FILED

MAY 16 2011

Carol E. Higbee, P.J.Cv.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ATLANTIC COUNTY

CASE NO. 289

Civil Action

IN RE: REGLAN LITIGATION

MASTER DOCKET: ATL-L-3865-10 CT

CASE MANAGEMENT ORDER NO. 11 REGARDING PROCEDURES PERTAINING TO PRODUCT IDENTIFICATION BY PLAINTIFFS

THIS MATTER having been brought before the Court by the Parties, for adoption of procedures for matters in which a plaintiff has not identified having ingested a product manufactured by a named defendant, and good cause having been shown,

IT IS on this 16th day of May, 2011, **HEREBY ORDERED:**

1. In any action filed in the New Jersey In Re: Reglan Litigation ("individual Coordinated Matter"), at any time after service of the Plaintiff Fact Sheet ("PFS"), a defendant that has not been identified as a manufacturer, or non-manufacturer distributor or seller, of Reglan® or metoclopramide dispensed to, ingested or otherwise administered to the plaintiff or other relevant person ("Plaintiff"), such defendant ("Non-identified Defendant") may inform a Plaintiff by letter or e-mail to Plaintiffs' Liaison Counsel and all parties to any individual Coordinated Matter, that Plaintiff has not identified such Defendant as a manufacturer, or non-manufacturer distributor or seller, of the Reglan® or metoclopramide dispensed to, ingested or otherwise administered to Plaintiff ("Product Identification Dismissal Letter"). Such Product Identification Dismissal Letter shall include sufficient detail for counsel of record for defendant(s) and/or plaintiffs to meet and confer regarding the lack of product identification and

shall enclose a draft Stipulation of Dismissal Without Prejudice. No provision of this Order shall preclude a named Defendant from seeking whatever other relief they deem appropriate under applicable law, New Jersey Court Rules and prior orders issued in this consolidated litigation, after following this procedures set forth in this Case Management Order No. 11.

2. The procedure set forth in this Order may not be used for dismissal of claims asserted in Plaintiff's Long or Short Form Complaints that are not based on a theory of recovery involving the ingestion or administration of Reglan® or metoclopramide. However, where a plaintiff's period of alleged ingestion or administration ends before a defendant: (a) acquired or otherwise became entitled to the rights associated with the NDA or RLD for a Reglan® product; and (b) that defendant is named as a party in the plaintiff's Short Form Complaint, then such a defendant may seek dismissal under this Order.

3. Not later than fifteen (15) days from the date of transmission of the Product Identification Dismissal Letter, Plaintiff's counsel shall advise counsel serving the Product Identification Dismissal Letter of: (a) the desire to conduct a meet and confer in an attempt to resolve any disputes regarding the lack of product identification, which shall be conducted as soon as is reasonably practicable; or (b) a consent to the Stipulation of Dismissal Without Prejudice; or (c) a written explanation as to why they are not consenting to executing the proffered Stipulation of Dismissal.

4. During or prior to any such meet and confer, Plaintiff may supplement the PFS with additional product identification information. During the meet and confer, the parties may discuss further discovery reasonably necessary for any remaining product identification.

5. In the event of the individual Plaintiff's failure, in accordance with paragraph 3 above, to timely respond to the Product Identification Dismissal Letter by either providing a written explanation as to why they are not consenting to executing the proffered Stipulation of Dismissal or requesting a meet and confer, or in the event that the meet and confer fails to successfully resolve the issue, the Non-identified Defendant may then apply to the Court for dismissal of the individual Coordinated Matter without prejudice. Such an application shall be in the form of a proposed order for dismissal without prejudice with a copy thereof to be served upon all Liaison Counsel and every other party appearing in the individual Coordinated Matter, together with a notice advising that unless the Court and the proponent of the order are notified in writing of specific objections thereto within ten (10) days after such service, the order may be signed in the Court's discretion. The application shall be accompanied by an affidavit of counsel reciting the relevant facts supporting the application and annexing a copy of the Product Identification Dismissal Letter and/or other proofs. The affidavit shall state that the moving party is not in default in any discovery obligations owed to the delinquent party, and provide the representation of prior consultation with, or notice to opposing counsel or pro se party, as required by R. 1:6-2(c). If no objection is timely served, the Court, in its discretion, may forthwith sign the proposed order. If objection is made, the matter may be listed for hearing, or otherwise resolved in the discretion of the Court.

6. Dismissal pursuant to this procedure shall be without prejudice as to a Plaintiff's right to move to vacate the dismissal and reinstate a dismissed Non-identified Defendant in the event product identification evidence for the dismissed Non-identified Defendant is obtained at a later date. In this instance, the date of commencement of the action for statute of limitations purposes as to the reinstated Defendant shall be the original date of filing of the pleading naming

such Defendant. Should the Court decline to execute any Non-identified Defendant's proposed order for Product Identification Dismissal, that Defendant may seek whatever other relief they deem appropriate under applicable law, New Jersey Court Rules and the prior orders issued in this consolidated litigation.

7. If an order of dismissal without prejudice has been entered and not thereafter vacated, the dismissed Defendant, after the expiration of one hundred twenty days (120) days from the date of entry of the order, may move on notice for an order of dismissal with prejudice. The motion to dismiss with prejudice shall be granted unless a motion to vacate the previously entered order of dismissal without prejudice has been filed by the delinquent party, or good cause has been demonstrated to exist warranting the denial of such motion.

8. Nothing in this Case Management Order shall serve as a basis for delaying discovery proceedings.

Carol E. Higbee

Honorable Carol E. Higbee, P.J. Cv.