

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

IN RE: ACTOS® (PIOGLITAZONE) PRODUCTS LIABILITY LITIGATION)	MDL No. 6:11-md-2299
This Document Applies To:)	JUDGE DOHERTY
<i>All Cases</i>)	MAGISTRATE JUDGE HANNA
)	
)	

ORDER REGARDING PRESERVATION OF RECORDS AND *PRIMA FACIE* EVIDENCE OF USAGE, INJURY AND CAUSATION REQUIREMENTS FOR PENDING CASES NOT PARTICIPATING IN THE ACTOS® RESOLUTION PROGRAM AND NEWLY FILED OR TRANSFERRED CASES

I. INTRODUCTION

This Order applies to all Plaintiffs with personal injury claims pending as of April 28, 2015 in these cases, or subsequently filed or transferred into this proceeding. This Order requires such Plaintiffs to produce certain specified information regarding their personal injury claims. The Order does not apply to any Plaintiff whose claim is eligible for, and has been submitted to, the ACTOS® Resolution Program. Moreover, if a Plaintiff has already undertaken to meet any of the obligations set forth in this Order pursuant to this Court’s previous case management orders, that Plaintiff is not required under this Order to duplicate any of those actions already undertaken. Persons who represent themselves *pro se* in this proceeding shall comply fully with all obligations required of counsel by this Order, unless otherwise stated.

II. PRESERVATION NOTICE REQUIREMENT

- A. Counsel for Plaintiff or Plaintiff *pro se* shall notify the following individuals or entities, by registered mail (with return receipt) (each, a “Notice”), that the individual or entity may have records relevant to the Plaintiff’s claim in these cases (“Claim”) and that any records relating to the Plaintiff must be preserved as directed herein, pending collection by the Plaintiff or Defendant:
 1. All Pharmacies that dispensed any medications to the Plaintiff for the period from three years prior to the date of the first diagnosis of the alleged personal injury to the present;
 2. All Physicians, Medical Facilities, other Healthcare Providers and/or other persons (“Other Providers”) who prescribed ACTOS® Products for the Plaintiff, or provided any samples of ACTOS® Products to the Plaintiff;

3. For the period of three years prior to the date of the first diagnosis of the alleged personal injury to the present, if not already included in Paragraphs 1 or 2 above:
 - (i) Plaintiff's primary care physician(s);
 - (ii) Plaintiff's endocrinologist(s);
 - (iii) Plaintiff's urologist(s);
 - (iv) Plaintiff's oncologist(s) or any other medical provider who provided treatment to Plaintiff for cancer;
 - (v) Any hospital who treated Plaintiff for any reason; and
 - (vi) Any other healthcare provider who treated Plaintiff for the personal injury alleged in his or her case.
- B. The Notices set forth in Paragraph A above, shall be sent within sixty (60) days after the final Opt-In Deadline, as may be extended under the terms of the ACTOS® Resolution Program Master Settlement Agreement, for cases that were pending as of April 28, 2015, or, for cases filed on or after April 28, 2015, within sixty (60) days from the date the case is filed in or transferred into this proceeding,
- C. A copy of this Order shall be attached to the Notice sent pursuant to this Section, and copies of all such Notice(s) shall be preserved by counsel for Plaintiff or Plaintiff *Pro Se* for so long as the Claim remains pending in this proceeding.
- D. Plaintiffs shall serve on Defendants a statement listing the names and addresses of all individuals or entities to which Notices were sent, along with copies of the Notices and a signed certification that the Notices were sent as required by this Order, within sixty (60) days after the final Opt-In Deadline, as may be extended under the terms of the ACTOS® Resolution Program Master Settlement Agreement, if their case was pending prior to April 28, 2015, or for cases filed on or after April 28, 2015, within sixty (60) days from the date the case is filed in or transferred into this proceeding. Service of the Notice on Defendants by Plaintiffs shall be made by email to Sherry A. Knutson, Esq. at SidleyActos@Sidley.com.
- E. Plaintiffs who fail to fully comply with the requirements of Paragraphs A through D above shall be given notice of such failure by e-mail or fax from Defendants' Lead Counsel or her designee and shall be provided thirty (30) additional days to cure such deficiency ("Cure Period"). No other extensions will be granted unless agreed to by all Parties in writing. If Plaintiff fails to cure the deficiency within the Cure Period, Defendants' Lead Counsel or her designee may file a Motion to Show Cause why that case should not be dismissed with prejudice. Plaintiff shall thereupon have sixty (60) days to respond to the Notice to Show Cause. Any

failure to respond to the Motion within the required period of time shall lead to the dismissal of the case with prejudice, except for good cause shown.

- F. Absent good cause shown for the failure to comply with the requirements of the Preservation Notice Order, the parties agree, a Plaintiff may not seek to introduce into evidence at trial any document or information from a Pharmacy, Physician, other Healthcare Provider and/or Other Provider, if a Notice was required by Paragraph A of this Order and such Notice was not sent to the Pharmacy, Physician, other Healthcare Provider and/or Other Provider from whom such document or information was obtained.

III. DISCOVERY REQUIREMENTS

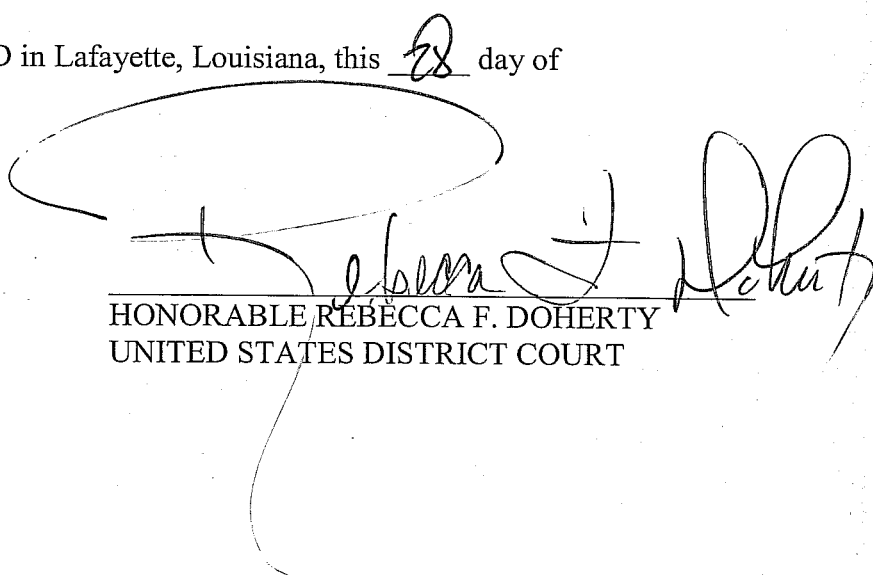
- A. Within sixty (60) days after the final Opt-In Deadline, as may be extended under the terms of the ACTOS® Resolution Program Master Settlement Agreement, or, for cases filed on or after April 28, 2015, within sixty (60) days from the date the case is filed in or transferred into this proceeding, Plaintiffs who are subject to this Order shall produce all of the documents and/or information described in this Section III.
1. All pharmacy records regarding the dispensing of drugs to the Plaintiff for the period from three years prior to the date of the first diagnosis of the alleged personal injury to the present;
 2. A Plaintiff Fact Sheet (“PFS”) that complies with the requirements of the MDL Case Management Order governing submission of Plaintiff Fact Sheets, entered by this Court on July 9, 2012 (the “MDL PFS Order”), and authorizations in the forms previously approved by the Court;
 3. Medical records as follows for the period of three years prior to the date of the first diagnosis of the alleged personal injury to the present:
 - (i) All Physicians, Medical Facilities, other Healthcare Providers and/or Other Providers who prescribed ACTOS® Products for the Plaintiff, or provided any samples of ACTOS® Products to the Plaintiff;
 - (ii) All medical records relating to the Plaintiff from Plaintiff’s primary care physician(s);
 - (iii) All medical records relating to the Plaintiff from Plaintiff’s endocrinologist(s);

- (iv) All medical records relating to the Plaintiff from Plaintiff's urologist(s);
 - (v) All medical records relating to the Plaintiff from Plaintiff's oncologist(s) or any other medical provider who provided treatment to Plaintiff for cancer;
 - (vi) All medical records relating to the Plaintiff from any hospital who treated Plaintiff; and
 - (vii) All medical records relating to the Plaintiff from any other healthcare provider who treated Plaintiff for the personal injury alleged in his or her case;
4. A certification signed by Plaintiff or his or her counsel (i) attesting that records have been collected from all pharmacies that dispensed drugs to, or for, the Plaintiff, as described in subparagraph A(1) above; (ii) attesting that all medical records described in subparagraph A(3) above have been collected; and (iii) attesting that all records collected pursuant to subparagraphs A(1) and A(3) have been produced, pursuant to this Order. If any of the documents described in subparagraphs A(1) and (3) above do not exist, Plaintiff or his or her counsel shall state that fact and the reason, if known, why they do not exist in this certification, and provide a "No Records Statement" from the pharmacy or healthcare provider;
5. A report complying with Rule 26(a)(2) on general causation for the injury alleged by Plaintiff from a medical expert opining to a degree of medical or scientific certainty that ACTOS® Products pose an increased risk for the development of the type of injury alleged by Plaintiff; and
6. A report complying with Rule 26(a)(2) from a medical expert opining to a reasonable degree of medical certainty, that the use of ACTOS® Products caused or substantially contributed to the personal injury alleged by Plaintiff.
- B. Service on Defendants by Plaintiff or his or her counsel of items set forth above shall be made by email to Sherry A. Knutson, Esq. at SidleyActos@Sidley.com.
- C. Plaintiffs who fail to fully comply with the requirements of this Order shall be given notice of such failure by e-mail or fax from Defendants' Lead Counsel or her designee and shall be provided thirty (30) additional days to cure such deficiency ("Cure Period"). If a Plaintiff fails to cure the deficiency within the Cure Period, Defendant's Lead Counsel or her designee shall meet and confer with Plaintiff, and if that does not result in a cure then Defendant's Liaison Counsel may file a Motion to Show Cause why that case should not be dismissed with prejudice. Plaintiffs shall thereupon have thirty (30) days to respond to the Motion to Show Cause. Any failure to respond to the Motion within the required

period of time shall lead to the dismissal of the case with prejudice, except for good cause shown.

- D. To the extent not expressly stated herein, nothing in this Order abrogates or replaces each Plaintiff's obligation to submit the PFS, authorizations, and other materials required under the MDL Orders. The Plaintiff need not re-submit a PFS if one has already been submitted with respect to his or her claim.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 28 day of April, 2015.


HONORABLE REBECCA F. DOHERTY
UNITED STATES DISTRICT COURT