



**A. SCHEDULING OF STATUS CONFERENCES.**

Status conferences will be scheduled at regular times, with the next conference date and time chosen, at the latest, during each status conference.

**B. JOINT AGENDA.**

Counsel shall meet, confer, and submit a joint agenda at least forty-eight hours prior to any regularly scheduled status conference. In the absence of agreement, each side may submit separately proposed agendas.

**II. APPOINTMENT OF LIAISON COUNSEL.**

1. The following attorneys are hereby appointed as liaison counsel:

Plaintiffs' Liaison Counsel:

James McHugh, Jr.  
Lopez McHugh LLP  
1123 Admiral Peary Way  
Quarters K  
Philadelphia, PA 19112

Defendants' Liaison Counsel:

Albert G. Bixler  
Eckert Seamans Cherin & Mellott, LLC  
Two Liberty Place  
50 South 16th Street, 22nd Floor  
Philadelphia, PA 19102  
abixler@eckertseamans.com

2. Privileges Preserved. No communications 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.

### III. DISCOVERY.

#### A. GENERAL.

1. Non-Duplication of Written Discovery. The Parties acknowledge that substantial discovery has been served on Defendants in the federal Multidistrict Litigation concerning GBCAs, *In Re: Gadolinium Contrast Agents Product Liability Litigation*, MDL No. 1909, Case No. 1:08 GD 50000 (N.D. Ohio) (the “*MDL Proceedings*”). The Parties agree that duplication of discovery is to be avoided. Accordingly, within 20 days of the entry of the Protective Order referenced in Section VI of this Order, Defendants shall serve on Plaintiffs’ Liaison Counsel copies of all Answers to Interrogatories, Requests for Production of Documents or other discovery responses served in the *MDL Proceedings* to the extent those discovery responses have not already been served upon Plaintiffs’ counsel here (including Jim McHugh, Jr., Plaintiffs’ Liaison Counsel, or Ramon Lopez of the firm of Lopez McHugh, the federal-state court plaintiffs’ counsel liaison appointed in MDL-1909). Plaintiffs agree that they will not serve any discovery in these Coordinated Actions that duplicate or repeat the discovery in the *MDL Proceedings* or that seek substantially identical information.

2. Non-Duplication of Depositions. The Parties and the Court endorse the cross-noticing of depositions in these Coordinated Actions, in other state court GBCA actions and in the *MDL Proceedings* to avoid multiple depositions of fact and expert witnesses. If a Party in these Coordinated Actions cross-notices a deposition in these cases, it shall provide the notice to Liaison Counsel by e-mail or facsimile as soon as possible. If a Party in these Coordinated Actions objects to that cross-notice, the Party issuing the cross-notice shall, within two (2) business days after service thereof, notify the Court of the dispute by letter e-mailed, delivered or faxed to the Court and Liaison Counsel. That letter shall ask the Court to convene a conference call to resolve the dispute as soon as it can be scheduled. The burden

shall be on the Party in these Coordinated Actions objecting to the cross-notice to demonstrate that the cross-notice should be quashed. In no event shall witnesses be deposed on multiple occasions in connection with this proceeding without leave of Court and for good cause shown or by agreement of the Parties, except that depositions of healthcare providers may be taken separately for each patient by or for whom a claim is asserted. Further, no witness may be deposed in these Coordinated Actions who has been deposed in the *MDL Proceedings* if such deposition has been cross-noticed in these Coordinated Actions (or was cross-noticed in these cases before Coordination) without leave of Court and for good cause shown or by agreement of the Parties.

**B. ATTEMPT TO RESOLVE DISPUTES.**

To avoid unnecessary litigation concerning discovery disputes, counsel are directed to meet and confer before filing a discovery motion. In any motion filed, counsel for the moving party must certify that a good faith effort was made to resolve the dispute.

**IV. PRODUCT IDENTIFICATION.**

**A. PLAINTIFF FACT SHEETS.**

1. Service of Plaintiff Fact Sheets. Plaintiffs in all cases shall complete and serve upon all Defendants (including GPO agent and distributor Defendants) named in an individual action a PFS and shall produce all responsive non-privileged documents in his or her possession that are called for in the PFS. The PFS form is attached hereto as Exhibit 1. Plaintiffs whose cases are pending in this Court at the time of this Order shall have until September 15, 2009, to produce a completed PFS, signed and dated authorizations, and all requested documents in his or her possession, including all medical records possessed by Plaintiff or Plaintiffs' counsel. Plaintiffs must provide a complete and good faith response to

all questions in the PFS to the best of his or her ability and may, if necessary, indicate that the question is not applicable to Plaintiff, or, after a good faith investigation, that Plaintiff does not know or cannot recall the answer to a question. Plaintiffs shall make a good faith effort to substantiate his or her allegations identifying exposure to a particular GBCA product(s) and the respective Defendant(s) as well as the administering health care facility. For Plaintiffs whose cases are not pending in this Court at the time this Order is entered, the completed PFS, signed and dated authorizations and all other requested documents in her or her possession shall be produced within forty-five (45) days after the date the case is commenced in this Court by Writ of Summons or Complaint, whichever is later. Plaintiffs' remain under a continuing duty to supplement the PFS, if needed, throughout the litigation.

2. Defendants' Obligation to File Responsive Pleadings. If not previously filed, Defendants are obligated to file a responsive pleading to a complaint no later than thirty (30) days following receipt of a PFS or Supplemental PFS which contains good faith substantiation of Plaintiff's allegations that a specific GBCA manufactured by a particular Defendant or Defendants is identified for each procedure(s).

3. Deadline for Filing Forum non Conveniens Motions. Defendants shall file forum non conveniens motions no later than 90 days after the service of a full and complete PFS.

4. Non-Mental Health Medical Authorizations. Each person who produces a PFS according to Section IV.A.1 of this Order shall also produce an Authorization for Release of Records for each non-mental health medical provider (including insurer and pharmacies) listed in the PFS. The Non-Mental Health Medical Authorization to be used is attached hereto as Exhibit 2 and shall be served on Defendants' Liaison Counsel.

5. Mental Health Authorizations. Each person who produces a PFS according to Section IV.A.1 of this Order who also alleges a specific psychiatric injury or damage as described in Section II.G question 3 of the PFS, shall, in addition to the non-mental health medical provider releases described in paragraph 4 above, serve an original signed authorization for the release of records from each mental health care provider identified in the PFS, Section II.G, question 3. The Mental Health Records Authorizations that Plaintiff must complete in such cases is attached hereto as Exhibit 3 and shall be served on Defendants' Liaison Counsel.

6. Employment Authorizations. Each person who produces a PFS according to Section IV.A.1 of this Order and who alleges past or future lost earnings as a result of administration of GBCA(s) as described in Section II.B. question 16 of the PFS must also serve upon counsel for any Defendant named in his case an original release for employment records for each employer identified in the PFS and/or an authorization for Social Security Disability Insurance records. Notwithstanding allegations of past or future lost earnings, where health conditions, injuries or work environment factors may relate to Plaintiff's claim(s), Defendant(s) may request an Employment Authorization and the Parties will meet and confer regarding such production. The Employment Authorization is attached hereto as Exhibit 4 and shall be served on Defendants' Liaison Counsel.

7. Request for Supplemental Authorizations. Following service of the PFS, Defendant(s) whose products have been specifically identified as having been administered to Plaintiff may request that Plaintiff's counsel produce additional supplemental authorizations. Any request for additional authorizations must be made in writing and delivered by electronic means and must identify the particular provider or other entity whose

records are being sought. Within seven (7) business days of electronic service of the request, Plaintiff's counsel shall either produce a signed authorization or notify Defendant(s) by electronic means that they object to the execution of the signed authorization(s). Plaintiff and Defendant(s) may agree to additional time.

8. "Special" Authorizations. If a health care provider, employer or other custodian of records: (a) requires a specific form of authorization that is different than the authorizations set forth in this Order; (b) requires an authorization executed more recently than those provided by Plaintiff to Defendant(s); (c) requires a notarized authorization; or (d) requires an original signature, Defendant(s) shall notify Plaintiff's counsel of the requirement(s) by electronic means and Plaintiff shall either produce a signed authorization within seven (7) business days or notify Defendant(s) by electronic means that they object to the execution of a signed authorization.

9. Pathology Collection. The authorizations produced pursuant to this Order shall not cover the release of pathology specimens or tissue and no release obtained pursuant to this Order may be used to obtain or collect original tissue or pathology samples, unless agreed to by Plaintiff and Defendant(s). A pathology protocol shall be covered by an additional Order from the Court.

10. Authorizations in Cases Involving Multiple Defendants. In cases where there are multiple Defendants, Plaintiff shall not be required to provide separate authorizations to each Defendant with the PFS, unless agreed to by Plaintiff and Defendant(s). Rather, in cases involving multiple Defendants, Plaintiff will serve all required authorizations to Defendants' Liaison Counsel who will coordinate distribution and record collection.

11. Access to Medical/Employment Records. Defendant(s) or its/their authorized agents shall make available all records obtained through use of authorizations exchanged pursuant to this Order through an outside vendor(s). The Parties shall meet and confer to resolve appropriate cost-sharing, if any, Bates-stamping, web-site access, viewing fees and copying costs issues, and third-party access issues (e.g., a treating physician Defendant or other third party or, as the case may be, a Plaintiff, who also wishes to obtain the records). Access to the records of any individual Plaintiff will be limited to his or her counsel of record and counsel for the Defendants named in Plaintiff's case, and any consultant(s) hired by counsel for Defendants. If records are collected pursuant to any authorization or are otherwise received by either Party within three (3) days before a scheduled deposition, each Party will notify the other Parties' counsel and produce or make available such records immediately, but not less than twenty-four (24) hours, prior to any deposition (unless the records are received less than twenty-four (24) hours prior to the deposition).

12. Verification. Plaintiff's responses to the PFS shall be verified as provided in the Pennsylvania Rules of Civil Procedure in connection with Answers to Interrogatories.

13. Service and Confidentiality. Plaintiff shall be obligated to serve his or her executed PFS and related documents (other than authorizations) on counsel for all Defendants named in the individual case. Further, a PFS and related documents (including health care records and information) are confidential and will be treated as "Confidential Documents" pursuant to the terms of the Protective Order.

## B. DEFENDANT FACT SHEETS.<sup>1</sup>

1. Service of Defendant Fact Sheet if Product Identification is Substantiated. Each sponsor<sup>2</sup> or manufacturing Defendant is obligated to complete in good faith and serve upon Plaintiff in an individual case a completed Defendant Fact Sheet, including Part I ("Defendant Product Identification") and Part 2 ("Defendant Case Profile"), and all responsive documents called for in the DFS, forty-five (45) days after receipt by that Defendant of a full and complete PFS or Supplemental PFS (including all required authorizations and accompanying documents) which contains and includes good faith substantiation of use of that particular Defendant's GBCA product prior to the diagnosis of NSF in the case. Defendants remain under a continuing duty to supplement the DFS, if needed, throughout the litigation. The DFS form is attached hereto as Exhibit 5.

2. Defendants' Obligations to Serve Part 1 (Product Identification) DFS. If Plaintiff is unable to substantiate in good faith use of that particular Defendant's GBCA in the initial PFS, the named Defendants shall be obligated to serve responses only to Part 1 of the DFS ("Defendant Product Identification") forty-five (45) days after receipt of Plaintiff's PFS. Defendants must provide a complete and good faith response to Part 1 of the DFS and remain under a continuing duty to supplement the DFS, if needed, throughout the litigation.

3. DFS "Part 1" Responses Not Deemed Conclusive of Product Identification. Nothing contained in this Order, nor any answer by any Defendant in Part 1 of the DFS, shall be deemed to relieve any Plaintiff of the burden of substantiating in good faith

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<sup>1</sup> This Order neither applies to nor imposes any DFS obligation on any Defendant in the Coordinated Actions other than the sponsors or manufacturers of GBCAs (i.e., the Order does not impose a requirement that a non-GBCA sponsor/manufacture like a physician, hospital, Group Purchasing Organization ("GPO") agent like Novation, or distributor like McKesson to produce a DFS). McKesson's and Novation's disclosure obligations are discussed below in Sections C and D.

<sup>2</sup> "Sponsor" shall be defined as consistent with FDA, meaning a person who takes responsibility for and initiates a clinical investigation.

exposure to a specific GBCA prior to the diagnosis of NSF. Further, no answer by any Defendant in Part 1 of the DFS shall preclude any Defendant from asserting that any Plaintiff has failed to carry his or her burden of proving exposure to a specific GBCA prior to the diagnosis of NSF.

4. Verification. Defendants' responses to the DFS shall be verified as provided in the Pennsylvania Rules of Civil Procedure in connection with Answers to Interrogatories.

**C. DEFENDANT McKESSON'S DISCLOSURES.**

Within 30 days of the receipt of the product identification information identified in Plaintiff's Fact Sheet, Defendant McKesson, if named in that action, shall provide 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. If the Declaration confirms that Defendant McKesson supplied a GBCA product to the facility in question during the time period referred to above, the Declaration will include information stating, if such information is available: (i) the GBCA or GBCAs sold; (ii) the date of sale; (iii) the name and address of the facility; (iv) the customer account number; (v) the quantity of GBCA sold; and (vi) the billing document and number, if available.

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

**D. DEFENDANT NOVATION'S DISCLOSURES.**

Novation, LLC is a named Defendant in the Weaver matter only. If Weaver's Plaintiff Fact Sheet sufficiently substantiates use of an identified GBCA in Plaintiff's procedure(s), within 45 days of receipt of the PFS, Novation shall provide a Declaration to the Parties confirming or denying: (i) whether the facility at which Plaintiff was exposed to the specific GBCA was a member eligible to purchase a GBCA pursuant to a Novation contract; and (ii) whether any Novation records reflect sales of a GBCA product to the facility in question during the three (3) years preceding the procedure(s) at issue.

If the Declaration confirms that the facility in question purchased a GBCA pursuant to a Novation contract during the time period referred to above, the Declaration will include information stating, if such information is available: (i) the GBCA or GBCAs sold; (ii) the date range(s) of sales, determined as specifically as possible; (iii) the name and address of the facility; (iv) the facility's membership number; and (v) the name of the third-party Distributor, if known.

If Novation denies that the facility at issue was eligible to purchase a GBCA pursuant to a Novation contract, the Declaration shall state that Novation has conducted a reasonable search of records and accessible databases and has confirmed that it could not locate any evidence that the facility in question purchased a GBCA under a Novation contract for the three (3) years preceding the procedure(s) at issue.

**E. MCKESSON AND NOVATION DEPOSITIONS AND DISMISSALS.**

Plaintiff may take the deposition of the McKesson or Novation Declarant as appropriate, which deposition shall be held by telephone and limited only to the issues in the Declaration. Prior to noticing any depositions on the issue of product identification with respect to McKesson or Novation, the Parties shall meet and confer on any additional

information requested by Plaintiff regarding whether said information can be produced pursuant to a supplemental declaration.

In the event that McKesson provides evidence (which may include the Declaration described above) that it did not distribute to any of the medical facilities where Plaintiff is alleged to have received a GBCA scan, the Plaintiff shall dismiss McKesson without prejudice within thirty (30) days. However, the provisions of this paragraph shall not prevent McKesson from moving for summary judgment at any other time as provided by law.

In the event that Novation provides evidence (which may include the Declaration described above) that the medical facilities were not eligible to purchase a GBCA through a Novation contract, the Plaintiff shall dismiss Novation without prejudice within thirty (30) days. However, the provisions of this paragraph shall not prevent Novation from moving for summary judgment at any other time as provided by law.

**F. THIRD PARTY DISCOVERY WHERE PLAINTIFF IS UNABLE TO SUBSTANTIATE IN GOOD FAITH ALLEGATIONS SUPPORTING PRODUCT IDENTIFICATION.**

1. Service of Supplemental PFS. If, after receiving Part 1 of the DFS and completing third-party discovery, Plaintiff is able to identify the specific manufacturer(s) or sponsor of any relevant procedure, Plaintiff shall provide a Supplemental PFS incorporating the identity-substantiating information as set forth in Section IV.F.4.a of this Order.

2. Plaintiff's Obligations. If Plaintiff is unable to substantiate in good faith his or her allegations identifying the GBCA product(s) administered to Plaintiff, Plaintiff shall be required to conduct discovery to ascertain the identity of the manufacturers or sponsors. The method of discovery may be by any means permitted by the Pennsylvania Rules of Civil Procedure. The Parties must comply with the requirements of Section VII of this Order to

obtain discovery from witnesses located outside of this Commonwealth as well as the notice requirements of Pa. R. Civ. P. 4009.21(a). These efforts shall commence promptly following service of Plaintiff's PFS to Defendant(s) pursuant to Section IV.A.1 of this Order. Plaintiffs shall diligently conduct discovery on product identification. Failure to do so may result in dismissal upon Defendants' motion under Section IV.F.4.d of this Order.

3. Product Identification Depositions. All Parties are entitled to proper notice of depositions. The Parties shall cooperate in the scheduling and taking of product identification depositions. The Parties serving the deposition notice shall reasonably accommodate requests from third-party witnesses and opposing counsel to schedule the deposition at a mutually convenient time and place.

(a) Noticing and Scheduling Product Identification Depositions. The noticing of a product identification deposition shall state in the caption that this deposition is for the purpose of obtaining information on the issue of product identification. This Order does not apply to liability, causation or damage depositions.

(b) Third Party Health Care or Third Party Distributor Depositions. Plaintiff may take the depositions of third party health care employees with knowledge of the identity of the brand of any GBCA administered to Plaintiff, as well as the custodian of records of any third party healthcare provider. Depositions of McKesson and Novation employees with knowledge of the brand of any GBCA sold to the facility shall be conducted consistent with Sections IV.C, IV.D and IV.E of this Order. Said depositions may be taken by telephone or in person and are limited in scope to the issue of brand name product identification.

i. Depositions Duces Tecum. Any deposition, the notice or subpoena for which is accompanied by a request for production of documents or things, should be taken five business days after the documents are produced, unless impracticable.

ii. Deposition Canceling/Adjournments. The Parties are encouraged to communicate in the canceling and moving of deposition dates. All Parties should be given reasonable notice of the canceling or adjournment of a deposition. Notices of cancellation of depositions that involve travel should be provided at least three days before the deposition takes place.

(c) Third Party Distributor Verification. In the event the DFS and discovery from the health care facility indicates that sales of the manufacturer's GBCA may have been conducted through a distributor or involved a GPO agent (e.g. Novation), the Plaintiff shall have the right to conduct discovery with respect to the distributor or GPO agent identified. Prior to conducting said discovery, the Plaintiff shall meet and confer with the distributor's or GPO agent's counsel to determine if there is a more efficient method of obtaining the information necessary with respect to product identification.

(d) Defendant Depositions. Any Plaintiff seeking to depose an employee or former employee of a Defendant for the purpose of discovering the brand of the specific GBCA administered to Plaintiff must first submit in writing to that Defendant the topics to be covered and the reason why Plaintiff believes that employee would have information regarding product identification. Said depositions may, but do not necessarily have to, be taken by telephone or by written examination. Said depositions are limited in scope to obtain potentially relevant evidence on the issue of product identification. The Parties shall meet and confer and any unresolved issues regarding the deposition shall be

raised with the Court. If representatives from Plaintiff's dispensing healthcare providers/facilities who allegedly administered the unknown brand of GBCA to Plaintiff have not been deposed for product identification purposes pursuant to this Section, Defendants may insist that such third-party depositions take place prior to depositions of Defendant witnesses for product identification purposes.

4. Product Identification Related Dismissals of Manufacturer/Sponsor Defendants.

(a) Good Faith Substantiation of Product Identification. Product identification may be substantiated in good faith by medical record, sworn affidavit or testimony.

(b) Voluntary Dismissal of Manufacturer/Sponsor Defendants. If (1) product identification is substantiated for all known GBCA scans by medical record, sworn affidavit, or testimony; and (2) the manufacturer/sponsor Defendants whose products are implicated agree that the substantiation is in good faith, the Plaintiff shall dismiss within seven (7) days the other manufacturer/sponsor Defendants without prejudice. However, at any time prior to the deadline by which a voluntary dismissal is due under this Paragraph, a Plaintiff provides Defendants written notice that specific medical records are outstanding that may identify previously unknown scans, voluntary dismissals under this Paragraph shall not be required until 30 days following receipt of such records. In order to provide adequate notice of outstanding records under this Paragraph, Plaintiff must list with specificity the institution or healthcare provider for which records are expected. Voluntary dismissal of McKesson and Novation is covered in Section IV.E. above.

(c) Evidentiary Significance. No statement whether orally or in writing made in connection with product identification substantiation, as set forth in this Order, shall be binding on any Party or admissible at trial. A Defendant may contest that its GBCA was used in a particular scan procedure even if it agreed there is good faith substantiation of product identification. A Plaintiff may establish that another Defendant's GBCA was used in a particular scan procedure even if they previously asserted that a different Defendant's GBCA was used. Participation in the product identification process, as outlined in this Order, is not intended to nor does it change in any way the Parties' burden of proof.

(d) Dismissal by Defendant's Motion in Cases in Which Product Identification Remains Unsubstantiated for any Known GBCA Scans. In the event Plaintiff is not able to make good faith substantiation of product identification as to a specific manufacturer/sponsor Defendant still a Party to the case 120 days after receiving a full and complete Part 1 of the DFS from that Defendant, the non-identified named Defendants (including McKesson and Novation) may be dismissed with prejudice upon Defendant's motion. Defendants may also bring a motion to dismiss in cases in which the Plaintiff's attorney has failed to diligently conduct product identification discovery as required under Section IV.F.2 of this Order.

#### **G. FACT SHEET COMPLIANCE AND MOTION PRACTICE.**

1. Fact Sheets as Interrogatories and Requests for Production. The Fact Sheets which are required to be answered are a convenient form of propounding interrogatories and requests for production of documents. The completed Fact Sheets shall be considered interrogatory answers pursuant to Pa. R. Civ. P. 4006 and as responses pursuant to Pa. R. Civ. P. 4009.12 to requests for production, and are governed by the standards

applicable to written discovery under these rules. The questions and requests for production contained in the Fact Sheet are non-objectionable and shall be answered without objection. This section does not prohibit a Party from withholding or redacting information based upon a recognized privilege. Any redaction or withholding of information based on privilege shall be indicated by the following notation: "Information withheld on the basis of the attorney-client privilege [or other specific recognized privilege]." If a Party withholds or redacts any documents on the basis of privilege, he or she shall provide Defendants with a privilege log pursuant to Section V.18 below. If a Party withholds or redacts any information on the basis of privilege, he or she shall provide Defendants with a privilege log pursuant to Section V.18 below.

2. Fact Sheet Deficiency Dispute Resolution. If any Party disputes the sufficiency of responses in the Fact Sheets, that Party shall notify the Party that served the Fact Sheet, in writing, of the alleged deficiencies. If the Parties are unable to resolve the dispute, either Party may send, by facsimile, a letter to the Court requesting the Court's intervention.

3. Notice of Delinquent Fact Sheets. If a Party believes that a Fact Sheet is past due under this Order, that Party shall send written notice to the Party identifying the case name and docket number, and purported due date(s) of the delinquent Fact Sheet. If the Parties are unable to resolve the dispute, either Party may send, by facsimile, a letter to the Court requesting the Court's intervention.

## V. DOCUMENT PRODUCTION.

1. Documents to be Produced. Within 30 days of the entry of the Protective Order referenced in section VI of this Order, Defendants shall produce to

Plaintiffs' Liaison Counsel copies of the documents produced to Plaintiffs in the federal Multi District Litigation concerning GBCAs, *In Re: Gadolinium Contrast Agents Product Liability Litigation*, MDL No. 1909, Case No. 1:08 GD 50000 (N.D. Ohio) (the "*MDL Proceedings*").<sup>3</sup> The parties acknowledge that Plaintiffs' Liaison Counsel may already possess documents produced in the *MDL Proceedings* and the parties agree to cooperate to avoid duplicative production.

2. Documents From Other GBCA Litigations. Defendants agree that, in the event that Defendants produce any non case-specific documents or materials in another GBCA products liability lawsuit and those documents or materials have not been produced in these coordinated proceedings, Defendants will produce such documents or materials in these proceedings subject to any and all objections to production on the grounds of relevance and/or any applicable privilege or work product protection.

3. Production to Liaison Counsel. Defendants shall be required to produce documents only to Plaintiffs' Liaison Counsel, except for case specific documents which shall only be produced by Defendants to counsel of record for the individual Plaintiff. Plaintiffs' Liaison Counsel may provide copies of documents produced by a Defendant only to any Plaintiff in these Coordinated Actions (i) who has filed an individual action against the specific Defendant by which the document production is made, and served such Defendant with process in the individual action, and (ii) who is subject to the Protective Order for confidential information that is appended hereto as Exhibit 6. Subject to the immediately preceding restrictions on Liaison Counsel's ability to provide copies of such documents to others, Plaintiffs' Liaison Counsel's only obligation with regard to the distribution of such

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<sup>3</sup> Novation voluntarily produced documents to Plaintiffs' Steering Committee in the MDL Proceedings, and volunteers to produce the same documents, in the same format, to Plaintiffs' Liaison Counsel here.

documents will be to make them available to Plaintiffs in the form in which Plaintiffs' Liaison Counsel received them from Defendants.

4. General Format of Production. Except as limited in this paragraph, all documents that originally existed in electronic or hard-copy form that are produced in these proceedings shall be produced in electronic image form in the manner provided herein. To the extent exceptions to the foregoing are required, the Parties will meet and confer to discuss alternative production requirements, concerns, or formats. Each document produced pursuant to this Order shall convey the same information in the electronic image(s) produced as the original document. Documents that present imaging or formatting problems shall be promptly identified and the Parties shall meet and confer to attempt to resolve the problems.

5. Document Image Format. All production document images will be provided as single-page Tagged Image File Format ("TIFFs" or ".tiff format"). All images generated from hard copy documents shall be scanned as black and white images at 300 d.p.i. resolution and shall be saved and produced in a Group 4 compression single-page "TIFF" format and reflect, without visual degradation, the full and complete information contained on the original document. All images generated from native electronic documents shall be saved electronically (or "printed") in a Group 4 compression single-page "TIFF" image that reflects the full and complete information contained on the original document. Defendants shall produce a "load file" to accompany the images, which load file shall include information about where each document begins and ends to facilitate the use of the produced images through a document management or litigation support database system. The Parties shall meet and confer to the extent reasonably necessary to facilitate the import

and use of the produced materials with commercially available document management or litigation support software such as Summation or Concordance.

6. Document Unitization. Each page of a hard copy document shall be scanned into an image and if a document is more than one page, the unitization of the document and any attachments shall be maintained as it existed in the original when creating the image file. For documents that contain fixed notes, the pages will be scanned both with and without the notes and those pages will be treated as part of the same document. The relationship of documents in a document collection (e.g., cover letter and enclosures, email and attachments, binder containing multiple documents, or other documents where a parent-child relationship exists between the documents) shall be maintained through the scanning or conversion process. If more than one level of parent-child relationship exists, documents will be kept in order, but all will be treated as children of the initial parent document. Such information shall be produced to Plaintiffs in the load file and Objective Coding, as hereafter defined, in a manner to enable the parent-child relationship among documents in a document collection to be reconstituted by Plaintiffs in commercially available document management software, such as Concordance and Summation.

7. Color. If an original document contains color, Defendants shall honor reasonable requests for either the production of an original document for inspection and copying or production of a color image of the document.

8. Duplicates. Where a single document custodian has more than one identical copy of a document (i.e., the documents are visually the same and contain the same electronic text), Defendants need only produce a single copy of that document. Each Defendant and Plaintiffs will meet and confer, prior to the production of documents, regarding the de-

duplication of documents across custodians. Further, if a duplicate document exists that is part of a document family, the duplicate will only be removed, pursuant to the terms of this paragraph, if the entire family is removed as a duplicate, i.e. a single document will not be removed from a family even if it is a duplicate.

9. Bates Numbering. Each page of a produced document shall have a legible, unique page identifier ("Bates Number") electronically "burned" onto the image at a location that does not obliterate, conceal, or interfere with any information from the source document. No other legend or stamp will be placed on the document image other than a confidentiality legend (where applicable), redactions and redaction reason (consistent with the Stipulated Protective Order in this matter), and the Bates Number identified above. The confidential legend shall be "burned" onto the document's image at a location that does not obliterate or obscure any information from the source document.

10. File Naming Conventions. Each page image file shall be named with the unique Bates Number of the page of document, followed by the extension ".TIF." In the event the Bates Number contains a symbol and/or character that cannot be included in a file name, the symbol and/or character will be omitted from the file name.

11. Production Media. Defendants shall produce documents on CD-ROM, DVD, external hard drive, or such other readily accessible computer or electronic media as the Parties may hereafter agree upon (the "Production Media"). Each piece of Production Media shall identify a production number corresponding to the production "wave" the documents and the Defendant on the Production Media are associated with (e.g., for GE Healthcare, Inc. "GEHC001"; "GEHC002"), as well as the volume of the material in that production wave (e.g., "-001"; "-002"). For example, if the first production

wave by a Defendant comprises document images on three hard drives, Defendant shall label each hard drive in the following manner in numeric sequence: (e.g. for GE Healthcare Inc., "GEHC001-001"; "GEHC001-002"; "GEHC001-003.") Additional information that shall be identified on the physical Production Media shall include: (1) the case number of the case in which it is produced, (2) the producing Party's name, and (3) the production date. The type of materials on the media (e.g., "Documents", "OCR Text", "Objective Coding", etc.) and the Bates Number range(s) of the materials on the Production Media shall also be contained on the Production Media, and where not practicable to do so may be provided in an accompanying letter.

12. Meta-Data and Objective Coding. Defendants will produce meta-data and objective coding information as described below with each production. Defendants may review and, where necessary, revise or redact objective coding if it contains privileged or work product information. Nothing herein shall be construed to require Defendants to produce or provide any information that is privileged or work product information. For images generated from native electronic documents, Defendants shall produce with each production of documents an ASCII text file, appropriately delimited, setting forth the meta-data electronically extracted from each document corresponding to the fields in Exhibit A to this Order (where available). If a Defendant who produces the documents ("Producing Defendant") chooses to objectively code certain hard-copy documents for its own respective use, then with each production of such documents, Defendant shall produce an ASCII text file, appropriately delimited, setting forth the objective coding for each document. The data file will include the fields and type of content set forth on Exhibit A, if available. If Producing Defendant chooses to objectively code certain hard copy documents after the production of

such documents, the Producing Defendant shall provide the objective coding to the other Parties as soon as it is available. The objective coding, if any, shall be provided to the other Parties as it was received from the entity doing the coding. All Parties reserve any arguments of what evidentiary value, if any, objective coding has. In addition, the supplying Party does not certify that the objective coding data is error free and the supplying Party shall not be responsible for errors, if any, in objective coding data. The meta-data and objective coding (collectively, "Objective Coding") shall be labeled and produced on Production Media in accordance with the provisions of paragraph 8, and shall be provided in a manner suitable for importing the information in a commercially available document management or litigation support software such as Summation or Concordance. If the receiving Party has problems importing and using the Objective Coding for document management, the Parties shall meet and confer to attempt to resolve the problems.

13. OCR/Extracted Text. Defendants shall produce corresponding Optical Character Recognition (OCR) text files for all hard-copy documents and any electronic documents that require redaction prior to production. For documents that exist natively in electronic format that have not been redacted and that are produced as images, Defendants shall produce extracted text files reflecting the full text that has been electronically extracted from the original, native electronic files. The OCR and extracted text files shall be produced in ASCII text format and shall be labeled and produced on Production Media in accordance with the provisions of paragraph 8. These text files will be named with the unique Bates Number of the first page of the corresponding document followed by the extension ".txt." The OCR and extracted text files shall be produced in a

manner suitable for importing the information into commercially available document management or litigation support software such as Summation or Concordance.

14. Format for Production. The format of document images and objective coding described in paragraphs 5 and 12 above, and the OCR/extracted text files described in paragraph 13, shall conform with the requirements of a commercially available document management or litigation support software the requesting Party intends to use. The Parties shall confirm this with each other in advance of the processing.

15. Original Documents. Defendants shall retain the original hard-copy and native source documents in their original format (together with, except as may be otherwise expressly agreed among the Parties, the means to access, retrieve, and view such documents; however, the original hardware does not have to be kept) for all documents produced in this proceeding. Defendants shall make reasonable efforts to maintain the original native electronic source documents in a manner so as to preserve the "meta-data" associated with these electronic materials in the event review of such meta-data becomes necessary. Subject to preservation of appropriate privileges and other protections of Defendants' information from production in accordance with applicable law, Defendants shall, upon reasonable request after any necessary meet and confer, make originals of any produced document available for inspection by the requesting Party in the form in which such documents are kept in the ordinary course of business.

16. Production of Other Electronic Documents. This Order only applies to the production of the following categories of electronic documents: emails (and any associated attachments), word processing documents, spreadsheets, presentations, and

imaged documents (in any format). The Parties shall meet and confer to agree on the form of any production of electronic documents other than the foregoing.

17. Use of Documents. When documents produced in accordance with this Order are used in any Proceeding herein, including depositions, hearings, or trial, the image copy of documents as described in Paragraphs 5 and 11 herein shall be the copy used. OCR or extracted text shall not be used in any Proceeding as a substitute for the image of any document.

18. Privilege Logs. The Parties will produce privilege logs in Excel format or a similar electronic format that allows text searching and organization of data. A Party will produce a separate privilege log for custodian/department within 60 days after the production of a custodian/department's documents for which privilege is asserted to apply is substantially complete, and within the same time period following any subsequent or rolling productions. The production of a privilege log for a custodian/department will be not less than 30 days prior to a custodian's deposition. The Parties may modify the deadlines for production of privilege logs by agreement.

19. Service of Documents, Data and Privilege Logs. Service of documents, data and privilege logs under this Order shall be made upon Liaison Counsel for Plaintiffs and Lead Counsel for each Defendant.

## **VI. PROTECTIVE ORDER.**

The Parties agree to the entry of the Protective Order attached hereto as Exhibit 6.

**VII. COMMISSION PRACTICE.**

The following procedures are hereby adopted, with the agreement of all counsel, regarding the obtaining of a commission or a letter rogatory for the taking of a deposition or the obtaining of a subpoena outside of Pennsylvania in the above Program:

1. If a Party wishes to take a deposition or obtain a subpoena outside of Pennsylvania, that Party (hereinafter "Requesting Party"), must provide reasonable notice in writing to all Parties.

2. The Requesting Party should include with the above notice a proposed commission or a proposed letter rogatory that will be presented to the Court as authority for the taking of a deposition or the obtaining of a subpoena outside of Pennsylvania.

3. The Requesting Party shall circulate the proposed commission or letter rogatory along with the proper notice to all counsel by letter, stating that any Party has five (5) business days from the date of the letter to object to the issuance of a commission or a letter rogatory.

4. If a Party objects to the issuance of a commission or a letter rogatory, the objecting Party shall notify the Requesting Party in writing of the basis for the objection.

5. If, after the expiration of the five (5) day period, no objections are received by the Requesting Party, the proposed commission or letter rogatory may be submitted to the Court as unopposed.

6. The unopposed commission or letter rogatory will be presented to the Court on the first and third Monday of each month. In the event that the Monday falls on a legal holiday, the presentation will occur on the next possible business day. The package submitted to the Court shall include the unopposed commission or letter rogatory and a self-

addressed stamped envelope for return of a copy of the Court-approved commission or letter rogatory. Service of the Court-approved commission or letter rogatory shall be made on all interested Parties by the Requesting Party immediately upon receipt of the same.

**VIII. COMPLETION OF FACT DISCOVERY.**

1. The Parties will submit a schedule for the 2008 filed cases to be incorporated into a separate CMO no later than October 20, 2009.

2. In addition to the written discovery contemplated by the above paragraphs of this Order, the Parties shall have the right to serve supplemental written discovery limited to information not previously disclosed in discovery. All such written discovery shall be submitted in sufficient time to afford to the responding Party the period provided by the Pennsylvania Rules of Civil Procedure within which to serve its response prior to the applicable fact discovery deadline.

3. Except for case-specific discovery set forth in the CMO contemplated by paragraph 1 above, and generic and product identification discovery otherwise permitted under this Order, all other discovery shall be stayed absent permission from the Court.

**IX. EXPERT DISCOVERY.**

Expert discovery shall commence at the close of fact discovery. The Parties shall confer and present to the Court an agreed-upon expert discovery plan (or their statements of any disputed positions concerning expert discovery) no later than October 20, 2009. That plan shall provide for the depositions of all generic experts. Case specific experts shall be deposed at the Court's discretion.

X. **PRO HACE VICE ADMISSIONS.**

National counsel for the Defendants shall file applications for admission *pro hac vice* in this Master Docket if they desire to appear in this matter or in the Coordinated Actions. An application for admission granted in this Master Docket shall permit the admitted counsel to appear in any of the Coordinated Actions.

XI. **STIPULATIONS OF DISCONTINUANCE OF LESS THAN ALL DEFENDANTS.**

If Plaintiffs intend to discontinue an action against less than all Defendants to that action, counsel for Plaintiffs in that case and the dismissed Defendant shall prepare a stipulation of discontinuance. Notice of the proposed discontinuance shall be provided to all other Parties to that case. If no Party objects to the proposed discontinuance, then the stipulation may be forwarded to the Court as unopposed and shall be entered by the Court.

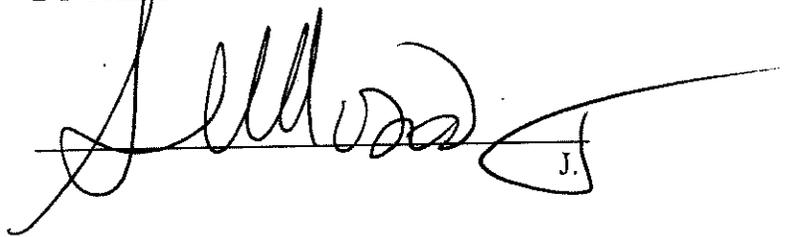
XII. **SERVICE OF PAPERS.**

Service of papers in the Coordinated Actions shall be made either by e-mail to counsel-of-record as provided in the pleadings or Fact Sheets, or first-class mail except where rule of Court specifies some other form of service.

**XIII. FURTHER ORDERS.**

The Parties shall prepare for review and approval by the Court such other Case Management Orders as are required, including, without limitations, orders governing deposition procedures and scheduling (including coordination with other GBCA litigation), pretrial proceedings and trial proceedings.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J. Allwood", is written over a horizontal line. The signature is stylized and cursive. To the right of the signature, the letter "J." is written inside a small, hand-drawn oval.

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