

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

: MDL NO. 1355
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: SECTION: L
:
: JUDGE FALLON
: MAG. JUDGE AFRICK
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: THIS DOCUMENT RELATES TO ALL CASES
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**PRETRIAL ORDER NO. 14
(State-Federal Coordination)**

The Court has been informed that an Agreement has been reached between and among the plaintiffs in this action, numerous plaintiffs in state court actions and the defendants respecting matters which are the subject of defendants’ pending Motion For Injunction. A copy of that Agreement is attached.

The court acknowledges that issues may arise under Section K(2)(d) of Pre-Trial Order No. 7, which is a part of the Agreement that may require consultation with some state courts.

For good cause shown, it is on this 30th day of November 2001.

ORDERED that the defendants’ Motion For Injunction is withdrawn without prejudice and may be renewed pursuant to Section 7 of the Agreement; and it is further

ORDERED that, in the event disputes arise under Section K(2)(d) of Pre-Trial Order No. 7, which the parties are unable to resolve among themselves and which are presented to this Court for resolution, either during or after the conduct of a deposition, this Court will consult, to the extent necessary and practicable, with the state court Judge or Judges who have jurisdiction over the cases in which the objection arises in an effort to provide a resolution satisfactory to both courts. It shall be the obligation of

counsel who seeks judicial intervention under Section K(2)(d) to provide the name, address and telephone number of the state court Judge.

Except to the extent jurisdiction already exists, if any, this Order shall not confer jurisdiction upon any claimant or counsel to MDL No. 1355.

BY THE COURT:

Dated: November 30, 2001

/s/ Eldon E. Fallon
JUDGE ELDON E. FALLON
UNITED STATE DISTRICT JUDGE

AGREEMENT

The parties to this Agreement are counsel to parties in various state and federal court actions against Janssen Pharmaceutica Inc. and Johnson & Johnson (hereinafter “defendants”) involving the product Propulsid®. They wish to resolve certain differences between and among them respecting pretrial matters in those cases, both those which are presently on file and those Propulsid® cases which counsel will hereafter file in state or federal courts. All counsel represent that they have the authority to enter into this Agreement.

In consideration of the mutual promises contained herein the parties agree as follows:

1. Counsel for the plaintiffs who sign this Agreement shall appoint a Coordination Committee which shall have the authority to speak for and bind all such signatories to the administration of this Agreement. The composition and management of this Committee shall be the exclusive right and obligation of plaintiffs’ counsel who sign this Agreement.
2. The plaintiffs agree that the depositions which shall be taken by them of past and present employees of the defendants in all their present and future cases involving Propulsid® shall be coordinated by plaintiffs’ counsel as follows:
 - (a) one plaintiffs’ attorney shall be designated as lead counsel for each deposition;
 - (b) when lead counsel has completed his or her deposition of the witness, any other plaintiffs’ counsel who wishes to question the witness shall limit his or her questions to discoverable matters not covered by lead counsel;
 - (c) the depositions shall be noticed and conducted in accordance with Pretrial Order No. 7 entered on December 7, 2000 by the United States District Court for the Eastern District of Louisiana in MDL No. 1355 (this Order shall be subject to any modifications which the plaintiffs and defendants may agree to in writing);
 - (d) the deposition of the witness shall only be taken once for use in all state and federal court cases subject only to the Supplemental Depositions provisions of the December 7, 2000 Order; and
 - (e) depositions taken pursuant to this Agreement will be treated as if they had been taken pursuant to the rules and law of the particular jurisdiction in which their use is sought as to relevancy, materiality and competency, and where state law supplies the rule of decision, the privilege of a witness or party shall be determined in accordance with state law.

3. The depositions of defendants' past or present employees shall commence in December 2001.
4. The defendants shall, to the extent they have not yet done so, provide the Coordination Committee, in both electronic and hard copy, copies of the transcripts of depositions already taken of defendants' past and present employees, and of expert witnesses and third parties (but not to include depositions of plaintiffs, their employers and their health care providers, although there shall be posted on the MDL Verilaw system a notice that such depositions have been taken and who is the custodian, who shall be identified by name, firm, address, both physical and e-mail, telephone and fax number), whether in state court or federal court, together with the exhibits marked at those depositions and copies of the document production the defendants have already made. This production has essentially been made in the form of several hundred CD's which contain more than 4,000,000 pages of documents from defendants together with copies of certain videos and electronic data. Sufficient copies of non-electronic materials shall be provided in sufficient numbers for members of the Coordination Committee. The defendants shall provide the Coordination Committee all future document production. Depositions taken pursuant to this Agreement, as well as depositions of experts and third parties, shall be placed on the MDL Verilaw system which is part of the MDL Court's case management system. The defendants shall arrange posting of depositions taken to date on the MDL Verilaw system; as to depositions taken after the date of this Agreement, the deposition shall be posted by the party taking the deposition. The Coordination Committee shall arrange to distribute among its members, as may be requested, copies of future depositions to be taken of defendants' past and present employees.
5. This Agreement shall be appended to a proposed Consent Order or a Stipulation which shall be signed by counsel for the respective parties and filed in all present and future state court actions. It shall bind the parties' conduct of depositions of the defendants in those actions.
6. The parties shall endeavor to come to an agreement respecting Master Interrogatories and Requests for Admission and any further Demands for Production of Documents which plaintiffs may wish to serve on defendants. The purpose of such an agreement would be to achieve a reasonable result for all state court and federal court cases, prevent duplication and avoid the need for judicial intervention. Failing to reach such an agreement, the parties agree that the matter shall be presented to the MDL court for resolution.
7. The defendants will withdraw their Motion for Injunction without prejudice and reserving their rights to re-urge same in the event and in defendants' sole and exclusive judgment that discovery and/or class certification coordination is not functioning. The Fact of this Agreement shall not be used for any purpose by any party should the Motion for Injunction be refiled. Any party to this Agreement may withdraw from it upon 90 days notice to the other parties. The Agreement shall remain in effect for that withdrawing party during the 90-day period.

8. The defendants stipulate that the making of this Agreement by any party to a state court case and their counsel is not an acknowledgment by them that the MDL Court has authority over management of pretrial activity in those cases other than as set forth in this Agreement. The defendants further stipulate that the making of this Agreement by a party to a state court case and their counsel is for the sole purpose of providing a vehicle for deposition management. It has been made for the sole purpose of achieving a system for effective coordination of deposition activity in both the state court and federal court cases.

DATED: November 30, 2001

/s/ Russ M. Herman

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