

DOCKETED  
COMPLEX LIT CENTER

NOV 1 2010

**J. STEWART**

IN RE : COURT OF COMMON PLEAS  
: PHILADELPHIA COUNTY  
REGLAN®/METOCLOPRAMIDE :  
LITIGATION : JANUARY TERM, 2010  
: NO. 1997  
*This Document Relates to All Cases* :

In Re: Reglan Litigation-ORDER

CASE MANAGEMENT ORDER NO. 12



10010199700139

**GOVERNING ALL REGLAN®/METOCLOPRAMIDE CASES**

**PRODUCT ID DISMISSAL PROCEDURE**

1. In cases where complete pharmacy records, covering a Plaintiff's entire alleged ingestion period and identifying manufacturers by name or NDC number are available, a Defendant named, as a manufacturer or that manufacturer's successor in interest, or as a non-manufacturer distributor or seller of metoclopramide ingested by such Plaintiff, in a Writ of Summons or SFC, but not identified in records as the manufacturer, or non-manufacturer distributor or seller, of metoclopramide dispensed to Plaintiff, may avail itself of: (1) the product ID dismissal motion procedure described in (4)-(7) below; and (2) the requirement to answer the Defendant Fact Sheet described in section 8 below. This procedure applies to only those Defendants or their successors in interest sued in their capacity as a manufacturer whose product was ingested by a plaintiff. This procedure is not to be utilized for dismissal of any non-manufacturing claims of liability asserted in Plaintiff's Long or Short Form Complaints. Nothing in this procedure shall preclude a Defendant named as a non-manufacturer from filing whatever motions they deem appropriate under the Pennsylvania Rules of Civil Procedure.

In some instances, complete pharmacy records as described above may not be available in individual cases for one or more of the following reasons:

- i) Plaintiff is unable to identify one or more dispensing pharmacies;
- ii) Plaintiff identifies all dispensing pharmacies, but one or more of the identified pharmacies no longer exist or otherwise are unable after good faith inquiry to produce records relating to Plaintiff; or
- iii) One or more of the identified pharmacies has records for Plaintiff, but the records do not indicate the manufacturer of dispensed Reglan/metoclopramide by name or NDC number.

2. Simultaneously with or subsequent to service of the PFS, but not later than 90 days after service of the PFS ("Supplemental Product ID Discovery Period" or "SPIDDP"), Plaintiff may supplement missing or incomplete pharmacy records with such items as: medical records, receipts, dispensed packaging, insurance records, purchase orders, bills of lading or other documentary evidence of product ID and/or with affidavit or deposition testimony of a dispensing physician, dispensing pharmacist, pharmacy purchasing manager or other responsible person. Any party may pursue discovery, including the service upon Defendants of limited interrogatories, in the SPIDDP, in furtherance of product ID, except that Plaintiff shall not propound product ID discovery on a Defendant

prior to exhausting all other reasonable avenues of product ID discovery. Disputes as to the scope of discovery served or pursued in the SDIDDP may be submitted to Discovery Master Bock.

3. Plaintiff may certify at any time after service of the PFS that no product ID discovery is required or that all reasonably feasible product ID discovery has been completed. Upon the earlier of Plaintiff's certification or the expiration of the SDIDDP ("Product ID Discovery Closure Date"), any Defendant, named as a manufacturer or that manufacturer's successor in interest, or non-manufacturer distributor or seller, of metoclopramide dispensed to, ingested or otherwise administered to Plaintiff, not identified as a result of the supplemental discovery, or who otherwise believes in good faith that the supplemental discovery does not support identification of that Defendant, may avail itself of the product ID dismissal motion procedure described below. Plaintiff may seek an extension of the SDIDDP upon good cause shown to Discovery Master Bock.

4. (a) At any time after the Product ID Discovery Closure Date, a Defendant may inform a Plaintiff by a Product ID Dismissal Letter directed to Plaintiff's individual representative counsel via e-mail, with copies to all other counsel of record in such Plaintiff's action, and Plaintiffs' Liaison Counsel at Gilligan & Peppelman ([ray@gandplaw.us](mailto:ray@gandplaw.us)), Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck ([stewart@erlegal.com](mailto:stewart@erlegal.com)) and Feldman & Pinto ([rpinto@feldmanpinto.com](mailto:rpinto@feldmanpinto.com)), that such Defendant has not been identified as a manufacturer, or non-manufacturer distributor or seller, of metoclopramide dispensed to, ingested or otherwise administered to Plaintiff.

(b) Absent objection from any party within ten (10) days of delivery of the Product ID Dismissal Letter, Plaintiff may file a voluntary dismissal of Defendant from the case in its entirety, which is deemed to be on consent of all parties.

5. If Plaintiff does not file a voluntary dismissal of Defendant within thirty (30) days of delivery of the Product ID Dismissal Letter, Defendant may file a motion to dismiss on grounds of no product ID.

6. Should Defendant's motion for Product ID Dismissal be denied, Defendant reserves its right to file a motion for summary judgment at a later date.

7. (a) Dismissal pursuant to this procedure shall be without prejudice as to a Plaintiff's right to reinstate a dismissed Defendant in the event product identification evidence for the dismissed Defendant is uncovered at a later date. In this instance, the date of commencement of the action as to the reinstated Defendant for statute of limitations purposes shall be considered to be the original date of service on such defendant.

(b) Plaintiff's right to reinstate a dismissed Defendant more than 90 days after the dismissal without prejudice shall be conditioned upon a good faith showing by Plaintiff that the evidence upon which reinstatement is premised was not reasonably discoverable prior to the dismissal without prejudice. Disputes as to the adequacy of Plaintiff's showing shall be resolved by the Court after consultation with Discovery Master Bock.

8. (a) In the event that a Defendant is named as a manufacturer, manufacturer's successor in interest, or non-manufacturer distributor or seller in a Plaintiff's SFC, but not specifically identified in said SFC or in the associated PFS, said Defendant's time to serve a Defendant's Fact Sheet ("DFS") as to said Plaintiff shall be the later of 120 days from service of the PFS or thirty (30) days from

Plaintiff's production of evidence, pursuant to paragraph 2 above, supporting identification of Defendant as the manufacturer, or non-manufacturer distributor or seller, of metoclopramide dispensed to, ingested by or otherwise administered to Plaintiff.

(b) If a Defendant invokes the procedure set forth in paragraphs (4) through (7) above, Defendant's time to serve a DFS shall be tolled until thirty (30) days from the date of a final order denying its motion to dismiss or other determination that Defendant is a proper party to the action.

SO ORDERED

  
\_\_\_\_\_  
HONORABLE SANDRA MAZER MOSS  
Coordinating Judge  
Complex Litigation Center

Date: 10/29/10, 2010