

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

In Re: Digitek Cases

THIS DOCUMENT RELATES TO:
ALL ACTIONS

FEBRUARY TERM, 2009
NO. _____

Case Management Order No. 1

GOVERNING ALL "DIGITEK" CASES

It is the goal of this Court to secure the just, speedy, and inexpensive determination of each case that alleges that the prescription medicine Digitek, increased the risk of cardiac instability or caused other injuries, and to eliminate duplication of effort, prevent unnecessary paper, and promote judicial economy.

In order to achieve these objectives, the following Case Management Order No. 1 is deemed entered this ___ ^{March} day of ~~February~~, 2009, for all Digitek Cases that are presently pending or hereafter filed in the Philadelphia Court of Common Pleas. The coordinated procedures set forth in this Order are without prejudice to any party's right to contest further coordination or consolidation of these actions.

I. DIGITEK CASES DOCKET

On ~~February~~ ___ ^{March} 2009, the Court established a Digitek Docket at ~~February~~ ^{March} Term, 2009, No. _____. This docket number was established as a depository for the filing of pleadings, motions, orders, and other documents common to the Digitek Cases. Once a pleading, motion, order, or other document is filed on this docket and copies are provided to all other interested counsel involved in the Digitek litigation, the pleading, motion, order, or other document may be incorporated by reference, either orally before the Court, or within another properly filed pleading, motion, order, or other document.

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II. STAY OF PROCEEDINGS

1. Digitek Cases are hereby stayed in all respects. Any plaintiff's counsel may protect the statute of limitations period for any claimant for filing a Writ of Summons. Defense counsel may enter their respective appearances in each case, but ~~all~~^{will} not serve a Rule to File a Complaint. There are to be no further pleadings, motions, or discovery proceedings, including but not limited to preliminary objections, Answers, Interrogatories, Requests for Production, subpoenas, Notices of Deposition, or requests for medical records, until further Order of this Court, or as set forth below. To the extent there are any pending discovery requests, responses to such requests are stayed until further Order of this Court.

2. Further, the parties in these cases are directed to refrain from filing any potentially dispositive motions (i.e., Motions for Summary Judgment or Judgment on the Pleadings) temporarily until further Order.

III. PLEADINGS

A. MASTER LONG FORM COMPLAINT

1. Forty-five (45) days from the entry of this Order, counsel for plaintiffs in pending Digitek cases shall confer and shall collectively file a Master Long Form Complaint ("Master Complaint"). The Master Complaint must be served on Defendants, in accordance with the Pennsylvania Rules of Civil Procedure, before a response is required. The filing of the Master Complaint does not toll any applicable statute of limitations or repose as to any individual plaintiff in any Digitek Cases.

2. On or before forty-five (45) days after valid service of the Master Complaint, each Defendant shall file either (a) a master Answer or (b) a Master Set of Preliminary Objections to the Master Complaint.

3. All motions filed in the Digitek Cases shall be in letter format pursuant to mass tort procedure.

4. Plaintiffs shall respond to any Master Preliminary Objections within thirty (30) days of service.

5. The Court will rule on the Master Preliminary Objections, and whether a hearing thereon will be held is subject to the sole discretion of the Court. The Court's ruling on the Master Preliminary Objections will be binding on all current and future Digitek Cases.

6. If Master Preliminary Objections are sustained to one or more ~~counts~~^{counts} in the Master Complaint for the Digitek Cases, plaintiffs, if so ordered, shall file a conforming Amended Master complaint within thirty (30) days of the Order sustaining the Master Preliminary Objections.

7. If Master Preliminary Objections are sustained to one or more counts in the Master Complaint, those events shall be deemed stricken from any subsequently filed Short Form Complaint (see ¶ III.B.2 below), and plaintiffs, if so ordered, shall file a conforming Short Form Complaint within thirty (30) days of the Order sustaining the Master Preliminary Objections.

8. In the event that an Amended Master Complaint is filed in the Digitek Cases, defendants shall have thirty (30) days from the filing of the Amended Master Complaint to file a responsive pleading; or, if no such Amended Master Complaint need be filed, defendants shall have thirty (30) days from the Order determining Master Preliminary Objections to file a Master Answer for the Digitek Cases.

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9. If a New Matter is pleaded in the Digitek Cases, such New Matter in the Digitek Cases will be deemed denied and plaintiffs are not required to file any further responsive pleadings to defendants' New Matter in the Digitek Cases.

B. PREVIOUSLY FILED CASES

1. The Master Complaint for the Digitek Cases will substitute for and supersede all complaints filed in individual Digitek Cases pending in the Philadelphia County Court of Common Pleas.

2. Within thirty (30) days of the entry of this Order, each plaintiff in a Digitek Case shall file a Short Form Complaint, in a form to be agreed upon with defendant's counsel, using each action's original court term and number.

3. All allegations in Short Form Complaints will be deemed denied, and defendants are not required to file answers to Short Form Complaints, unless any plaintiff alleges a cause of action not included in the Master Complaint, in which case defendant may file a preliminary objection to any such count. An entry of appearance shall constitute a denial of all allegations in the Short Form Complaint for Digitek Cases, and an assertion of all applicable affirmative defenses.

4. Defendants will not file preliminary objections challenging claims as to which preliminary objections have previously been overruled.

5. Plaintiffs shall have thirty (30) days to file a response to any preliminary objections.

6. The Court will rule on the preliminary objections, and whether a hearing thereon is scheduled is solely within the discretion of the Court

7. If any of the Court's rulings permit a plaintiff to file an Amended Short Form complaint, Defendants shall be afforded thirty (30) days after service of the Amended Short Form Complaint in which to file a responsive pleading.

8. If no responsive pleading is filed, allegations in an Amended Short Form Complaint will be deemed denied.

C. NEWLY FILED CASES

1. All Digitek Cases filed after the date of this Order shall be instituted by the filing of a Writ for Summons or a Short Form Complaint. If suit is instituted by a Writ of Summons, any named defendant may file a Rule to File a Complaint, which shall apply to the benefit of all named defendants.

2. Plaintiffs shall indicate in each Short Form Complaint those counts of the Master Complaint that are incorporated by reference.

3. If additional causes of action are alleged in a Short Form Complaint, the specific facts supporting these allegations shall be pleaded in accordance with the Pennsylvania Rules of Civil Procedure, and the defendants against whom they are alleged must be specifically identified on a separate sheet of paper attached to the Short Form Complaint.

4. Defendants shall have thirty (30) days from the date of service of the Short Form Complaint or thirty (30) days from the date of the Court's ruling on the Master Preliminary Objections, whichever is later, to file preliminary objections to each Short Form Complaint.

5. If no responsive pleading is filed, allegations in a Short Form Complaint shall be deemed denied. An entry of appearance shall constitute a denial of all allegations in a Short Form Complaint and an assertion of all applicable affirmative defenses.

6. Defendants will not file preliminary objections challenging claims as to which Master Preliminary Objections have previously been overruled.

7. Plaintiffs shall have thirty (30) days from the date of service of preliminary objections to file a response.

8. The Court will rule on the preliminary objections and whether a hearing thereon is scheduled is solely in the discretion of the Court.

9. If the Court's ruling on preliminary objections to a Short Form Complaint does not provide for the filing of an Amended Short Form Complaint, the remaining allegations of the Short Form Complaint shall be deemed denied.

10. If any of the Court's rulings permit a plaintiff to file an Amended Short Form Complaint, defendants shall be afforded thirty (30) days after service of an Amended Short Form Complaint in which to file a responsive pleading.

11. If no responsive pleading is filed, allegations in an Amended Short Form Complaint will be deemed denied.

D. SERVICE OF PAPERS AND PLEADINGS ON LIAISON COUNSEL

1. All Master Pleadings, Master Discovery Requests and Responses, and Master Motions and Responses served under the "Digitek" Master caption shall be served on opposing liaison counsel. The Miller Firm, LLC has agreed to serve as Plaintiffs' Liaison Counsel, and _____ will serve as Defendants' Liaison Counsel. Service on liaison counsel shall be deemed as service on all counsel, and liaison counsel shall be responsible for disseminating to all co-counsel. The parties will make a single service of these documents in paper copy form to opposing liaison counsel at their Philadelphia office, and will also serve these documents simultaneously to opposing liaison counsel electronically in PDF or similar format;

where a master pleading, master discovery request or response, or master motion or response contains more than 20 pages in attachments, the parties shall only be required to serve the exhibits once, in paper form, as described above, Other plaintiffs' counsel who are counsel of record for cases pending in these Digitek Cases who would like copies of these documents are bound by the terms of the Protective Order to be entered by this Court and must make arrangements through plaintiffs' liaison counsel for the Digitek Cases if they wish to obtain copies of these documents.

2. All documents served on liaison counsel shall be served at counsel's Philadelphia office in accordance with the Pennsylvania Rules of Civil Procedure and the Mass Tort Program and Complex Litigation Center rules.

3. All case specific documents shall be served on proper individual counsel in a manner consistent with the Pennsylvania Rules of Civil Procedure and the Mass Tort Program and Complex Litigation Center rules.

4. Issues relating to discovery will be addressed in a separate order.

BY THE COURT

Date: _____