

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**In Re: TAXOTERE (DOCETAXEL)
PRODUCTS LIABILITY
LITIGATION**

MDL NO. 2740

**THIS DOCUMENT RELATES TO:
ALL CASES**

SECTION “N” (5)

**JOINT REPORT NO. 3 OF LIAISON COUNSEL
(Status Conference, May 12, 2017)**

NOW INTO COURT come Plaintiffs’ Co-Liaison Counsel (“PLC”) and Defendants’ Liaison Counsel (“DLC”), who respectfully submit this Joint Report No. 3 of Liaison Counsel.

1. REPORT OF CLAIMS AND CASE INVENTORY

On October 4, 2016, the JPML transferred 28 civil action(s) to the United States District Court for the Eastern District of Louisiana for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See In re Taxotere (Docetaxel) Prod. Liab. Litig.*, No. MDL 2740, 2016 WL 5845996 (U.S. Jud. Pan. Mult. Lit. Oct. 4, 2016). Since that time, 223 additional actions have been transferred to the Eastern District of Louisiana pursuant to 27 Conditional Transfer Orders of the JPML. As of May 10, 2017, there are 1,116 cases pending in the MDL before the Honorable Kurt D. Engelhardt.

2. FEDERAL/STATE COORDINATION

Related state court proceedings have been filed in California, Missouri, and Delaware. All of these state court proceedings, except for two lawsuits in Delaware, have been removed to federal court or are in the process of being removed to federal court. Plaintiffs in Delaware, Missouri, and California have filed motions to remand. In accordance with PTO 21 (Rec. Doc.

276), a jointly proposed briefing schedule for these motions to remand has been presented to the Court for its consideration, which the parties are prepared to discuss at the status conference.

The parties continue to coordinate and communicate with all counsel and advise them of the status conference call in number (listen only). The parties also continue to alert the relevant state court judge(s) of the MDL, the Court's willingness to cooperate with the state court judges for the purposes of coordinating discovery and other pretrial proceedings, and provide the call in number for the status conferences, should they wish to join.

3. PRETRIAL ORDERS

All Pretrial Orders are attached to this Joint Report as Appendix A.

The Court has issued the following important Pretrial Orders since the March 17, 2017 Status Conference.

Pretrial Order No. 29 (Rec. Doc. 303) entered March 27, 2017 – Streamlined Service on Accord Healthcare, Inc.

Pretrial Order No. 30 (Rec. Doc. 304) entered March 27, 2017 – Streamlined Service on Sandoz, Inc.

Pretrial Order No. 32 (Rec. Doc. 307) entered March 31, 2017 – Streamlined Service on Actavis Pharma, Inc.

Pretrial Order No. 33 (Rec. Doc. 308) entered March 31, 2017 – Streamlined Service on McKesson Corporation

Pretrial Order No. 35 (Rec. Doc. 310) entered March 31, 2017 – Scheduling Two Meetings between the Court and the Settlement Committees

Pretrial Orders No. 37 and 41 (Rec. Docs. 318 and 331) entered April 6, 2017 and April 17, 2017 – Exemplar Short Form Complaint and superseding and amending Exemplar Short Form Complaint.

Pretrial Order No. 38 (Rec. Doc. 326) entered on April 12, 2017- Amending PFS and DFS

Pretrial Order No. 39 (Rec. Doc. 327) entered on April 11, 2017- Streamlined Service on Sun Pharma Global, Inc.

Pretrial Order No. 40 (Rec. Doc. 328) entered on April 12, 2017- Streamlined Service on Hospira Worldwide, LLC and Pfizer Inc.

Pretrial Order No. 42 (Rec. Doc. 348) entered on April 26, 2017- Responsive Pleadings to Short Form Complaints Reserved

Pretrial Order No. 43 (Rec. Doc. 349) entered April 27, 2017- Regarding July 7, 2017 Status Conference, 505(b)(2) Defendant Settlement Committee, “Science Day,” Remand Motions and Discovery Schedule

Pretrial Order No. 44 (Rec. Doc. 371) entered May 11, 2017- Appointing 505(b)(2) Defendant Settlement Committee

4. COUNSEL CONTACT INFORMATION FORM

All counsel in the MDL are required to complete the Counsel Contact Information Form (available as a fillable PDF on the Court’s MDL 2740 website) attached to PTO No. 7 (Rec. Doc. 155), and forward it to Plaintiffs’ Co-Liaison Counsel at dwhite@bkc-law.com. This information must be kept current by counsel, and will be relied upon throughout the litigation. Co-Liaison Counsel provides a copy of all Counsel Contact Forms to Jacob Woody at BrownGreer. BrownGreer will rely on the information included in the Counsel Contact Form to serve all pleadings.

5. MASTER COMPLAINT AND SHORT FORM COMPLAINT

The Master Long Form Complaint was filed on March 31, 2017 and bears Rec. Doc. 312. PTO 41 (Rec. Doc 331) provides the Court-approved amended Exemplar Short Form Complaint, which supersedes PTO 37 (Rec. Doc. 318). Counsel are advised to make reference to the Master Long Form Complaint when completing the Short Form Complaint. Additionally, should any plaintiff’s counsel use the Short Form Complaint as an amending complaint, and not include all the defendants named in the original complaint, on the Clerk’s docket, the Clerk’s office will close the plaintiff’s claims against the defendant(s) who is (are) not named.

If any case was docketed in the MDL prior to April 1, 2017, a Short Form Complaint may be filed as an amended complaint in the plaintiff’s individual case, not in the master MDL

docket. If the case is filed in or transferred to the MDL from April 1, 2017 forward, the plaintiff must file a Short Form Complaint. The relevant PTOs are PTO No. 15 (Rec. Doc. 230), PTO No. 37 (Rec. Doc. 318), and PTO 41 (Rec. Doc. 331).

6. PLAINTIFF AND DEFENDANT FACT SHEETS

Counsel should note the rules of the Plaintiff Fact Sheets (“PFS”) in several Pretrial Orders:

- Amended PTO 22 (Rec. Doc. 325) sets forth service of PFSs and Defendant Fact Sheets;
- PTO 23 (Rec. Doc. 280) amends Exhibit A which are the authorizations to PFS (Rec. Doc. 280);
- PTO 24 (Rec. Doc. 279) provides additional details on the service of fact sheets and authorizations through MDL Centrality and the PLC Distribution of Orders and Notices per PTO 1

Amended PTO 22 (Rec. Doc. 325) provides the timeframe for service of completed PFS and DFS forms; however, the Court has determined that the term “date of this order” in the Orders refers to the date of the initial PTO 22 (i.e., March 10, 2017).

All counsel are encouraged to become very familiar with these PTOs as they establish the procedures and deadlines relative to PFS and DFS.

To date, Plaintiffs have served 3 PFSs and 211 PFSs are in progress. Many PFSs are due under the provisions of Amended PTO 22 (Rec. Doc. 325) on May 24, July 24, and September 22, 2017.

7. MDL CENTRALITY

Fillable versions of the Plaintiffs Fact Sheet and Defense Fact Sheet are on the Court’s website under the tab “Forms,” as well as on the BrownGreer website.

8. SERVICE ON DEFENDANTS

Counsel for sanofi and the Plaintiffs' Steering Committee (PSC) have agreed to a streamlined service procedure set forth in PTO 9 (Rec. Doc. 160) for service of complaints on the domestic sanofi entity. As a result of PTO 9 (Rec. Doc. 160), plaintiff is not required to effectuate service on the foreign sanofi entities unless otherwise ordered by the Court.

Counsel for several defendants have also agreed to streamlined service procedures: for Accord Healthcare, Inc., a streamlined service procedure is in PTO 29 (Rec. Doc. 303); for Sandoz Inc. in PTO 30 (Rec. Doc. 304); for Actavis Pharma, Inc. in PTO 32 (Rec. Doc. 307); for McKesson Corporation in PTO 33 (Rec. Doc. 308); for Sun Pharma, Inc. in PTO 39 (Rec. Doc. 327); and for Hospira Worldwide, LLC in PTO 40 (Rec. Doc. 328).

The PSC was notified by two defendants that some Streamlined Service Orders may need to be amended to properly identify certain entities. Accordingly, the parties are working to resolve this issue with all defendants, which may require amendment of some pleadings.

9. DISMISSAL OF DEFENDANTS

Three entities, who were originally named as defendants, have been dismissed in all cases pending in the MDL. One entity (Apotex, Inc.) submitted proof by affidavit that it did not manufacture Docetaxel. The other entities, Northstar RX, LLC and Eagle Pharmaceuticals, Inc., submitted proof that they did not manufacture Docetaxel until after the date of infusions alleged in the individual Complaints. The referenced documents are as follows: Northstar RX LLC (Rec. Docs. 320, 324, 333, 335), Eagle Pharmaceuticals, Inc. (Rec. Doc. 319, 332, 336), and Apotex, Inc. (Rec. Docs. 219, 224, 225).

The PSC and all defendants agree to make a concerted effort to ensure that defendants who did not market the product before the dates of use or infusion alleged in the complaints are

dismissed from those cases. The parties are prepared to discuss this issue at the status conference.

10. PRESERVATION ORDER

Counsel are reminded to familiarize themselves with the terms of PTO 1 (Rec. Doc. 4, ¶12) regarding preservation of evidence. The parties will meet and confer if it becomes appropriate to modify, amend or supplement PTO No. 1 regarding Preservation Order.

11. PROTECTIVE ORDER

The parties are conferring regarding entry of a Protective Order. Magistrate Judge North ordered the parties to submit a joint proposed Protective Order to govern discovery. (Rec. Doc. 291). The parties are prepared to discuss the status of these matters at the status conference.

12. ESI DISCOVERY

In accordance with Magistrate Judge North's Order dated January 30, 2017 (Rec. Doc. 199), the parties are negotiating the framework of an appropriate ESI discovery protocol. Plaintiffs are discussing individual ESI issues with each defendant. Magistrate North tentatively set a discovery conference on May 16, 2017. The parties reported to Magistrate North during the week of May 8, 2017 regarding their progress and advised whether the May 16, 2017 conference is necessary. The parties are prepared to discuss this issue with the Court.

13. DISCOVERY OF DEFENDANTS

The parties have issued informal discovery requests. The parties are continuing to confer about a procedure for and timing of discovery of defendants and will report to the Court at the next Liaison Counsel meeting.

14. SCHEDULING ORDER FOR ALL CASES

Over the past several weeks, the parties have worked diligently on scheduling and are in the process of finalizing a joint proposed Case Management Order (“CMO”). The parties are prepared to discuss the status of the discussions at the status conference.

15. MOTION PRACTICE

The Court entered PTO 21 (Rec. Doc. 276) which, in pertinent part, set June 21, 2017 as the submission date for pending motions to remand, and also required Liaison Counsel to confer regarding the briefing schedule for the motions to remand. Liaison Counsel have conferred and have presented to the Court a proposed briefing schedule for the remand motions. The parties are prepared to discuss the briefing schedule at the status conference.

On April 28, 2017, French Defendants sanofi and Aventis Pharma S.A. filed a Motion to Dismiss For Lack of Personal Jurisdiction. (Rec. Doc. 346). The date of submission on that motion is October 11, 2017.

On April 20, 2017, sanofi-aventis U.S. LLC filed a Motion for Disclosure of Non-Party Interested Entities or Persons. (Rec. Doc. 334). The motion is set for submission on June 7, 2017 (Rec. Doc. 357).

16. CLASS CERTIFICATION BRIEFING SCHEDULE

A putative class action was filed in the matter captioned *Matthews et al. v. Sanofi S.A. et al*, No. 16-17731. Plaintiffs filed their Motion for Class Certification on April 25, 2017. (Rec. Doc. 342). The submission date for plaintiffs’ motion is June 21, 2017. (Rec. Doc. 357).

17. SCIENCE PRESENTATION

Informational presentations were made to the Court on May 3, 2017 to provide background science information on Taxotere (Docetaxel).

18. SETTLEMENT COMMITTEES

Pursuant to PTO 6 (Rec. Doc. 133), the Court appointed representatives to a plaintiff's Settlement Committee and to a sanofi Settlement Committee. Settlement Committees are tasked with maintaining a continuing, collaborative discussion of the elements and characteristics of a framework for potential resolution of cases. These two Settlement Committees met on March 7, 2017, and later met with the Court and Liaison Counsel on May 3, 2017. PTO 35 (Rec. Doc. 310). At the meeting, the Court discussed the goals and expectations of the Settlement Committees, and the Court expressed its intent to appoint a third Settlement Committee comprised of six attorneys, one nominated by each of the 505(b)(2) defendants. The parties agreed that the previously scheduled meeting between the parties and the Court set for May 12, 2017 would be cancelled, but representatives of the Plaintiffs' and sanofi Settlement Committees may meet on either May 11 or May 12, 2017.

19. SPECIAL MASTER FOR PLAINTIFFS' TIME AND EXPENSES

In PTO 20 (Rec. Doc. 265) the Court appointed Kenneth W. DeJean as Special Master for the Plaintiffs to review the time and expenses submitted as common benefit during the course of the MDL. At this time the Special Master is learning the time and expense reporting system and will shortly begin his first review of the time and expenses submitted.

20. UPCOMING DEADLINES OR IMPORTANT DATES

- A. May 16, 2017 – (Rec. Doc. 291) – ESI status conference before Magistrate Judge North with all parties.
- B. May 30, 2017 - PTO 15 (Rec. Doc. 230) – Defendants shall file all Rule 12 Motions to Dismiss (other than related to personal jurisdiction) directed to the Master Complaint.
- C. June 21, 2017- PTO 43 (Rec. Doc 349) - Submission date for Motions to Remand.
- D. [date not yet triggered] - PTO 15 (Rec. Doc. 230) Plaintiffs, through the PSC, shall file any Opposition Memoranda to Rule 12 Motions to Dismiss (other than related to personal jurisdiction) directed to the Master Complaint filed by Defendants within 60 days after filing of the Motions to Dismiss.
- E. August 31, 2017 - PTO 15 (Rec. Doc. 230) - Deadline for Plaintiffs to file any Opposition Memoranda to the Defendants’ Motions to Dismiss directed to the Master Complaint and regarding personal jurisdiction.
- F. [date not yet triggered] - PTO 15 (Rec. Doc. 230) - Each Defendant shall file a Master Answer on or before 60 days following the filing of the Master Complaint or within 30 days after the Court’s ruling on all Motions to Dismiss, whichever is later.

21. NEXT STATUS CONFERENCE

The Court has announced that the next general status conference will be held on July 7, 2017, at 10:00 a.m. in Judge Engelhardt’s courtroom, with the meeting of Liaison Counsel at 8:30 a.m. in Chambers, and the meeting of the PSC and the defendants’ Lead Counsel at 9 a.m. The Court has set up a telephone conference line for the status conference that begins at 10:00 a.m. To join the status conference by telephone at 10:00 a.m., call (800) 260-0712 and enter access code 423344.

Dated: May 12, 2017

Respectfully submitted:

/s/Dawn M. Barrios

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Defendants' Liaison Counsel

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2017, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record who are CM/ECF participants.

/s/ M. Palmer Lambert

M. PALMER LAMBERT

**UNITED STATES DISTRICT COURT
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APPENDIX A

(List of Pretrial Orders)

PRETRIAL ORDERS

Pretrial Order No. 1 (Rec. Doc. 4) entered October 13, 2016 – Setting initial conference.

Pretrial Order No. 2 (Rec. Doc. 104) entered November 17, 2016 – Appointing Plaintiffs’ Liaison Counsel, Plaintiffs’ Steering Committee, and Defendants’ Liaison Counsel.

Pretrial Order No. 3 (Rec. Doc. 115) entered November 30, 2016 – Filing Requests for Summons and Summons Returns.

Pretrial Order No. 4 (Rec. Doc. 122) entered December 9, 2016 – Procedures for Direct Filing into the MDL [**superseded by PTO 5**].

Pretrial Order No. 5 (Rec. Doc. 131) entered December 13, 2016 – Amended Procedures for Direct Filing into the MDL.

Pretrial Order No. 6 (Rec. Doc. 133) entered December 13, 2016 – Appointing Settlement Committees.

Pretrial Order No. 7 (Rec. Doc. 155) entered December 28, 2016 – Approving and attaching Counsel Contact Information Form.

Pretrial Order No. 8 (Rec. Doc. 156) entered December 30, 2016 – Federal-State Coordination and Cooperation.

Pretrial Order No. 9 (Rec. Doc. 160) entered January 3, 2017 – Streamlined Service on sanofi-Aventis U.S. LLC.

Pretrial Order No. 10 (Rec. Doc. 169) entered January 11, 2017 – JPML Clarification on Scope of MDL.

Pretrial Order No. 11 (Rec. Doc. 170) entered January 11, 2017 – Extending Deadline to Submit Proposed PFS and DFS.

Pretrial Order No. 12 (Rec. Doc. 191) entered January 20, 2017 – Directing that Service of Process shall be made on all known, non-sanofi Defendants by February 15, 2017; Directing Liaison Counsel to Provide Proposed Deadlines for Close of Pleadings.

Pretrial Order No. 13 (Rec. Doc. 209) entered January 31, 2017 – Appointing Brian S. Rudick to the Settlement Committee.

Pretrial Order No. 14 (Rec. Doc. 216) entered February 3, 2017 – Order from January 27, 2017 Status Conference.

Pretrial Order No. 15 (Rec. Doc. 230) entered February 10, 2017 – Order setting deadlines for Master and Short Form Complaint, Motions to Dismiss and Master Answer.

Pretrial Order No. 16 (Rec. Doc. 234) entered February 13, 2017 – Intention to Enter Common Benefit, Time and Expense Rules, Appointment of CPA, Holdback, Assessments, and Related Issues.

Pretrial Order No. 17 (Rec. Doc. 235) entered February 13, 2017 – Intention to Appoint Kenneth W. DeJean as Special Master.

Pretrial Order No. 18 (Rec. Doc. 236) entered February 14, 2017 – Ordering the use of the attached Plaintiff Fact Sheets and Defense Fact Sheets. See also R.Doc. 236-1.

Pretrial Order No. 19 (Rec. Doc. 262) entered February 23, 2017 – Adopting the proposed Common Benefit Order submitted by Liaison Counsel and the Plaintiffs’ Steering Committee.

Pretrial Order No. 20 (Rec. Doc. 265) entered February 24, 2017 – Appointing Kenneth W. DeJean as Special Master.

Pretrial Order No. 21 (Rec. Doc. 276) entered March 7, 2017 – Setting Deadlines following March 6, 2017 meeting with liaison counsel.

Pretrial Order No. 22 (Rec. Doc. 279) entered March 10, 2017 – Implementation of Deadlines for Service of Fact Sheets and Deficiencies.

Pretrial Order No. 23 (Rec. Doc. 280) entered March 10, 2017 – Amending Exhibit A to Pretrial Order No. 18 (R. Doc. 236-1) to include the authorizations approved by the Court.

Pretrial Order No. 26 (Rec. Doc. 289) entered March 17, 2017 – Designating Defense Counsel to Attend Plaintiffs’ Steering Committee Meetings

Pretrial Order No. 27 (Rec. Doc. 298) entered March 24, 2017 – Order from March 17, 2017 Status Conference

Pretrial Order No. 28 (Rec. Doc. 302) entered March 27, 2017 – Setting a Meeting with Liaison Counsel

Pretrial Order No. 29 (Rec. Doc. 303) entered March 27, 2017 – Streamlined Service on Accord Healthcare, Inc.

Pretrial Order No. 30 (Rec. Doc. 304) entered March 27, 2017 – Streamlined Service on Sandoz, Inc.

Pretrial Order No. 31 (Rec. Doc. 305) entered March 27, 2017 – Amended Task Codes for Common Benefit Order

Pretrial Order No. 32 (Rec. Doc. 307) entered March 31, 2017 – Streamlined Service on Actavis Pharma, Inc.

Pretrial Order No. 33 (Rec. Doc. 308) entered March 31, 2017 – Streamlined Service on McKesson Corporation

Pretrial Order No. 34 (Rec. Doc. 309) entered March 31, 2017 – Extending the Deadline to Submit Proposed Orders for Streamlined Service as to Eagle Pharmaceuticals, Inc. and NorthStar Rx LLC

Pretrial Order No. 35 (Rec. Doc. 310) entered March 31, 2017 – Scheduling Meetings between the Court and the Settlement Committees

Pretrial Order No. 36 (Rec. Doc. 317) entered April 6, 2017 – Withdrawal of Deadline to Submit Proposed Orders Regarding Streamlined Service as to Eagle Pharmaceuticals, Inc. and NorthStar Rx LLC

Pretrial Orders No. 37 and 41 (Rec. Docs. 318 and 331) entered April 6, 2017 and April 17, 2017 – Exemplar Short Form Complaint and superseding and amending Exemplar Short Form Complaint.

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