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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

COURT  
OF OHIO  
CLEVELAND

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4 **IN RE GADOLINIUM BASED CONTRAST**  
5 **AGENTS PRODUCTS LIABILITY LITIGATION**  
6 **(MDL No. 1909)**

**Case No. 1:08 GD 50000**

**Honorable Dan A. Polster**

7 **THIS DOCUMENT RELATES TO:**  
8 **ALL CASES**

**AGREED ORDER RE:**  
**DISTRIBUTOR DEFENDANT**  
**McKESSON CORPORATION**

9  
10 **As of November 5, 2009 ("Effective Date"), Plaintiffs (through undersigned Counsel),**  
11 **McKesson Corporation ("McKesson"), and Manufacturer Defendants as set forth below, hereby**  
12 **stipulate as follows:**

13 **1. This Stipulation governs the following:**

14 **(a) "MDL cases" which shall mean the cases listed in Exhibit A (the "Listed**  
15 **Cases") and any other gadolinium-based contrast agent ("GBCA") cases presently or**  
16 **later filed in the In Re: Gadolinium-Based Contrast Agents Product Liability Multi-**  
17 **District Litigation 1909 (hereinafter "MDL 1909") pending in the Northern District of**  
18 **Ohio before Judge Dan Aaron Polster, Case Number 1:08-gd-50000 (the "Court") by**  
19 **counsel for plaintiffs in the Listed Cases ("Plaintiffs' Counsel.") in which McKesson is**  
20 **named as a party.**

21 **(b) "Other MDL Cases," which shall include other GBCA cases pending or may**  
22 **be filed in MDL 1909, where the McKesson is not a party.**

23 **2. The parties to the agreement that is set forth in this Agreed Order (the**  
24 **"Parties") are McKesson, a distributor of GBCAs; the undersigned Plaintiffs' counsel whose**  
25 **clients' interests are affected by this Agreed Order; and the Manufacturer Defendants: General**  
26 **Electric Company, GE Healthcare, Inc., Bayer Healthcare Pharmaceuticals, Inc., Bayer Schering**  
27 **Pharma AG, Bracco Diagnostics, Inc., and Mallinckrodt, Inc., Tyco Healthcare, Covidien, Ltd.,**  
28 **through their undersigned counsel.**

**3. In the MDL Cases, McKesson will satisfy its obligations under this Agreement**  
**by complying with MDL 1909 Case Management Order No. 11 ("CMO 11"), entered by the**  
**Court on April 30, 2009. However, after McKesson satisfies its obligations to provide sales**

1 information required by Paragraph 5 of CMO 11, the Parties have agreed that McKesson shall  
2 be dismissed in all MDL cases listed in Exhibit A regardless of whether McKesson sold or  
3 distributed any GBCA product(s) to the imaging facility(s) in question.

4 4. As such, in the MDL Cases, Plaintiffs' Counsel will execute a request for an  
5 order dismissing McKesson from the action, without prejudice, pursuant to FRCP 41(a)(2),  
6 within 30 days after McKesson has provided the information required by Paragraph 5 of CMO  
7 11, or within 30 days of the Effective Date of this Agreed Order, whichever is later, regardless  
8 of whether McKesson sold or distributed any GBCA product(s) to the imaging facility(s) in  
9 question.

10 5. In the Other MDL Cases, where McKesson is not a party to the action,  
11 McKesson agrees to act as a resource to Plaintiffs, the MDL Court and Manufacturer  
12 Defendants, with the limitations set forth below. McKesson will provide sales information to a  
13 party seeking such information provided only that the party seeking information from  
14 McKesson first obtains satisfactory confirmation from the applicable imaging facility and/or  
15 Manufacturer Defendant indicating that McKesson sold or distributed the GBCA product in  
16 question. Satisfactory confirmation that McKesson sold or distributed the GBCA product to the  
17 imaging facility at issue, which will trigger McKesson's obligation, include:

18 (a) An affidavit of the appropriate imaging facility personnel stating that  
19 McKesson distributed the GBCA product to the imaging facility;

20 (b) Deposition testimony of the appropriate imaging facility personnel stating  
21 that McKesson distributed the GBCA product to the facility;

22 (c) Deposition testimony of the appropriate Manufacturer Defendant  
23 personnel stating that McKesson distributed the GBCA product to the facility;

24 (d) An invoice from the imaging facility indicating that McKesson  
25 distributed the GBCA product to the facility; or

26 (e) A Defendant Fact Sheet stating that McKesson was the distributor of the  
27 GBCA product to the imaging facility in question.

28 6. In the Other MDL Cases, within 60 days of receipt of the confirming information  
described in paragraph 5(a)-(e) above, McKesson agrees to provide the following information:

(a) A Declaration to the parties confirming or denying any sales of a GBCA  
product to the facility in question during the three years preceding the procedures at  
issue.

1 (b) If the Declaration confirms that McKesson supplied a GBCA product to  
2 the facility in question during the time period referred to above, the Declaration will  
3 include information stating, if such information is available: (i) the GBCA or GBCAs  
4 sold; (ii) the date of sale; (iii) the name and address of the facility; (iv) the customer  
5 account number; (v) the quantity of GBCA sold; and (vi) the billing document and  
6 number. Plaintiffs' Counsel shall not add McKesson as a defendant to any case in which  
7 this information is provided, even if McKesson provides information that it sold or  
8 distributed any GBCA product(s) to the imaging facility at issue(s).

9 (c) If McKesson denies that it sold or distributed the GBCA product(s) to the  
10 imaging facility at issue, the Declaration shall state that McKesson has conducted a  
11 reasonable search of its customer sales and sales history databases and has confirmed  
12 that it could not locate any evidence that it supplied GBCA product(s) to the imaging  
13 facility in question, for the three (3) years preceding the procedure(s) at issue.

14 7. In the MDL Cases and the Other MDL Cases, all of the information provided to  
15 the Plaintiffs pursuant to Paragraph 7(a)-(c) must be treated as "HIGHLY CONFIDENTIAL,"  
16 pursuant to the existing Protective Orders in MDL 1909, and is also subject to the Non-Share  
17 Agreement attached hereto as Exhibit B.

18 8. The Manufacturer Defendants agree to the dismissal of McKesson without  
19 prejudice in the MDL Cases, as set forth herein.

20 9. Each party will bear its own fees and costs in connection with the dismissals of  
21 McKesson in cases listed in Exhibit A.

22 **IT IS SO STIPULATED:**

23 Dated: November 4, 2009

24 SEDGWICK, DETERT, MORAN & ARNOLD LLP

25 /s/ Michael L. Fox

26 Charles T. Sheldon

27 Michael L. Fox

28 Attorney for McKesson Corporation

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Dated: November 4, 2009

SKIKOS, CRAWFORD, SKIKOS, JOSEPH &  
MILLICAN

/s/ Steven J. Skikos  
Steven J. Skikos, Esq.  
Kathleen N. Millican, Esq.  
Plaintiff's attorney, on behalf of Plaintiffs'  
Executive Committee

Date: November 4, 2009

BOHRER LAW FIRM

/s/ Philip Bohrer  
Philip Bohrer

Date: November 4, 2009

WILLIAMSON & RUSNAK

/s/ Cyndi Rusnak  
Cyndi Rusnak

Date: November 4, 2009

SANFORD BARLOW LLP

/s/ Alex Barlow  
Alex Barlow

Date: November 4, 2009

KLINE & SPECTER

/s/ Michelle Tiger  
Michelle Tiger

Dated: November 4, 2009

DLA PIPER LLP,

/s/ Christopher Strongosky  
Heidi Levine, Esq.  
Christopher Strongosky, Esq.  
Attorneys for Defendants General Electric  
Company, GE Healthcare Inc.

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Dated: November 4, 2009

**GOLDMAN ISMAIL TOMASELLI BRENNAN  
& BAUM LLP**

/s/ Tarek Ismail  
Tarek Ismail, Esq.  
Attorneys for Defendants  
Bayer Corporation, Bayer Schering Pharma AG  
and Bayer Healthcare Pharmaceuticals, Inc.

Dated: November 4, 2009

**BAKER STERCHI COWDEN & RICE**

/s/ Paul Penticuff  
Paul Penticuff, Esq.  
Attorneys for Defendant Bracco Diagnostics, Inc.


Dated: November 4, 2009

**SHOOK, HARDY & BACON, LLP,**

/s/ Deborah A. Moeller  
Deborah A. Moeller, Esq.  
Attorneys for Defendants  
Mallinckrodt Inc., Tyco Healthcare, Covidien,  
LTD.

**IT IS SO ORDERED:**

Dated: 11/5, 2009

  
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Honorable Dan A. Polster

# Exhibit A

**EXHIBIT A TO MDL****ORDER TO DISMISS MCKESSON****MCKESSON CORPORATION CASE LIST**

<b>CASE NAME</b>	<b>CASE NUMBER</b>	<b>JURISDICTION</b>	<b>PLAINTIFF'S COUNSEL</b>
Judith Darlene Neal v. Bayer Corp. et. al	1:09-gd-50077	MDL	Williamson & Rusnak
Cassandra Pettigrew v. General Electric Company, et. a	1:08-gd-50359-DAP	District Court of Rhode Island now in MDL	Kline & Specter
Juanita McCain et al v. General Electric Company, et. al.	1:09-gd-50095	MDL	Bohrer Law Firm Skikos Crawford, Skikos, Joseph & Millican
Regis Wright v. General Electric Company, et. al.	1:09-gd-50093	MDL	Bohrer Law Firm Skikos Crawford, Skikos, Joseph & Millican
John Waldrip v. General Electric Company, et. al.	1:09-gd-50091	MDL	Bohrer Law Firm Skikos Crawford, Skikos, Joseph & Millican
Gerald Templeton (Duncan) v. General Electric Company, et. al.	1:09-gd-50094	MDL	Bohrer Law Firm Skikos Crawford, Skikos, Joseph & Millican
Elizabeth Arntsen v. Bayer Corp, et al.	1:09-gd-50031	MDL	Williamson & Rusnak
Clifford Brown v. Bayer Corp, et al.	1:09-gd-50033	MDL	Williamson & Rusnak
Dabby Bowman v. Bayer Corp, et al.	1:09-gd-50032	MDL	Williamson & Rusnak
Pete Capo v. Bayer Corp, et al.	1:09-gd-50034	MDL	Williamson & Rusnak
Mary Cooper v. Bayer Corp, et al.	1:09-gd-50036	MDL	Williamson & Rusnak
Reynolds Delgado, Sr. v. Bayer Corp, et al.	1:09-gd-50037	MDL	Williamson & Rusnak
John Paul Freeman et al. v. Bayer Healthcare Pharmaceuticals, Inc. et al.	1:09-gd-50038	MDL	Sanford Barlow LLP
Leo P. Johnson v. Bayer Corp, et al.	1:09-gd-50040	MDL	Williamson & Rusnak
Carol Murray v. Bayer Corp, et al.	1:09-gd-50043	MDL	Sanford Barlow LLP
David Simpson v. General Electric Co., et al.	1:09-gd-50154	MDL	Bohrer Law Firm and Skikos Crawford, Skikos, Joseph & Millican

# Exhibit B



**NON-SHARE AGREEMENT**

1. Certain documents, testimony, and other information that may be disclosed or produced in this litigation contain trade secrets or other confidential proprietary, business, and commercial information, as well as other information protected from disclosure by applicable law. Protection of this information is necessary and will benefit the parties and their counsel in this litigation by allowing them to present fully their claims and defenses concerning the information and activities at issue without concern that their Confidential Information would be disclosed to and/or appropriated by their competitors from the public record.

2. There is currently a Protective Order governing the In Re: Gadolinium-Based Contrast Agents Product Liability Multi-District Litigation 1909 cases, which is still in full force and effect.

3. In addition, Counsel for Plaintiffs in this matter may not disclose, use, or share any documents produced by McKesson Corporation, specifically sales history information, in this litigation in discovery in any other litigation, nor share them with other individuals or entities who are engaged in, or contemplating, litigation against the McKesson Corporation or Manufacturer Defendants. Similarly, responses to document requests may only be used in the matter in which they are served.

WHEREFORE, the parties to this stipulation, by and through their respective counsel, hereby agree that, to the extent Confidential Information is produced, such Confidential Information will be subject to the terms and provisions of this Stipulated Non-Share Agreement.