

IN RE

REGLAN®/METOCLOPRAMIDE
LITIGATION

This Document Relates to All Cases

DOCKETED
COMPLEX LITIGATION CENTER

FEB 16 2010

J. STEWART

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JANUARY TERM, 2010
NO. 1997

In Re: Reglan Litigation-CMOIS

CASE MANAGEMENT ORDER NO. 1:

GOVERNING ALL REGLAN®/METOCLOPRAMIDE CASES



It is the goal of this Court to secure the just, speedy, and inexpensive determination of each case filed by a Plaintiff alleging injuries and/or death as a result of his/her usage of the prescription drug Reglan® ("Reglan") and/or metoclopramide now pending or hereafter filed in the Court of Common Pleas, Philadelphia County, Pennsylvania, and to eliminate duplication of effort, prevent unnecessary paperwork, and promote judicial economy.

In order to achieve these objectives, the following Case Management Order No. 1 is entered this 16th day of Feb., 2010 for all individual Reglan®/metoclopramide cases that are presently pending or hereafter filed in the Philadelphia Court of Common Pleas. This Order supersedes any other Case Management Order previously entered in any case coordinated in this litigation, except for *Hassett v. Dafoe, et al.*, August Term, 2008, No. 01551, which will be subject to a subsequent Case Management Order to be agreed upon by the parties.

I. REGLAN®/METOCLOPRAMIDE CASES DOCKET

On January 12, 2010, the Court established a Reglan®/metoclopramide Docket at January Term, 2010, No. 01997. This docket number was established as a depository for the filing of pleadings, motions, orders, and other documents common to the Reglan®/metoclopramide 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 Reglan®/metoclopramide 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.

II. TEMPORARY STAY ON RESPONSIVE PLEADINGS OBLIGATIONS AND ON FILING DISPOSITIVE MOTIONS

All responsive pleading obligations are stayed until such time as responsive pleadings are due under the relevant Sections below. The parties in these cases are directed to refrain from filing any potentially dispositive motions (i.e., Motions for Summary Judgment, Motions or Judgment on the Pleadings), except as detailed in this and future Orders. However, no current or future party has waived any rights, claims, or defenses existing at the time of the execution of this Order.

III. PLEADINGS

A. MASTER LONG FORM COMPLAINT

1. Within thirty (30) days from the entry of this Order, counsel for Plaintiffs in pending Reglan®/metoclopramide cases shall confer and shall collectively file a *Master Long Form Complaint*. The *Master Long Form Complaint* must be served on each Defendant, in accordance with the provisions of this Order, before a response is required by that Defendant.

2. On or before twenty (20) days after valid service of the *Master Long Form Complaint* on a Defendant, that Defendant shall file either (a) a *Master Answer* or (b) *Master Preliminary Objections to the Master Long Form Complaint*.

3. Plaintiffs shall have twenty (20) days to respond to the Master Preliminary Objections and any replies thereto shall be filed within five (5) business days of service.

4. 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

Reglan®/metoclopramide cases.

5. If *Master Preliminary Objections* are sustained to one or more counts in the *Master Long Form Complaint* for the Reglan®/Metoclopramide cases, Plaintiffs, if so ordered, shall file a conforming *Amended Master Long Form Complaint* within twenty (20) days of the Order sustaining the *Master Preliminary Objections*.

6. All *Short Form Complaints* and all *Master Answers* are deemed to follow the most current *Amended Master Long Form Complaint* and *Answer*, respectively.

7. If *New Matter* is pleaded in the *Master Answer*, such *New Matter* will be deemed denied, and Defendants' exceptions to the denials are preserved and Plaintiffs are not required to file any further responsive pleadings to Defendants' *New Matter* asserted in the *Master Answer*.

B. PREVIOUSLY FILED CASES

1. The *Master Long Form Complaint* for the Reglan®/metoclopramide cases will substitute and supersede all Complaints filed in individual Reglan®/metoclopramide cases pending in the Philadelphia County Court of Common Pleas. If any Complaint filed before the *Master Answer* asserts claims not asserted in the *Master Long Form Complaint*, those claims are deemed withdrawn without prejudice. In all respects, the *Master Long Form Complaint* controls over allegations contained in any previously filed Complaint. The filing of the *Master Long Form Complaint* does not toll any applicable statute of limitations in individual cases.

2. Defendants shall have no obligation to answer any complaint filed before the *Master Long Form Complaint*.

3. Within thirty (30) days of the filing of the *Master Long Form Complaint*, each Plaintiff in a Reglan®/metoclopramide case, whether initiated by Writ of Summons or Complaint, shall file a *Short Form Complaint*, in a form to be agreed upon with Defendants'

counsel, using each action's original court term and number. Plaintiffs shall indicate in each *Short Form Complaint* those counts of the *Master Complaint* that are incorporated by reference. Any case previously initiated by a Writ of Summons shall be subject to dismissal in accordance with the notice provision of Pennsylvania Rules of Civil Procedure 236 if the *Short Form Complaint* is not filed in accordance with this paragraph.

4. 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 Long Form Complaint*, in which case Defendants may file a *Preliminary Objection* to any such count. 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*. An entry of appearance shall constitute a denial of all allegations in the *Short Form Complaint* for Reglan®/metoclopramide cases, and an assertion of all applicable new matters and defenses.

5. Defendants will not file *Preliminary Objections* challenging claims as to which *Preliminary Objections* have previously been overruled.

6. Plaintiffs shall have twenty (20) days from the date of service of *Preliminary Objections* to file a response and any replies thereto shall be filed within five (5) business days of service.

7. The Court will rule on the *Preliminary Objections*, and whether a hearing thereon is scheduled is solely within the discretion of the Court.

8. 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.

9. If any of the Court's rulings permit a Plaintiff to file an *Amended Short Form Complaint*, Defendants shall be afforded twenty (20) days after service of the *Amended Short Form Complaint* in which to file a responsive pleading.

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

C. NEWLY FILED CASES

1. The Court favors that all Reglan®/metoclopramide cases filed after the date of this Order will be instituted by the filing of a *Short Form Complaint*. But if suit is instituted by a *Writ of Summons*, it is self-executing and Plaintiff shall file a *Short Form Complaint* within twenty (20) days without the need of a *Rule to File a Complaint*. If Plaintiff fails to file a *Short Form Complaint* within twenty (20) days, the action shall be subject to dismissal in accordance with the notice provision of Pennsylvania Rules of Civil of Procedure 236 if the *Short Form Complaint* is not filed in accordance with this paragraph.

2. Plaintiffs shall indicate in each *Short Form Complaint* those counts of the *Master Long Form 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 twenty (20) days from the date of service of the *Short Form Complaint* or twenty (20) 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. An entry of appearance shall constitute a denial of all allegations in a *Short Form Complaint* and an assertion of all applicable defenses.

6. Defendants shall not file *Preliminary Objections* challenging claims as to which *Master Preliminary Objections* have previously been overruled.

7. Plaintiffs shall have twenty (20) days from the date of service of *Preliminary Objections* to file a response and any replies thereto shall be filed within five (5) business days of service.

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 twenty (20) days after service of an *Amended Short Form Complaint* in which to file a responsive pleading.

D. SERVICE ON LIAISON COUNSEL

1. Service of all documents under the "Reglan®/metoclopramide" master caption shall be served on Liaison Counsel.

2. 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, and will also serve

these documents simultaneously to opposing Liaison Counsel electronically in PDF or similar format. Other Plaintiffs' counsel who are counsel of record for cases pending in these Reglan®/metoclopramide cases who would like copies of these documents may be bound by the terms of a Protective Order that may be entered by this Court and must make arrangements through Plaintiffs' Liaison Counsel for the Reglan®/metoclopramide Cases if they wish to obtain copies of these documents.

3. All documents served on Liaison Counsel shall be served on Liaison Counsel in accordance with the Pennsylvania Rules of Civil Procedure and the Philadelphia Court of Common Pleas Mass Tort Program and Complex Litigation Center rules.

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

IV. APPOINTMENT OF LIAISON COUNSEL

1. The following attorneys are hereby appointed as Liaison Counsel:

Plaintiffs' Liaison Counsel:

Ray Peppelman
GILLIGAN & PEPPELMAN
606 E. Baltimore Pike
Media, PA 19063
Phone: 610-566-7777
Fax: 610-566-0808
ray@gandplaw.us

Stewart Eisenberg
EISENBERG, ROTHWEILER, WINKLER, EISENBERG & JECK
1634 Spruce St.
Philadelphia, Pennsylvania 19103
Phone: 215-546-6636
Fax: 215-546-0118
stewart@erlegal.com

Rosemary Pinto
FELDMAN & PINTO
1604 Locust Street, 2R
Philadelphia, PA 19103
Phone: 215-546-2604
Fax: 215-546-9904
rpinto@feldmanpinto.com

Defendants' Liaison Counsel:

Henninger S. Bullock
MAYER BROWN LLP
1675 Broadway
New York, NY 10019
Phone: 212-506-2500
Fax: 212-262-1910
hbullock@mayerbrown.com

Michael W. King
REED SMITH, LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
Phone: 215-851-8100
Fax: 215-851 1420
mking@reedsmith.com

Walter "Pete" Swayze, III
SEGAL MCCAMBRIDGE SINGER & MAHONEY, LTD.
30 South 17th Street, Suite 1700
Philadelphia, PA 19103
Phone: 215-972-8015
Fax: 215-972-8016
pswayze@smsm.com

John Mullen
NELSON LEVINE DE LUCA & HORST, LLC
518 Township Line Road, Suite 300
Blue Bell, PA 19422
Phone: 215-358-5100
Fax: 215-358-5101
jmullen@nldhlaw.com

2. 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.

3. The Liaison Counsel will be responsible for the drafting, coordination, propounding, and scheduling of all master discovery requests and depositions. In addition, the Liaison Counsel will be responsible for all future case management orders, pleadings, responses, and any other documents that affect all actions in this litigation.

4. All issues of service of papers on Liaison Counsel shall be governed by the Section III.D.

V. MOTIONS

1. All motions filed in the Reglan®/metoclopramide litigation, including *Preliminary Objections*, shall be in letter format pursuant to mass tort motion procedure.

2. Defendants anticipate the filing of Motion(s) on the basis of *Forum Non Conveniens* which will be addressed in future Case Management Order(s) pending information received from forum discovery to be addressed to Plaintiffs.

VI. SERVICE OF PROCESS

1. To eliminate disputes over service of process and to reduce the expense of such service, Defendants have agreed to waive the normal legal requirements for service of process in the Coordinated Actions. Instead, Defendants have agreed to accept service of process for Reglan®/metoclopramide products liability cases filed in the Philadelphia Court of Common Pleas through service, by registered mail, return receipt requested, upon the following:

Defendant Wyeth LLC Wyeth LLC c/o The Corporation Trust Company 820 Bear Tavern Road West Trenton, NJ 08628	Defendant Wyeth Pharmaceuticals Inc. Wyeth Pharmaceuticals Inc. c/o The Corporation Trust Company 820 Bear Tavern Road West Trenton, NJ 08628
---	---

<p>Defendant Schwarz Pharma, Inc.</p> <p>Henninger S. Bullock, Esquire MAYER BROWN LLP 1675 Broadway New York, NY 10019</p>	<p>Defendant Alaven Pharmaceutical LLC</p> <p>Henninger S. Bullock, Esquire MAYER BROWN LLP 1675 Broadway New York, NY 10019</p>
<p>Defendant Teva Pharmaceuticals USA, Inc.</p> <p>Ms. Jennifer Fuller-Ricciardi Teva Pharmaceuticals USA, Inc. 425 Privet Road P.O. Box 1005 Horsham, PA 19044</p>	<p>Defendant PLIVA, Inc.</p> <p>Ms. Jennifer Fuller-Ricciardi Teva Pharmaceuticals USA, Inc. 425 Privet Road P.O. Box 1005 Horsham, PA 19044</p>
<p>Defendant Actavis Elizabeth LLC</p> <p>Walter "Pete" Swayze, III, Esquire SEGAL, MCCAMBRIDGE, SINGER & MAHONEY, LTD. 30 South 17th Street, Suite 1700 Philadelphia, PA 19103</p>	<p>Defendant Qualitest Pharmaceuticals, Inc.</p> <p>John Mullen, Esquire NELSON LEVINE DE LUCA & HORST, LLC 518 Township Line Road, Suite 300 Blue Bell, PA 19422</p>
<p>Defendant Major Pharmaceuticals, Inc. d/b/a The Harvard Drug Group LLC</p> <p>C. David Miller, II, Esquire GARAN LUCOW MILLER, P.C. 1000 Woodbridge Street Detroit, MI 48207-3192.</p>	<p>Defendant Pharmaceutical Associates, Inc.</p> <p>Daniel J. McCarthy, Esquire MINTZER SAROWITZ ZERIS LEDVA & MEYERS L.L.P. 1500 Market Street Suite 4100 Philadelphia, PA 19102</p>
<p>Defendant URL Pharma, Inc.</p> <p>Geoffrey Coan, Esquire Kathleen Kelly, Esquire WILSON ELSE 260 Franklin Street, 14th Floor Boston, MA 02110</p>	<p>Defendant Mutual Pharmaceutical Company, Inc.</p> <p>Geoffrey Coan, Esquire Kathleen Kelly, Esquire WILSON ELSE 260 Franklin Street, 14th Floor Boston, MA 02110</p>

Defendant Wockhardt USA/Morton Grove Pharmaceuticals Robert E. O'Malley, Esquire SEGAL, MCCAMBRIDGE, SINGER & MAHONEY, LTD. 233 S. Wacker Drive Sears Tower - Suite 5500 Chicago, IL 60606	Defendant ANIP Acquisition Company a/k/a ANIP Pharmaceuticals a/k/a ANI Pharmaceuticals a/k/a A & I Pharmaceuticals Philip D. Priore, Esquire Stephen M. McManus, Esquire McCORMICK & PRIORE, P.C. 4 Penn Center, Suite 800 1600 John F. Kennedy Boulevard Philadelphia, PA 19103
---	---

2. A copy of each notice transmitted to any defendant in the foregoing manner shall be provided to Defense Liaison Counsel, Henninger S. Bullock (hbullock@mayerbrown.com). Service will be effective only if addressed as above. If the same address and/or service agent is listed above for multiple Defendants, the mailing should be sent separately and clearly marked as to which entity is intended to be served on the outside of the mailing. General mailing to any Defendant will not be sufficient to effect service. Service will be effective ten (10) days after mailing in accordance with this Section. The foregoing procedure shall apply to Reglan®/metoclopramide products liability cases filed in the Philadelphia Court of Common Pleas and not to any other litigation. Defendants reserve all other rights available to them under federal or state law and under applicable treaties and conventions.

VII. FURTHER ORDERS

1. 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 Reglan®/metoclopramide litigation), pretrial proceedings and trial proceedings.

BY THE COURT:

11 