

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO**

**In re Ortho Evra®
Products Liability Litigation**

The Hon. David A. Katz, U.S.D.J.

N.D. Ohio Case No. 1:06-40000

MDL Docket No. 1742

This Document Relates to All Actions

**CASE MANAGEMENT ORDER No. 8
(State Federal Coordination of Discovery)**

I. SCOPE OF ORDER

A. Order Applicable to All Cases in MDL Proceedings.

This Order shall apply to all cases currently pending in MDL-1742 and to all related actions that have been or will be originally filed in, transferred to, or removed to this Court and assigned thereto. This Order is binding on all parties and their counsel in all cases currently pending in or subsequently made part of these MDL proceedings and shall govern each case in the MDL proceedings unless it explicitly states that it relates only to specific cases.

This Order shall apply to all discovery conducted by the Plaintiffs’ Steering Committee (“PSC”) (including any committees or sub-committees specifically authorized by the PSC to conduct such discovery) and discovery conducted by defendants in these MDL proceedings.

As a means of avoiding duplicative discovery, reducing the imposition of prejudice on any party or witness, and fostering judicial economy, this Order may apply to state court cases in which the state court parties and judge are coordinating discovery with MDL-1742 either by

consent of the parties or by order of the state court. Nothing in this Case Management Order shall be construed as usurping a state court's role in presiding over an ORTHO EVRA® products liability action filed within its jurisdiction. Rather, this Order and the coordinate discovery it proposes is intended to "ensure[] that pretrial proceedings will be conducted in a streamlined manner leading to the just and expeditious resolution of all actions to the overall benefit of the parties and the judiciary." MDL Transfer Order, March 1, 2006 (Doc. No. 1).

II. STATE FEDERAL COORDINATION

A. Coordination to Extent Practicable.

The Court has appointed Ellen Relkin, Esq. of Weitz & Luxenberg as Plaintiffs' State Liaison Counsel. Ms. Relkin shall regularly apprise state plaintiffs' counsel of the progress of MDL-1742, including discovery exchanged, depositions scheduled, orders entered, and procedures employed in coordinating state and federal actions. Ms. Relkin shall create and maintain a master list of all state actions, including names of plaintiffs' counsel, docket numbers, venues, judges assigned, and parties defendant.

Plaintiffs and defendants in these MDL proceedings, and in particular plaintiffs' State Liaison Counsel, PSC, defendants' Liaison Counsel, and all other counsel designated by the Court in prior or subsequent Pretrial Orders, shall work together to coordinate, to the greatest extent practicable, the conduct of these MDL proceedings with other products liability actions involving ORTHO EVRA® pending in any state court. Coordination is intended to conserve judicial resources, avoid duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. All discovery conducted in these MDL proceedings may be utilized in any state court ORTHO EVRA® products liability action, in accordance with that state's law and rules of evidence, and vice versa, subject to an

appropriate cost-sharing provision which will be addressed by a forthcoming order. All discovery obtained in these proceedings that is used in any state court litigation is subject to this Order, any protective order(s) entered by this Court, and such future cost-sharing/common benefit orders as may be entered by this MDL Court.

B. Intent to Coordinate with State Courts.

To achieve the full benefits of this MDL proceeding, this Court is willing to coordinate discovery with state courts presiding over related cases, to the extent that such state courts so desire, for instance through joint orders that will allow the parties in the state court actions to fully utilize any discovery conducted in the MDL proceedings. It is recognized that much of the early documentary and deposition discovery has taken place in state court actions and that discovery has been produced to the MDL Liaison Counsel already.

C. Coordination by Plaintiffs' Counsel.

All discovery directed towards defendants and non-party witnesses on behalf of plaintiffs in these MDL proceedings shall be undertaken by, or under the direction of, the PSC on behalf of all plaintiffs with cases in these MDL proceedings. Any discovery not limited to a specific plaintiff shall be signed by plaintiffs' Liaison Counsel. The PSC shall, where practicable, coordinate its discovery requests with plaintiffs' counsel in state court litigation to the extent practicable to eliminate duplicative discovery requests.

D. Cross Noticing of Depositions.

Depositions of fact witnesses that are noticed in these MDL proceedings (other than fact witnesses whose testimony is only relevant in an individual case) may be cross-noticed in any related state court action by plaintiffs' Liaison Counsel and/or defendants' Liaison Counsel, or counsel in such state court action.

E. Scheduling of Depositions.

The parties in each action subject to this Order are required to follow Case Management Order No. 7 (Deposition Guidelines).

III. SERVICE OF DOCUMENTS

A. Electronic Filing.

Electronic filing shall be utilized in MDL 1742, pursuant to Case Management Order No. 2, Paragraph 10.

B. Orders.

The Clerk of the Court shall forward only to plaintiffs' federal Liaison Counsel Michael London, Esq., Douglas & London, P.C. and defendants' Liaison Counsel, Julie Callsen, Esq., Tucker Ellis & West, a copy of each order or other document normally served by the Clerk. Service on Liaison Counsel shall be considered service on all parties.

C. Pleadings, Motions, and Other Documents.

A party filing a pleading, motion, or other document shall provide a copy to plaintiffs' Liaison Counsel and a copy to defendants' Liaison Counsel. A copy of the document shall also be submitted to Liaison Counsel via electronic mail. Service on plaintiffs' Liaison Counsel shall constitute service on all plaintiffs. Service on Liaison Counsel for the pharmaceutical defendants constitutes service on Johnson & Johnson, Johnson & Johnson Pharmaceutical Research & Development, LLC and Ortho-McNeil Pharmaceutical, Inc. only. This does not apply to Complaints. Service and distribution by Liaison Counsel to other attorneys of record shall be by overnight mail, facsimile, or electronic mail, reserving the right of any receiving counsel to waive, in writing, such receipt.

IV. DISCOVERY IN GENERAL

A. Attempt to Resolve Disputes.

To avoid unnecessary litigation concerning discovery disputes, counsel are directed to confer before filing a discovery motion as required under Local Rule 30.1. In any motion filed, counsel for the moving party must certify that a good faith effort was made to resolve the dispute.

B. Depositions.

Case Management Order No. 7 (Deposition Guidelines) governs the conduct, noticing, and scheduling of all depositions in these MDL proceedings. Disputes arising during the taking of depositions that cannot be resolved by agreement among counsel, and that if not immediately resolved will disrupt the discovery schedule significantly or require a rescheduling of the deposition, shall be presented by telephone to this Court. The submission of the issue and the Court's corresponding ruling should be recorded as part of the deposition.

C. Documents.

Defendants shall produce a common set of documents to the PSC for plaintiffs' use in these MDL proceedings pursuant to the Stipulated Protective Order. The PSC shall make the documents produced by defendants available to plaintiffs in any state court litigation who agree to be bound by this Order voluntarily or by Order of the state court, and who voluntarily agree to the assessment order to be entered in this MDL and who have agreed to be bound by the Stipulated Protective Order or other Protective Order entered by another court. This Order shall

not preclude any party from asserting in any action that such documents are inadmissible at trial, nor shall this provision be construed to supersede or amend any state law or state court order pertaining to such documents.

IT IS SO ORDERED.

August 25, 2006

DATE

s/ David A. Katz

DAVID A. KATZ, United States District Judge