

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: KABA SIMPLEX LOCKS) MDL DOCKET NO. 2220
MARKETING AND SALES PRACTICES) 1:11-md-02220
LITIGATION)
)
)
) JUDGE DONALD C. NUGENT
)
) ORDER
)

CASE MANAGEMENT ORDER/NOTICE OF PRE-TRIAL CONFERENCE
UPON TRANSFER PURSUANT TO 28 U.S.C. §1407

This order shall govern the practice and procedure in those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to their order of February 16, 2011 as well as all related actions originally filed in this Court or transferred or removed to this Court. These actions are listed in Attachment A to this order. This order shall also govern the practice and procedure in any tag-along actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 7.1 of the Rules of Procedure of that Panel, subsequent to the filing of the final transfer order by the Clerk of this Court, and any related actions subsequently filed in this Court or otherwise transferred or removed to this Court.

1. *Pretrial Consolidation.* The actions described in paragraph 1 of this order are, until

further order, consolidated for pretrial purposes. This order does not constitute a determination that these actions should be consolidated for trial, nor does it have the effect of making any entity a party to an action in which it has not been joined and served in accordance with the Federal Rules of Civil Procedure.

- (a) *Master Docket and File.* The clerk will maintain a master docket and case file under the style “In re: Kaba Simplex Locks Marketing and Sales Practices Litigation,” master file number 1:11-md-02220. All orders, pleadings, motions, and other documents will, when filed and docketed in the master case file, be deemed filed and docketed in each individual case to the extent applicable.
- (b) *Captions; Separate Filing.* Order, pleadings, motions, and other documents will bear a caption similar to that of this order. If generally applicable to all consolidated actions, they shall include in their caption the notation that they relate to “ALL CASES” and be filed and docketed only in the master file. Documents intended to apply only to particular cases must indicate in their caption the case number of the case(s) to which they apply, and they must be filed and docketed in the master file and in each of those case numbers.
- (c) *Discovery Requests and Responses.* Pursuant to Fed. R. Civ. P. 5(d), discovery requests and responses will not be filed with the court except when specifically ordered by the court or to the extent offered in connection with a motion.

2. *Organization of Counsel.* Prior to the first pretrial conference, counsel for each group

of parties whose interests are similarly aligned shall designate liaison counsel, subject to the approval of the Court. Liaison counsel shall

- (a) maintain and distribute to co-counsel and to opposing liaison counsel an up-to-date service list;
- (b) receive and, as appropriate, distribute to co-counsel orders or other communications from the court and documents from opposing parties and counsel;
- (c) maintain and make available to co-counsel at reasonable hours a complete file of all documents served by or upon each party, except such documents as may be available at a document depository, if a depository is ordered by the Court;
- (d) establish and maintain a document depository, if so ordered by the Court; and,
- (e) call meetings of co-counsel for the purpose of coordinating discovery, presentations at pre-trial conferences, and other pre-trial activities.

No communication among plaintiffs' counsel or among defendants' counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

3. *Service of Documents.* Orders from the Court, as well as pleadings, motions, or other documents filed by a party will be served through the electronic notification system associated with the Court's ECF filing system. All counsel of record, and all liaison counsel are required to sign up for electronic filing and notification through the clerk's office, prior to the first pre-trial conference. If any counsel experiences difficulty in getting registered, or accessing the electronic filing system,

please contact the Court's MDL coordinator, Renee Schumitsh, at (216) 357-7017, for assistance.

4. *Status Conferences.* The court will schedule periodic status conferences, as it deems necessary for the efficient management of this litigation. Lead counsel for the parties shall confer at least one week prior to each scheduled conference and attempt to resolve out-standing disputes and shall provide the Court, at least three days prior to the hearing, a joint letter listing all motions and other matters the parties anticipate addressing at the conference.

5. *Motions, Pleadings, and Other Matters.* The parties are to follow the guidelines established in the Federal Rules of Civil Procedure, and the local rules of this Court with regard to all matters addressed therein, unless otherwise ordered by this Court. Any request for a deviation from those rules must be in writing, and must follow the filing requirements established in paragraph One, above.

6. *Documents.* To further the just, speedy, and economical management of discovery,

the parties are Ordered to meet and confer prior to the first pre-trial status conference, to develop a plan for the preservation of documents, data, and tangible things reasonably anticipated to be subject to discovery in this action. The parties may conduct this conference as part of the Rule 26(f) conference. The resulting preservation plan may be submitted to the Court as a proposed Order under Rule 16(e). The parties should consult the Manual for Complex Litigation, Fourth, Section 40.25 (2) for a list of issues that should be considered when developing the preservation plan.

Until the parties reach an agreement on a preservation plan, all parties and their counsel are reminded of their duty to preserve evidence that may be relevant to this action. The duty extends to documents, data, and tangible things in the possession, custody, and control of the parties to this

action, and any employees, agents, contractors, carriers, bailees, or other nonparties who possess materials reasonably anticipated to be subject to discovery in this action. Counsel is under an obligation to exercise reasonable efforts to identify and notify any such nonparties, including employees of corporate or institutional parties.

If, after conferring to develop a preservation plan, counsel do not reach agreement on a proposed plan, the parties are to submit to the court a statement of the unresolved issues together with each party's proposal for their resolution of the issues.

7. *Discovery Requests.* Counsel shall, to the extent possible, coordinate and consolidate their requests for production and examination of documents to eliminate duplicative requests from the same party in this proceeding or in similar proceedings in other courts. No party shall request documents available to it at a document depository or from its own liaison counsel. The parties must produce documents to which they have not raised an objection on a rolling basis rather than waiting until all documents responsive to a request have been gathered, unless otherwise agreed by all parties. A party, who relying on any privilege or work product doctrine, does not produce all requested documents in response to a request for production of documents or a subpoena must state that is invoking a privilege and must specify which privilege or doctrine it is invoking.

Counsel shall, to the extent possible, combine their interrogatories to any party into a single set of questions. No question shall be asked that has already been answered in response to interrogatories filed by another party unless there is reason to believe that a different answer will be given.

8. No parties to any of these actions shall be required to obtain local counsel in this district and the requirements of Rule 83.5(a), (d), and (h) of the Rules of this Court are waived as to any attorney appearing in these actions who is duly admitted to practice before any United States Court.

9. Hearings shall not be held on any motions filed except by order of Court upon such notice as the Court may direct.

10. Any paper filed in any of these actions which is substantially identical to any other paper filed in another of these actions shall be sufficient if it incorporates by reference the paper to which it is substantially identical. Where counsel for more than one party plan to file substantially identical papers they shall join in the submission of such papers and shall file only one paper on behalf of all so joined.

11. Any orders including protective orders previously entered by this Court or any transferor district court shall remain in full force and effect unless modified by this Court upon application.

12. All discovery proceedings in these actions are stayed until further order of this Court and the time requirements to perform any acts or file any papers pursuant to Rules 26 through 37, Federal Rules of Civil Procedure, are tolled until the first pretrial conference at which time a discovery schedule will be established.

14. The Court will be guided by the Manual For Complex Litigation, Fourth, and counsel are directed to familiarize themselves with that publication.

15. All other matters will be discussed at the initial pretrial conference to be held on Tuesday, March 8, 2011 at 10:30 a.m.. On or before, March 3, 2011 counsel shall furnish suggestions for items to be included on the agenda for this conference. In addition to the proposed agenda, and any other proposal required by this Order, a Report of Parties' Planning Meeting under

Fed. R. Civ. P. 26(f) and Local Rule 16.3(b) shall also be filed with the Court no later than March 3, 2011. IT IS SO ORDERED.

/s/ Donald C. Nugent
DONALD C. NUGENT
United States District Judge

DATED: February 23, 2011