDL Proceeding by a Plaintiff who resides in a federal district other than the Eastern District of Pennsylvania may be filed using the *Short Form*

Complaint and be litigated in these MDL Proceedings for purposes of pretrial proceedings, consistent with the Judicial Panel on Multidistrict Litigation's April 1, 2013, Transfer Order.

10. Solely for purposes of pretrial proceedings, Defendants will not challenge the venue of any action filed directly in the MDL Proceedings in the Eastern District of Pennsylvania. The direct filing of actions in MDL No. 2436 in the Eastern District of Pennsylvania is solely for purposes of consolidated discovery and related pretrial proceedings as provided by 28 U.S.C. § 1407. Upon the completion of all pretrial proceedings applicable to a case directly filed in this MDL 2436 Proceeding, and subject to any agreement that may be reached concerning a waiver of the requirements for transfer pursuant to *Lexecon v. Milberg Weiss et al.*, 523 U.S. 26 (1998), this Court, pursuant to the Rules of the Judicial Panel on Multidistrict Litigation and 28 U.S.C. §1404(a), will transfer that case to a federal district court of proper venue as defined by 28 U.S.C. § 1391, based on the district where the plaintiff resided at the time of alleged injury by use of an acetaminophen-containing over-the-counter drug including TYLENOL, where the plaintiff resided at the time of ingestion, where the TYLENOL was purchased and ingested, the recommendations of the parties to that case, or on its own determination after briefing from the parties if they cannot agree. Utilization of the procedure set forth in this Order for directly filing a case in the MDL Proceedings shall not result in this Court being deemed the "transferor court" for any such directly filed case.

11. The fact that a case was filed directly in the MDL Proceedings pursuant to this Order does not impact choice of law and does not impact the statute of limitations that otherwise would apply to an individual case had it been filed in another district court and transferred to this Court pursuant to 28 U.S.C § 1407. Choice of law principles applicable in the jurisdiction of

16. Prior to any plaintiff's lawyer filing a *Short Form Complaint* directly in the United States District Court for the Eastern District of Pennsylvania, that attorney must register for and have a Pennsylvania CM/ECF login name and password. Instructions can be found at the Court's website <https://ecf.paed.uscourts.gov/html2/us16000.html>.

17. When electronically filing the pleadings, the signature block shall follow the below format:

RESPECTFULLY SUBMITTED,
/s/ Jane Doe _____
Jane Doe
NAME OF LAW FIRM
ADDRESS
TELEPHONE
FAX
EMAIL@EMAIL.com
Attorney for Plaintiff

III. SERVICE OF PROCESS – MCNEIL/JOHNSON & JOHNSON

18. McNEIL-PPC, Inc. and its parent corporation Johnson & Johnson, Inc. agree, without waiver of any defenses, to accept service of process of both the *Master Complaint* and any *Short Form Complaint* filed in this MDL Proceeding (or any Amendments thereto), solely on its own behalf in all TYLENOL cases filed directly in this MDL, in accordance with the direct filing procedures set forth in this Order, subject to the provisions of Fed. R. Civ. P. 4(d) (as modified herein). The process for the acceptance of service in this Order relates solely to McNEIL-PPC, Inc. and Johnson & Johnson and no other defendant(s), and nothing herein is intended to modify the requirements of the Federal Rules of Civil Procedure with regard to effecting service on any other defendant(s).

19. For cases filed directly into the MDL Proceedings pursuant to this Order, the *Master Complaint* or *Short Form Complaint* (or any amendments thereto) and notice required

under Rule 4(d) shall be provided by mailing them with a cover letter with an E-Mail address for receipt confirmation to:

MDLTylenol@butlersnow.com

20. McNEIL-PPC, Inc., and its parent corporation Johnson & Johnson, Inc. are not required to return the waiver forms contemplated by Rule 4(d), but shall instead send a confirmation of first receipt of a *Master Complaint* or *Short Form Complaint* (or any amendments thereto) to Plaintiff's counsel by E-mail or otherwise and shall respond to the *Master Complaint* or *Short Form Complaint* (or any amendments thereto) as set forth herein. A Plaintiff who files his/her *Short Form Complaint* (or any amendments thereto) directly into the MDL Proceedings pursuant to the terms of this Order and effectuates service pursuant to this paragraph is not required to file a return of service with the Court.

21. Service will be effective only if effected and confirmed as set forth above by confirmation E-mail from MDLTylenol@butlersnow.com. This Order does not prevent any Plaintiff from effecting service pursuant to any other method authorized under the Federal Rules of Civil Procedure.

**III. RESPONSIVE PLEADINGS- DIRECT FILED CASES ANDCASES
TRANSFERRED BY THE JUDICIAL PANEL ON MULTIDISTRICT
LITIGATION (JPML)²**

22. For those cases transferred to MDL No. 2436 from another federal district court by the JPML prior to the entry of this Order, those Plaintiffs, who only named the defendants named in the *Master Complaint*, i.e., McNeil and/or J & J, , shall file a *Short Form Complaint* within 90 days of the entry of this Order.

² A "Case Transferred by the JPML" is a case filed in or removed to a federal district other than the Eastern District of Pennsylvania and subsequently transferred to the Eastern District of Pennsylvania by the Judicial Panel on Multidistrict Litigation.

23. For those cases transferred after the entry of this Order, all Plaintiffs shall file a *Short Form Complaint* within 30 days of transfer of the case to the Eastern District of Pennsylvania by the JPML and assignment of a member case number in MDL No. 2436.

24. The Defendants named in the *Master Complaint*, McNeil and J&J, are not required to file *Answers* to the *Short Form Complaint*. An *Entry of Appearance* (including an appearance entered prior to the filing of the *Short Form Complaint*) by an attorney representing such Defendants shall constitute a denial of all allegations in the *Short Form Complaint* filed against any of the Defendants named in the *Master Complaint* and an assertion of all defenses that are included in the *Answer* of McNeil and J&J. (Exhibit "C" hereto).

25. If additional causes of action are alleged in a *Short Form Complaint* that were not alleged in the *Master Complaint*, the specific facts supporting these allegations shall be pleaded in accordance with the Federal Rules of Civil Procedure and the Defendants against whom they are alleged must be specifically identified on a separate sheet of paper attached to the *Short Form Complaint*. If additional causes of actions are added pursuant to this paragraph, Defendants reserve the right to plead, or otherwise respond, specifically and separately to such additional causes of action.

26. Defendants shall have 30 days from the entry of this Order to file any motion asserting that the *Master Complaint* fails to state a claim upon which relief may be granted, pursuant to Rule 12(b)(6), and Plaintiffs shall have 30 days thereafter to respond to the same.

27. Filing of a Master Short-Form Answer.

a. The *Master Short-Form Answer and Affirmative Defenses* ("Master Short-Form Answer"), in the form attached hereto as Exhibit C, shall be filed once by Defendants Johnson and Johnson ("J&J") and McNEIL-PPC, Inc. and McNeil Consumer Healthcare

Division of McNEIL-PPC, Inc. (“McNeil”) (collectively, “Defendants”) in MDL 2436 upon entry of this Case Management Order, and shall be deemed to respond to the allegations of all Complaints in member actions filed in, removed to, or transferred to MDL 2436.

b. The *Master Short-Form Answer* is not intended to, and shall not, waive any applicable defenses available to Defendants, and Defendants may respond to any particular complaint by way of motion(s) permissible under the Federal Rules of Civil Procedure and Case Management Orders in MDL 2436 or otherwise. Defendants may also file counterclaims, cross-claims and/or third-party complaints, pursuant to Rules 13 and 14 of the Federal Rules of Civil Procedure, in connection with any particular individual action.

c. To the extent Defendants desire to respond to any particular individual complaint for the purpose of motion practice, including for the purpose of addressing any specific cause of action, or for the purpose of pleading counterclaims, cross-claims and/or third-party complaints, Defendants shall file motions or other responsive pleadings within the deadlines previously established by applicable CMO(s), or within 45 days after service of process of the specific member action upon Defendants, whichever is later.

d. In any member action that is remanded to a transferor court pursuant to JPM¹ Rules 10.1-10.2, or is selected as a bellwether trial should such procedures be ordered, Defendant(s) may file an amended answer that includes, but is not limited to, state-specific affirmative defenses based on the applicable substantive state law (s) for that member action.

(i) For remanded Member actions, the amended answer shall be filed within 45 days of the transfer to the transferor court.³

³ “Transfer” is defined as the date on which the member case is opened by the Clerk of the United States District Court for the Eastern District of Pennsylvania.

(ii) For Member Actions selected as a potential bellwether action, the amended answer shall be filed within 45 days of such designation.

28. The parties may request extension of these deadlines by means of a stipulated order submitted to the Court. The foregoing provisions do not impact the parties' ability to seek leave to amend a complaint or responsive pleading in accordance with Local Rules and the Federal Rules of Civil Procedure. In no event may Plaintiffs file a request for default against any defendant named in any member action without first contacting counsel for such defendant and allowing 21 days for remedy.

SO ORDERED this 17th day of June, 2013.


HONORABLE LAWRENCE F. STENGEL