

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. 9
(Concerning Privilege Logs and Challenges)**

THIS ORDER is entered to set forth guidelines and protocols that shall govern, (2) the protocol that shall be followed regarding the preparation of privilege logs pursuant to Fed. R. Civ. P. 26(b)(5)(A)(i)-(ii), and (3) the method for resolving privilege disputes by and among Plaintiffs and Defendants.

I. PROTOCOLS GOVERNING ATTORNEY-CLIENT PRIVILEGE AND WORK PRODUCT DOCTRINE

The parties have agreed to the following protocol governing the assertion of attorney-client privilege and work product doctrine in connection with their production of documents responsive to discovery propounded in this matter.

A. Redactions Relating to Attorney-Client Privilege and Work Product Doctrine

1. Documents that are determined, in good faith by the parties, to contain information that renders the entire contents of the document privileged shall be fully withheld

from production. Documents which are determined, in good faith by the parties, to contain information that renders only a portion of the document to be privileged shall bear a redaction of only that information claimed to be privileged stating the basis for redaction, *e.g.*, “attorney-client privilege.” Where a redaction is subsequently lifted by order of the Court or by agreement of the parties (*e.g.*, subject to a privilege challenge), the party claiming privilege shall provide a replacement document with the redaction removed bearing the same Bates number as the original document, with an associated load file that will execute replacing the image.

B. Privilege Log

2. Every responsive document fully withheld from production based on a claim of privilege shall be reflected on a privilege log that complies with Fed. R. Civ. P. 26(b)(5)(A)(i)-(ii). The parties shall produce privilege logs in Excel format or a similar electronic format that allows text searching, sorting and organization of data and the date of the privilege log. A privilege log shall contain the following:

- a. The document date;
- b. The source of the document;
- c. The identity of the person(s) who authored the document;
- d. The identity of the person(s) to whom the document was sent, copied to, or distributed to;
- e. Whether the document was disseminated to a person(s) outside the company, and if so, the name the employer of each such third party;
- f. A description of the subject/title and document type (may be included in the reference line of the document);
- g. The specific privilege or protection allegedly applicable to the document;
- h. The number of pages in any document withheld for privilege;

- i. The basis and information to support the claim for the applicability of the privilege or to enable the other party to evaluate the applicability of the claimed privilege or protection.

3. With respect to emails, when there is a chain of emails claimed to be privileged, the parties have agreed to reserve the rights regarding the issue of whether the designation on the privilege log for the email(s) is sufficient, without prejudice to either party to raise the issue at a later date.

4. Defendants shall produce a privilege log within 30 days of the initial production, and updated cumulative privilege logs within 45 days of each production.

5. Defendants shall produce with each production of documents a list of all attorneys that may have authored or received any document being produced. The list shall include the name and employer of each attorney and a description of whether the attorney is "in house" or working for a law firm.

6. If a party desires to receive a privilege log on an expedited basis or if a producing party requests an extension of the time period in which to produce a privilege log the parties shall meet and confer in good faith in an attempt to resolve the matter. Failure to resolve the matter in a prompt time frame shall not prejudice any party from seeking court relief.

7. Documents identified by Defendant McNEIL-PPC, Inc. on a privilege log provided in Tylenol litigation pending in New Jersey State Court shall be provided in these proceedings in the form provided in the New Jersey State Court proceedings.

C. Challenges to Claims of Privilege and/or Work Product Doctrine

8. A Receiving Party may challenge a Producing Party's redaction or designation of privilege from production by notifying the Producing Party, in writing of its good faith belief that

the redaction or designation was not proper and setting forth the basis of the dispute with regard to each redaction or each claim of privilege at issue.

9. Thereafter, the Producing Party shall have ten (10) calendar days to review the redacted or designated material, to consider the circumstances, and to meet and confer with the Receiving Party. If no resolution can be reached after those ten (10) calendar days, the Receiving Party may notify the Producing Party that a dispute remains unresolved, including in such notice an explanation of why the dispute still exists regarding the claim of privilege.

10. After notification, either the Producing Party or the Receiving Party may file and serve a motion that identifies the challenged redaction or claim of privilege and sets forth the legal basis for the redaction of claim of privilege. The burden of proof in connection with any such motion shall be on the Producing Party.

11. To assist in the prompt resolution of disputed claims, the Producing Party shall submit to the court at the time it files a Motion or Reply to a Motion unredacted copies of all documents at issue so that the court can conduct an in camera review and make a determination on the disputed claim regarding redaction or privilege.

12. For good cause shown, any party may request from any other party that the times and deadlines set forth in this Section be shortened or lengthened for the sake of judicial economy.

13. The parties shall communicate in good faith with one another to resolve all disputes regarding challenges to claims of privilege and/or work product, as well as issues regarding the privilege log, and shall provide to one another reasonable information in advance of the filing of any motions in an attempt to resolve issues in an expeditious and efficient manner.

SO ORDERED this 20th day of June, 2013


LAWRENCE F. STENGEL, J.