

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**In re: WATSON FENTANYL PATCH
PRODUCTS LIABILITY LITIGATION**

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**Case No. 1:12-cv-06296
MDL No. 2372**

**This Document Relates To:
All cases**

ORDER NO. 1

By order dated August 7, 2012, the Judicial Panel on Multidistrict Litigation (JPML) has transferred to this Court the civil actions listed in Attachment A to this Order. It appears to the Court that these cases merit special attention as complex litigation. For these reasons, the Court enters the following order:

1. Applicability of order. Pending further order by this Court, this order shall govern the practice and procedure in the actions that the JPML transferred to this Court by its order dated August 7, 2012, which are listed in Attachment A to this order. This Order also applies to any "tag-along" actions later filed in, removed to, or transferred to this Court.

2. Consolidation of actions. The actions listed in Attachment A are consolidated for pretrial purposes. Any "tag-along" actions later filed in, removed to, or transferred to this Court will be consolidated automatically with this action, without the need for a motion or entry of an order by the Court. This consolidation does not constitute a determination that the actions should be consolidated for trial, and it does not have the effect of making anyone or any entity a party to any action in which he, she, or it has not been named as a party.

3. Filing. The Clerk is maintaining a master case file under the heading "In re

Watson Fentanyl Patch Products Liability Litigation," Case Number 1:12-cv-06296 (the "Master Case File"). All filings with the Clerk should include that caption and case number. When a party intends that something it is filing apply to all of the consolidated actions, the party should indicate that by using the words "This Document Relates to All Cases" in or just after the case caption and file the document(s) in the Master Case File. When a party intends that something it is filing applies only to one or some of the consolidated actions, the party making the filing should file it under the individual case number(s) assigned to the particular case(s). The party making such a filing should indicate that by using the words "This Document Relates to *[fill in case number(s)]*" in or just after the case caption.

4. Plaintiffs' Steering Committee. The Court does not, at this time, believe the appointment of a plaintiffs' steering committee (PSC) is necessary. Any counsel who feels, at any time, that such necessity exists may file a motion with this Court requesting such, including setting forth grounds for such.

5. Plaintiffs' Lead Counsel. Lead counsel for plaintiffs is hereby designated to be Michael Heygood ("Lead Plaintiffs' Counsel") with James Orr, Charles Miller and David Pitcher designated as alternative plaintiffs' lead counsel ("Alternative Plaintiffs' Lead Counsel").

6. Plaintiffs' Counsel Responsibilities. Lead Plaintiffs' Counsel shall have the duty and responsibility to take the lead role in all aspects of this litigation from the plaintiffs' perspective. This shall include:

- a. Initiating, coordinating, conducting, developing and proposing all appropriate and/or necessary pretrial discovery, including scheduling matters, on behalf of plaintiffs in all actions consolidated as part of this multidistrict litigation.
- b. Examining witnesses and introducing evidence at hearings on behalf of

plaintiffs and acting as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the Court.

- c. Negotiating and entering into stipulations with the defendants regarding this litigation, subject to approval by the Court.
 - d. Exploring, developing, and pursuing all settlement options pertaining to any claim or portion of a claim that is a part of this litigation.
 - e. Providing appropriate status updates to all Plaintiffs' counsel regarding the status of the litigation.
 - f. Performing any task necessary, proper and reasonable for preparation of these matters for trial.
- and
- g. Performing such other functions as may be expressly authorized by further orders of this Court.

7. Defense Lead Counsel. Lead Counsel for defendants is hereby designated to be Joseph Thomas ("Lead Defendants' Counsel") with Jeffrey Peck, K.C. Green, and Jeffrey Geoppinger designated as alternative defendants' lead counsel ("Alternative Defendants' Lead Counsel").

8. Defense Counsel's Responsibilities: Lead Defendants' Counsel shall have the duty and responsibility to take the lead role in all aspects of this litigation from the defendants perspective. This shall include:

- a. Initiating, coordinating, conducting, developing and proposing all appropriate and/or necessary pretrial discovery, including scheduling matters, on behalf of all defendants in all actions consolidated as part of the multidistrict litigation.

- b. Examining witnesses and introducing evidence at hearings on behalf of defendants and acting as spokesperson for all defendants at pretrial proceedings and in response to any inquiries by the Court.
- c. Negotiating and entering into stipulations with the plaintiffs regarding this litigation, subject to approval by the Court.
- d. Exploring, developing, and pursuing all settlement options pertaining to any claim or portion of a claim that is a part of this litigation.
- e. Performing any task necessary, proper and reasonable for preparation of these matters for trial.
and
- f. Perform such other functions as may be expressly authorized by further orders of this Court.

9. Changes in Lead Counsel. If Lead Plaintiffs' Counsel or Lead Defendants' Counsel desires a change in the designation of Lead Counsel or Alternative Lead Counsel for their respective side, Lead Plaintiffs' Counsel or Lead Defendants' Counsel may file a notice modifying the designation of Lead Counsel or Alternative Lead Counsel for their respective side only, and such notice shall be sufficient to effect that modification.

10. Service List. This order is being served upon the following counsel:

Plaintiffs:

Michael Heygood	michael@hop-law.com
Charles Miller	charles@hop-law.com
David Pitcher	david@hop-law.com
James Orr	jim@hop-law.com
Eric Pearson	eric@hop-law.com
John Chapman	jchapman@hop-law.com

Defendants:

Jeffrey Peck	jpeck@ulmer.com
Joseph Thomas	jthomas@ulmer.com
K.C. Green	kcgreen@ulmer.com
Jeffrey Geoppinger	jgeoppinger@ulmer.com
Ashley Weaver	aweaver@ulmer.com
Kenneth Craycraft	kcraycraft@ulmer.com
Joshua Klarfeld	jklarfeld@ulmer.com
Lisa Kuhnell	lkuhnell@ulmer.com

Third Party Defendants

David Kramer	dkramer@dblaw.com
David Dirr	ddirr@dblaw.com

Any additional counsel who represents one or more parties in cases transferred to this Court as part of MDL 2372 and who want to be included in the service list should contact Judge Kennelly's courtroom deputy clerk, Olga Rouse (312-435-5350) for instructions on how to ensure that counsel receives notices in the future.

It shall be the responsibility of Charles Miller to maintain a proper up-to-date service list for all counsel representing Plaintiffs and field any inquiries from Olga Rouse regarding administrative matters related to Plaintiffs ("Plaintiffs' Liaison Counsel"). It shall be the responsibility of Lisa Kuhnell to maintain a proper up-to-date service list for all counsel representing Defendants and to field any inquiries from Olga Rouse regarding administrative matters related to Defendants ("Defendants' Liaison Counsel").

11. Status Conferences. The Court will conduct periodic status conferences in this matter. In addition to any additional hearings or status conferences that may be set in this matter, the following status conferences are hereby set and ordered, all of which are set to begin at 1:30 p.m.:

October 16, 2012

December 4, 2012

January 29, 2013

March 12, 2013

May 7, 2013

a. Attendance. Lead Plaintiffs' Counsel and Lead Defense Counsel shall make every reasonable effort to personally appear at every status conference and it is the expectation of the Court that they will personally attend the vast majority of such status conferences. If, for a particular status conference, Lead Counsel is unable to attend, one of the Alternative Lead Counsel may appear and act on behalf of a party at such status conference.

b. Agenda. At a status conference, Lead Counsel for each party (or Alternative Lead Counsel if Lead Counsel is absent) shall be prepared and authorized to:

- Argue, present and answer any and all questions related to all of the issues which the parties have set forth as being ripe to be considered and/or discussed in the Joint Status Report, as set forth in paragraph 8(c) herein;
- Argue, present and answer any and all questions from the Court regarding all filed but as yet unruled upon motions and responses thereto; and
- Upon reasonable inquiry, provide the Court the position of their party as to any

outstanding issue in this litigation.

c. Attorney conference. In advance of each status conference, counsel are directed to confer and seek consensus to the extent possible regarding the necessary agenda for the upcoming status conference. Not less than three (3) court days in advance of a status conference, the Parties shall file a Joint Status Report that identifies the issues that the Parties believe are ripe to be considered and/or discussed at the upcoming status conference, briefly setting forth, as appropriate, the respective sides and/or positions on such issues.

d. October 16, 2012 Status Conference: In addition to whatever other matters may be addressed at the October 16, 2012 status conference, the parties shall be prepared to address, in detail, the following items:

- (1) Appropriate methodology for selecting how cases should proceed forward in this MDL;
- (2) Appropriate methodology for determining when a case in this MDL shall be declared “ready for trial”;
- (3) Appropriate methodology for handling common expert discovery issues in this MDL; and
- (4) General discussion regarding remaining fact discovery that the respective parties believe is necessary.

12. Orders entered by transferor courts.

a. For cases that have been transferred to MDL No. 2372 from jurisdictions outside the Northern District of Illinois and in the matter of *Fraley v. Watson Pharmaceuticals, Inc., et al.*, Case No. 10-cv-05725, pending in the United States District

Court for the Northern District of Illinois , all deadlines that arise by order of the originating courts or by the local rules of the originating courts, including but not limited to discovery and pretrial deadlines entered by the originating courts prior to transfer to this Court, are hereby vacated; and

b. For all cases that are transferred to MDL No. 2372 in the future, all deadlines that arise by order of the originating courts or by the local rules of the originating courts, including but not limited discovery and pretrial deadlines entered by the originating courts prior to transfer to this Court, shall be vacated. This stay shall become effective at the moment of transfer of those cases into MDL No. 2372.

13. Settlement Notification. Any party settling any claim or portion of a claim shall promptly notify Lead Plaintiffs' Counsel and Lead Defense Counsel of such settlement and, in every case, such notifications must be made before such settlement is funded.

14. Cost Assessment and Fee Allocation. The Court recognizes that a time may come in the future when it is necessary and/or appropriate to entertain requests for reimbursement of costs incurred by Plaintiff's Lead Counsel and assessment of attorney fees collected by individual counsel representing individual plaintiffs. Until such time, Plaintiffs' Lead Counsel is directed to maintain a reasonable record of the work performed on behalf of the plaintiffs and a record of the expenses incurred.

Dated: September 24, 2012

s/ Matthew F. Kennelly
Judge Matthew Kennelly