

IN RE

REGLAN<sup>®</sup>/METOCLOPRAMIDE  
LITIGATION

COURT OF COMMON PLEAS

PHILADELPHIA COUNTY

JANUARY TERM, 2010

NO. 01997

DOCKETED  
COMPLEX LIT CENTER

MAY 6 2010

J. STEWART

CASE MANAGEMENT ORDER NO. 5

PROTECTIVE ORDER GOVERNING ALL REGLAN<sup>®</sup>/METOCLOPRAMIDE CASES

WHEREAS, Rule 4012 of the Pennsylvania Rules of Civil Procedure provides for the issuance of protective orders limiting the disclosure of discovered information in appropriate circumstances.

Therefore, the court finds good cause for the entry of this Protective Order under Pennsylvania Rule of Civil Procedure 4012 and hereby ORDERS that all documents and other information produced in this case by the parties shall be produced subject to the following:

1. SCOPE

A. At any time prior to the production of any documents or information by the producing party, it may designate such information or documents as confidential and subject to this Protective Order. The producing party shall further designate material as confidential and subject to this Protective Order by placing the following or substantially similar marking on each copy of each document copied for, by, or on behalf of the plaintiff or co-defendants in this action in a manner which will not interfere with its legibility: "CONFIDENTIAL -- SUBJECT TO AGREED PROTECTIVE ORDER." Documents or information so designated shall be referred to herein as "Confidential Discovery Material."

In Re: Reglan Litigation-ORDER



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B. This Protective Order shall apply to and govern all documents and information designated by the producing party as confidential whether or not such documents or information are informally produced or produced in response to formal discovery requests. The producing party may designate those specific answers to interrogatories, responses to other discovery requests, and excerpts of deposition testimony as confidential and protected by this Protective Order. With respect to deposition testimony, the designation of confidentiality may be made on the record at the time of the deposition, at which time the testimony and transcript thereof shall be subject to the full protection of this Protective Order. Within 30 days after the completion of the deposition, counsel for the party asserting confidentiality shall clarify all portions to which it claims confidentiality. In the case of testimony not so designated during the course of a deposition, counsel for the producing party may, at any time within thirty (30) days of the completion of the deposition, notify the parties that the deposition testimony contains confidential material, in which case the testimony and transcript thereof shall be subject to the full protection of this Protective Order. During the thirty-day period, the testimony will be treated as though it had been designated as confidential pursuant to the terms of this Protective Order. "Confidential Discovery Material" includes deposition testimony designated as confidential.

C. Any Confidential Discovery Material that is filed with the Court, and any pleading, motion, or other paper filed with the Court that reveals the content of any such Confidential Discovery Material, shall be filed under seal and shall bear the legend:

THIS DOCUMENT CONTAINS  
CONFIDENTIAL INFORMATION COVERED  
BY A PROTECTIVE ORDER OF THE COURT  
AND IS SUBMITTED UNDER SEAL  
PURSUANT TO THAT PROTECTIVE ORDER.  
THE CONFIDENTIAL CONTENTS OF THIS

DOCUMENT MAY NOT BE DISCLOSED  
WITHOUT EXPRESS ORDER OF THE COURT.

This Protective Order allows parties to file Confidential Discovery Materials under seal without a motion to file the documents under seal. Confidential Discovery Materials which any party intends to file with Court Administration shall be designated as set forth in this paragraph and shall have a copy of the form of Order approved in Case Management Order No. 6 appended to such Confidential Discovery Materials. Such Confidential Discovery Material and/or other papers shall be kept under seal until further order of the Court; however, Confidential Discovery Material and other papers filed under seal shall be available to the Court and counsel of record, and to all other persons entitled to receive the confidential information contained therein under the terms of this Protective Order. The party wishing to use the Confidential Discovery Material also agrees to submit such information sealed for the Court's in-camera inspection only.

D. Use of Confidential Discovery Material subject to this Protective Order at trial will be determined by subsequent agreement of the parties or order of this Court.

E. Confidential documents or information produced by defendants in prior Reglan<sup>®</sup>/metoclopramide litigation that are already in the possession of plaintiff's counsel can be used pursuant to the terms of this Protective Order. All documents or information so produced shall remain subject in all respects to all protections provided by this Protective Order even though they have not been designated with the specific markings described in paragraph 1(A). Documents or information stamped as or otherwise marked as "confidential" in prior litigation shall suffice. Their contents or existence shall not be disclosed by plaintiff or co-defendant(s) except as provided in this protective order. The foregoing provision does not apply to documents no longer considered confidential.

2. TERMS OF PROHIBITION

A. The documents and information provided by the producing party and designated as confidential shall be revealed only to, (1) counsel of record for the parties in this action, (2) paralegals or secretarial employees under the direct supervision or employ of counsel of record in this action, (3) retained experts of the parties, (4) outside copy and document processing entity or person retained by any party in connection with the litigation, (5) former employees, sub contractors or independent contractors of the defendant(s), (6) treating physicians, (7) parties or current employees of parties, and (8) the Court, any Special Master appointed by the Court, any Pennsylvania state court conducting related proceedings, and any members of their staffs to whom it is necessary to disclose the information, involved in a pending Reglan<sup>®</sup>/metoclopramide case against the producing party who agree to be bound by the terms of this protective order. The parties agree that the documents designated as confidential may be revealed to additional persons, including parties and/or in-house counsel, by agreement, which shall not be unreasonably withheld. Under no circumstances shall any of the above eight (8) categories of persons disclose such confidential documents to the press or media.

B. Each person as defined in 2A(3) – 2A(6) who reviews or inspects confidential documents or information subject to this Protective Order shall be brought within the personal jurisdiction of this court, including its contempt power, by signing a copy of the attached affidavit signifying agreement to the provisions of this Protective Order and consenting to the jurisdiction of this Court over his or her person for any proceedings involving alleged improper disclosure of said protected documents or information. A duly licensed attorney shall sign and acknowledge the authenticity of each person's signature.

C. With the exception of persons as defined in 2A(1), 2A(2), 2A(7) and 2A(8), no person entitled to access to protected documents or information under this Protective Order shall be provided with the protected documents or information unless such individual has first read the Protective Order of this Court and completed and signed the affidavit provided. No person entitled to access protected documents or information shall disclose or discuss the existence or contents of any such materials with any other individual, except those individuals who are also permitted to view, inspect or examine the materials protected herein. The information protected by this Protective Order shall be used for the sole purpose of the preparation for this case, and shall not be used for any other purpose or for any other legal action except as provided by this Protective Order.

D. Each party's counsel shall maintain a list of the names of all persons who inspect or review confidential documents obtained from another party prior to trial of this matter or who receive any copies of such confidential documents. Each party will produce a copy of the executed Exhibit A for each of its testifying experts along with that expert's report. With the exception of the Expert provision discussed in this section, the parties expressly agree, and it is hereby ordered that except in the event of a violation of this Order, the parties will make no attempt to seek copies of the Acknowledgments or to determine the identities of the persons signing them. If the court finds that any disclosure is necessary to investigate a violation of this Order, such disclosure will be made under a separate court order. Persons who come into contact with Confidential Information for clerical or administrative purposes, and who do not retain copies or extracts thereof, are not required to execute Acknowledgements but must comply with the terms of this Order. The terms of this Order shall not apply to any publicly available information or documents. This provision in no way alters or expands the terms of paragraph

2(A) of this Protective Order identifying the persons to whom confidential material may be revealed.

3. RETURN OF DOCUMENTS AND INFORMATION. Copies of documents and information produced by a defendant may remain in the possession of the undersigned Plaintiff's attorneys and other counsel as defined in 2(A)(1) but shall be governed by the terms and conditions of this Stipulated Protective Order. The documents and information produced by a defendant may be used by the undersigned Plaintiff's attorneys and other counsel as defined in 2(A)(1) in Reglan<sup>®</sup>/metoclopramide cases filed by the undersigned Plaintiff's attorneys and other counsel as defined in 2(A)(1) in which the producing party is a defendant. The documents and information produced by a defendant may not be used for any other purpose nor disclosed to any other person except as provided by this Order without the express written consent of the producing defendant upon written application or request to the producing defendant. Within 30 days after the conclusion of the last of the Reglan<sup>®</sup>/metoclopramide cases filed by the undersigned Plaintiff's attorneys' against the producing defendant, the undersigned Plaintiff's attorneys shall either return all the documents and information to the producing defendant at a location selected by the producing defendant and at the undersigned Plaintiff's attorneys' expense, or produce an affidavit executed by the undersigned Plaintiff's attorneys indicating that all of the documents from the producing defendant have been destroyed or will be destroyed within a reasonable time. This Protective Order remains in full force and effect and governs the use of the documents and information.

4. APPLICATION TO THE COURT. Nothing herein shall be construed to preclude or limit any party from opposing any discovery on any ground which would otherwise be available. Nothing in this Protective Order shall be deemed to preclude any party from seeking

or obtaining, on the appropriate showing, additional protection with respect to the confidentiality of documents or information. Nothing in this Protective Order shall preclude any party from seeking or obtaining, on the appropriate showing, an order lifting the protection granted in this Protective Order with respect to the confidentiality of documents or information.

5. ADMISSION INTO EVIDENCE. The terms of this Protective Order shall not be construed as any limitation upon the right of any party to offer into evidence any documents, response, or information designated as confidential.

6. VIOLATION OF PROTECTIVE ORDER. A violation by any person of any provision of this Protective Order may be punishable as determined by the Court. Further, the parties may pursue any and all civil remedies available for breach of the terms of this Protective Order.

7. JURISDICTION OF COURT. This Court retains jurisdiction over the parties, counsel for the parties, and all persons, firms, corporations, or organizations, whomsoever, to whom this Protective Order applies, for purposes of enforcement of this Protective Order following the conclusion of this action.

8. CHALLENGE TO CONFIDENTIALITY DESIGNATION.

A. If a party elects to challenge any designation of confidentiality of any documents or information pursuant to this Protective Order, that party shall provide the designating party thirty (30) days advance written notice and afford the producing party opportunity to voluntarily remove such designation. The producing party shall, within thirty (30) days of the receipt of such notice, either voluntarily remove the designation or file a written motion with the Court for an order preventing or limiting disclosure. Each such motion shall be accompanied by one copy of each document, response, or portion or transcript challenged,

following the provision set forth above in paragraph 1(C) of this Protective Order, and the confidentiality of such information shall remain protected until the Court shall order otherwise. In the event the producing party files a motion seeking protection of challenged documents or information, the party opposing the motion shall respond to the motion and the producing party shall have the opportunity to reply.

The interested parties shall attempt to resolve any such challenge by agreement prior to the time for filing of a motion as herein provided. If the challenge is not resolved by agreement, or by voluntary removal, and if no motion is filed within thirty (30) days of the receipt of written notice of challenge, then the confidential designation shall be removed and shall not thereafter apply to such documents or information.

B. All documents, testimony, or other materials designated by the producing party as confidential shall retain their confidential status during the pendency of any proceeding challenging confidentiality initiated by a party until such time as the parties' contentions initiated by a party regarding confidentiality of documents and materials so designated are fully and finally adjudicated, including such appeals as may be sought.

C. Neither this Protective Order nor the designation of any item as confidential materials shall be construed as an admission that such material or any testimony in respect to such material in a deposition or otherwise would be admissible in evidence in this litigation or in any other proceeding. In addition, this Protective Order does not, of itself, require the production of any information or document.

9. THIRD PARTY REQUEST FOR CONFIDENTIAL DISCOVERY MATERIAL.

If confidential documents or information in the possession of a receiving party is subpoenaed or requested by any court, administrative or legislative body, or any other person or organization

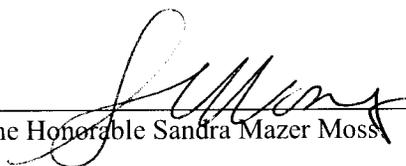
purporting to have authority to subpoena or request such data or information, the party to whom the subpoena or request is directed shall not, to the extent permitted by applicable law, provide or otherwise disclose such documents or information without waiting ten (10) business days after first notifying counsel for the producing party in writing of: (1) the information and documentation which is requested for production in the subpoena or request; (2) the date on which compliance with the subpoena or request is sought; (3) the location at which compliance with the subpoena or request is sought; (4) the identity of the party serving the subpoena or making the request; and (5) the case name, jurisdiction, and index, docket, complaint, charge, civil action, or other identification number or designation identifying the litigation, administrative proceeding, or other proceeding in which the subpoena or request has been issued.

10. INADVERTENT OR UNINTENTIONAL DISCLOSURE. Any inadvertent or unintentional disclosure of confidential and proprietary material will not be construed as a waiver, in whole or in part, of (1) the producing party's claims of confidentiality either as to the specific information inadvertently or unintentionally disclosed or as to any other confidential material disclosed prior to or after that date, or (2) the producing party's right to designate said material as confidential material pursuant to this Protective Order. This Protective Order does not in any way deprive a party of its right to contest the producing party's claims to protection for confidential, proprietary, and trade secret information. Nor does this Protective Order in any way deprive the producing party of its right to claim that such information should be protected from disclosure. Production of documents or information pursuant to this Protective Order shall not be construed as a waiver of any sort by the parties.

11. Nothing herein shall be construed or applied to affect the rights of any party to discovery under the Pennsylvania Rules of Civil Procedure, or to assert any objection, or to

prohibit any party from seeking such further provisions or relief as it deems necessary or desirable regarding this Protective Order, including, but not limited to an order that discovery not be had.

SIGNED AND ORDERED ENTERED ON THE 4<sup>th</sup> OF May, 2010.

  
The Honorable Sandra Mazer Moss

APPROVED:

**ATTORNEYS FOR PLAINTIFFS**

**ATTORNEYS FOR DEFENDANTS**



I further agree and attest to my understanding that, if I fail to abide by the terms of the Protective Order, I may be subject to sanctions, including contempt of court, for such failure. I agree to be subject to the jurisdiction of this Court and the courts of the State of Pennsylvania and the other states in which the lawsuits subject to the Protective Order are pending for the purposes of any proceedings relating to enforcement of the Protective Order.

I further agree to be bound by and to comply with the terms of the Protective Order as soon as I sign this Agreement, whether or not the Protective Order has yet been entered as an Order of the Court.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

\_\_\_\_\_  
Duly Licensed Attorney, if required under Paragraph 2(B) of the Protective Order