

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: GADOLINIUM BASED
CONTRAST AGENTS PRODUCTS
LIABILITY LITIGATION

Case No. 1:08 GD 50000

MDL No. 1909

Judge Dan Aaron Polster

CASE MANAGEMENT ORDER NO. 3:

**GENERAL PROCEDURES AND
APPOINTMENT OF COUNSEL**

I. SCOPE OF ORDER

1. This Order shall apply to all Plaintiffs and their counsel for actions relating to Gadolinium-based contrast agents (“GBCAs”) that are currently pending in MDL No. 1909 or hereafter subject to transfer to these proceedings (collectively, “the MDL proceedings”) and all Defendants and their counsel in the MDL proceedings.

II. RULES OF PROCEDURE

2. The Federal Rules of Civil Procedure, the Civil Local Rules of Court for the United States District Court for the Northern District of Ohio (“the Civil Local Rules”), this Order, and future Case Management Orders, and any other Orders issued by the Court, shall govern the MDL proceedings.

3. The inclusion of any action in *In Re: Gadolinium Based Contrast Agents Products Liability Litigation, MDL 1909*, whether such action was or will be filed originally or directly in the United States District Court for the Northern District of Ohio or was or will be transferred or removed from some other court, shall not constitute a determination by this Court that jurisdiction or venue is proper in this District. No reference in this Order to actions filed

originally or directly in the United States District Court for the Northern District of Ohio shall constitute a waiver of any Defendant's contention that jurisdiction or venue is improper and/or that the action should be dismissed or transferred, or any Plaintiff's contention that jurisdiction or venue is proper.

III. CAPTIONS/FILING OF CASES

4. Every document filed in the MDL proceedings shall must bear the identification "Case No. 1:08 GD 50000," and should bear the following caption or a caption substantially similar:

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LIABILITY LITIGATION

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5. If a document relates to all cases in the MDL proceedings, the following must be added to the caption:

-----X
THIS DOCUMENT APPLIES TO ALL CASES :
-----X

6. If, instead, a document relates to one or more specific cases but not to all cases, the specific caption(s) for the cases to which the paper is applicable must be added as follows:

-----X
Plaintiff(s) name, :
 :
 - against - : Case No. [individual case number]
 :
Defendant(s) name :
-----X
AND RELATED CASES (SEE APPENDIX) :
-----X

In all such documents, one case shall be specifically captioned (the primary or first case, if applicable), and all other cases to which the document applies shall be listed as “Related Cases” in an appendix to the document, separately tabbed and made easily identifiable to the Clerk of the Court.

7. All filings shall be filed electronically using the Case Management/ Electronic Case Files (CM/ECF) system in accordance with the Electronic Filing Policies and Procedure Manual for the United States District Court for the Northern District of Ohio.

8. A courtesy copy of all documents filed with the Court shall be electronically provided to Liaison Counsel on the day of the filing. Service of all documents not required to be filed with the Court shall be sent electronically to Lead Counsel for each Defendant and Liaison Counsel for the Defendants, and Liaison Counsel for Plaintiffs.

9. Nothing in this section shall be construed to deny the Court of jurisdiction where jurisdiction otherwise existed.

IV. ORGANIZATION OF COUNSEL

A. Plaintiffs' Steering Committee

10. Appointment of a Plaintiffs' Steering Committee ("PSC"), to act as set forth pursuant to CMO [#] and below, will facilitate communications among the Court and counsel, minimize duplication of effort, foster the coordination of joint positions, and provide for the efficient progress and control of this litigation. Responsibilities include:

- a. to consider and propose future case management orders ("CMOs") or other case management issues;
- b. to coordinate, to the extent practicable, the briefing of motions;
- c. to perform such other duties as may be set forth in future CMOs agreed upon by the respective Parties, or ordered by the Court.

B. Defendants' Lead Counsel

11. The following counsel will be the lead counsel for each respective Defendant:

- a. GE Healthcare Inc.:

Amy W. Schulman, Esq.
DLA Piper US LLP
1251 Avenue of the Americas
New York, NY 10020
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(F) 212-335-4501
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- b. Bayer HealthCare Pharmaceuticals Inc.:

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Courthouse Place
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(F) 312-494-4440
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c. Mallinckrodt Inc.:

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Shook Hardy & Bacon LLP
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(F) 816-421-5547
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d. Bracco Diagnostics Inc.:

Thomas N. Sterchi, Esq.
Baker, Sterchi, Cowden & Rice L.L.C.
2400 Pershing Road, Suite 500
Kansas City, MO 64108-2533
(T) 816-471-2121
(F) 816-472-0288
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e. Novation LLC:

Marsha M. Piccone, Esq.
Wheeler, Trigg & Kennedy
1801 California Street, Suite 3600
Denver, CO 80202
(T) 303-244-1800
(F) 303-244-1879
piccone@wtklaw.com

C. Liaison Counsel

12. Appointment of Liaison Counsel to act as set forth below will facilitate communications among the Court and counsel, minimize duplication of effort, foster the coordination of joint positions, and provide for the efficient progress and control of this litigation.

a. Plaintiffs' Liaison Counsel:

Peter J. Brodhead, Esq.
Spangenberg, Shibley & Liber
1900 East Ninth Street, Suite 2400
Cleveland, OH 44114

(P) 216-696-3232
(F) 216-696-3924
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b. Defendants' Liaison Counsel:

Charna Sherman, Esq.
Squire, Sanders & Dempsey LLP
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Cleveland, OH 44114
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(F) 216-479-8780
cesherman@ssd.com

13. Liaison Counsel are vested by the Court with the following responsibilities and duties:

- a. to prepare and maintain an official service list of Plaintiffs' and Defendants' counsel in the GBCA cases including the persons or companies they represent, upon whom papers shall be served in this litigation;
- b. to receive orders, notices, correspondence and telephone calls from the Court and the Clerk of the Court on matters of general applicability on behalf of all Plaintiffs or Defendants, as the case may be, and to notify such other Plaintiffs' or Defendants' counsel of communications received from the Court; and
- c. to perform such other administrative tasks as may be necessitated by this or future CMOs, by the agreement of the Parties, or by order of the Court.

14. Notwithstanding the appointment of Liaison Counsel, each counsel shall have the right to participate in all proceedings before the Court as fully as such counsel deems necessary. Liaison Counsel shall not have the right to bind any party as to any matter without the consent of counsel for that party, except Liaison Counsel's own clients. Further, Liaison Counsel shall remain free to represent the interests and positions of their clients free of any claim (including without limitation any claim of conflict) arising from service as Liaison Counsel.

15. The Liaison Counsel designations are of a personal nature. Accordingly, this Court looks to these counsel to undertake personal responsibility to perform the designated functions and reserves the discretion to replace them, on their own request or this Court's own motion, should they become unable to do so.

V. PRIVILEGES

16. The Court recognizes that cooperation among counsel and Parties is essential for the orderly and expeditious resolution of this litigation. The communication, transmission or dissemination of information in connection with the GBCA cases among the Plaintiffs' counsel, or among the Defendants' counsel, shall not be deemed a waiver of the attorney-client privilege, the protection afforded by the work product doctrine, the protection afforded to material prepared for litigation, the joint prosecution or joint defense privilege, or any other privilege to which a party may be entitled. Cooperative efforts, as described above, shall not in any way be used against any of the Parties, be cited as purported evidence of a conspiracy, wrongful action or wrongful conduct, and shall not be communicated to the jury at the trial of any action. Nothing in this paragraph shall in any way affect the applicability of any privileges or protection against disclosure otherwise available under law.

VI. USE OF MASTER PLEADINGS

17. The Parties agree that master pleadings will be used. The Parties will meet and confer on deadlines to submit and serve master pleadings and a proposed Order governing the same.

18. The Defendants' time to respond to complaints which have been properly served is extended until May 1, 2008, or until further Order of this Court, unless the applicable Rules permit a longer response time.

VII. STATUS CONFERENCES

19. The Court will hold periodic status conferences on dates to be determined, but to the extent practicable, no less than every five weeks.

IT IS SO ORDERED.

Dated: March 25, 2008

/s/Dan Aaron Polster
Honorable Dan Aaron Polster
United States District Judge