

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

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| <b>LITIGATION )</b>                     |                         |
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**CASE MANAGEMENT ORDER NO. 4**

I held a status conference on September 20, 2007. Lead counsel provided a proposed Case Management Order No. 4, and also provided a stipulation and agreed order regarding protocol for production of documents that relates to certain non-producer plaintiffs. At the conference we also discussed certain other scheduling issues. Based on all the information provided to me, I will approve the proposed stipulation in the non-producer cases, and I will enter this Case Management Order No. 4, which incorporates the agreements of the parties, but also includes additional scheduling matters. This Case Management Order No. 4 supplements the previous Case Management Orders and the Order Appointing Leadership Counsel entered in MDL 1811 and, unless specifically stated or otherwise modified herein, all provisions of those previously entered Orders remain in full force and effect.

**IT IS HEREBY ORDERED** that the following applies to cases involving non-producer parties:

1. Definitions. For the purposes of this Order, the following definitions apply:

(a) “Producer Plaintiff” means those plaintiffs who are named in the Master Consolidated Class Action Complaint (“Master Action”) and Plaintiffs in individual producer cases;

(b) “Defendants in the Master Action” means those defendants who are named as Defendants in the Master Action;

(c) “Non-Producer Party” means all parties who are not Producer Plaintiffs or Defendants in the Master Action;

(d) “Non-Producer Case” means any case other than the Consolidated Action or the individual producer cases.

2. Written Discovery in Non-Producer Cases.

(a) Discovery Among and Between Non-Producer Parties.

Notwithstanding anything to the contrary in prior Case Management Orders and in the provision of the Court’s Order Appointing Leadership Counsel stating that “no papers shall be served or filed, and no process, discovery, or other procedure shall be commenced by any counsel other than Lead Counsel,” all Non-Producer Parties in Non-Producer Cases may in those cases, through counsel, file and serve

requests for production, interrogatories and requests for admission on any Non-Producer Party in those cases. Copies of such discovery and responses to such discovery requests shall be served upon Plaintiffs' and Defendants' Lead Counsel. Limits on discovery, as set forth in previous orders, and the terms of the Confidentiality Agreement and Protective Order shall remain in full force and effect. Notwithstanding the limitations upon the number of interrogatories under paragraph B.3 of Case Management Order No. 1, any Non-Producer Party in a Non-Producer Case may serve up to twenty-five (25) interrogatories upon any Non-Producer Party and, upon good cause shown, may seek leave to serve additional interrogatories upon any such party. These interrogatories shall be in addition to those served in the Master Action. With respect to Requests for Admissions ("RFAs") and Requests for Production ("RFPs"), no limit shall be placed upon the number of RFAs and RFPs that may be served by any Non-Producer party in a Non-Producer Case on a Non-Producer Party. These RFAs and RFPs shall be in addition to those served in the Consolidated Action.

(b) Discovery Among and Between Non Producer Parties and Defendants in the Master Action. CMO 1 ¶¶B. 3, 4, and 7 are hereby modified with respect to Non Producer Parties and Defendants in the Master Action who are also defendants in Non Producer Cases as follows:

3. Interrogatories. Each party in a Non Producer Case may propound up to ten Interrogatories (including sub parts) on defendants in the Master Action, and defendants in that Action may propound the same number on each other party to that case. Said Interrogatories shall not be duplicative of discovery previously served in any other case or in the Master Action.

Responses shall be served within forty-five days.

4. Request for Admissions. Each party in the Non Producer Case may propound up to 20 Requests for Admission on defendants in the Master Action, and defendants in that Action may propound the same number on each other party to that case. Said Requests shall not be duplicative of Requests served in any other case or the Master Action. Responses shall be served within forty-five days.

7. Requests for Production of Documents and Things. Each party in a Non Producer Case may propound up to 20 Requests for Production of Documents and Things on defendants in the Master Action, and defendants in that Action may propound the same number on each other party to that case. Said Requests shall not be duplicative of discovery served in any other case or the Master Action. Responses shall be served within forty-five days.

The Non-Producer Parties and Defendants in the Master Action shall

conduct discovery in accord with these limitations unless leave of Court is granted otherwise.

(c) Discovery by Non-Producer Parties to Producer Plaintiffs. Leave of Court is required to conduct discovery other than that specified herein. By agreement of Lead Counsel, copies of all discovery, discovery responses and documents produced by defendants or by any third party pursuant to subpoena, will be made available to all parties in accordance with a protocol to be developed by Lead Counsel subject to compliance with the terms of the Confidentiality Agreement and Protective Order by the Non-Producer Parties and their counsel.

3. Pleadings and Motions in Non-Producer cases. Notwithstanding the provisions of any previous case management orders entered in this case, any Non-Producer Party may in a Non-Producer Case file pleadings, including cross claims and counterclaims, and motions that relate to factual or legal issues specific to that case only. Such pleadings, motions and responses thereto shall be served on Lead Counsel, but need not be coordinated through Lead Counsel. Such pleadings, motions and responses thereto must otherwise comply with all other deadlines and requirements of the Court's case management orders.

4. Depositions.

(a) Depositions by Non-Producer Parties of witnesses other than Producer Plaintiffs and Defendants in the Master Action. Counsel for Non-Producer Parties may initiate depositions in accordance with Rules 30 and 45 on a person or entity that is not a Producer Plaintiff or Defendant in the Master Action or an agent, employee, officer, director or otherwise affiliated with Producer Plaintiffs or Defendants in the Master Action that relate to factual or legal issues specific to that case only. Prior to serving any notice of deposition or subpoena to compel attendance, counsel for Non-Producer Parties shall confer with Lead Counsel to coordinate the scheduling of all depositions so that the depositions are taken in an orderly manner that will facilitate the progress of the litigation, minimize, to the extent possible, the burdens on parties and witnesses and comply with the general requirement of one deposition per witness. If counsel for the Non-Producer Party and Lead Counsel are unable to agree on scheduling or other issues related to any deposition, the Non-Producer Party may file a motion for leave to proceed with the deposition.

Counsel for Non Producer Parties may request that Lead Counsel schedule the depositions of Defendants in the Master Action (or persons affiliated with them). Lead Counsel shall meet and confer in good faith with the requesting counsel and attempt to accommodate such requests where they are consistent with

the efficient prosecution of the litigation and do not cause undue burden on the parties or the witnesses.

(b) Participation in depositions taken in connection with the Master Class Action. Counsel for Non-Producer Parties are permitted to attend and examine witnesses at any oral deposition taken in the Master Action, except those of Producer Plaintiffs and pursuant to protocols to be established by Lead Counsel. Counsel for the Non-Producer Parties and Lead Counsel are directed to coordinate and meet and confer prior to any oral depositions under Rule 30 to establish procedures so as to permit not only the completion of the deposition pursuant to Rule 30, but also to permit full participation as needed by counsel for all Non-Producer parties as well as counsel for parties in the Master Complaint.

5. Rule 45 Non-Party Document Subpoenas. Any party in a non producer case may serve a Rule 45 document subpoena on a person or entity that is not a party or an agent, employee, officer, director or otherwise affiliated with any party; provided that before serving any such subpoena counsel must consult with Lead Counsel in order to avoid duplication and undue burden on such non parties. Any information or materials obtained by the party issuing the subpoena from such non-parties shall be provided to all Lead Counsel and counsel for all Non Producer Parties within five business days of receipt from the person or entity subpoenaed or, for documents received prior to this order, within five business days of the entry of this

order. Any information or materials obtained by a Producer Plaintiff or a Defendant in the Consolidated Action pursuant to subpoena shall be provided to Lead Counsel and to counsel for all Non Producer Parties within five business days after receipt of a request for such information and materials.

6. Amendment to Document Protocol. The Court approves the “Substituted Agreed Amendment to Stipulation and Agreed Order Regarding Protocol for Production of Documents and Information both in Hard Copy and in Electronic Format” [docket # 363] and that agreed order and protocol shall apply in the Non-Producer Cases.

7. Discovery Does Not Affect Remand. Discovery by any party in any case in which a motion to remand to state court is filed or is pending does not affect or waive any party’s positions with respect to such requested remand.

8. Settlement. The Non-Producer Parties need not consult with, and are not represented by, Lead Counsel in any settlement negotiations related to their individual actions, but are encouraged to meet and confer with Lead Counsel where it would promote settlement of any issues related to this litigation.

9. Initial Disclosures. The Non-Producer Parties to any Non-Producer Case transferred to this Court after the entry of this Case Management Order No. 4, shall serve their Rule 26(a)(1)(A) disclosures within twenty (20) days of the docketing of that case in this Court.

**IT IS FURTHER ORDERED** that the following applies in all cases:

1. No later than **October 12, 2007**, Lead Counsel shall either propose a schedule for briefing the jurisdictional motions or will inform the Court that the disputes have been resolved. The parties shall provide a proposed order along with their schedule or report.

2. Not later than **October 15, 2007**, Defendants' Lead Counsel shall select at least five of the producer plaintiffs (not named in the Consolidated Complaint) who must produce the documents required by the PFS no later than **November 15, 2007**. The selected individuals must then submit to deposition as contemplated by paragraph I on page 2-3 of CMO # 3. Defendants will be expected to select the remaining ten individuals promptly upon receipt of the remaining plaintiffs' provision of their PFS's.

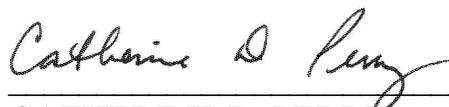
3. Both plaintiffs and defendants have not fully complied with the earlier Case Management Orders. Many plaintiffs have not provided their PFS's. Defendants have not completed their production of documents. Both sides must move to fulfill their obligations as quickly as possible or other deadlines in the case will be delayed. I will not at this time impose additional deadlines, but I expect the parties to be able to report substantial progress at the next status conference.

4. While this and the other Case Management Orders are intended to deal with all routine and reasonably anticipated matters, I recognize that issues may arise in the individual cases that require resolution. Therefore, although I am extending the stay in the individual producer cases, I am not prohibiting the individual producer plaintiffs from filing motions for relief if something unexpected occurs. Therefore, except for motions relating to remand to state court, motions challenging personal jurisdiction or service, or notices of voluntary dismissals, (all of which are governed by previous Case Management Orders) no pleadings or motions shall be filed in any of the individual producer cases until further order of the Court, **except that any party may, for good cause, move the Court for specific relief relating to that case if unexpected issues arise.**

5. The court will hold a status conference on **Thursday, November 29, 2007 at 11:00 a.m. in Courtroom 14 South.** Lead counsel must attend in person, and all other counsel are welcome to attend in person. For counsel who wish to appear by telephone, the Court will establish a procedure for conference call participation and will notify counsel of the procedure at least one week before the conference. Not later than **Tuesday, November 20, 2007,** lead counsel shall file a joint statement which must describe in detail the progress of the case and whether the existing schedule for the resolution of plaintiffs' request for class action status can be met. If the parties disagree about any scheduling matters, they

must set out their respective positions on all issues in the joint statement. If appropriate, they may also propose a schedule for all actions necessary to complete the pleadings, motions and discovery in the individual producer cases.

SIGNED this 28th day of September, 2007.

A handwritten signature in black ink, reading "Catherine D. Perry". The signature is written in a cursive style with a horizontal line extending from the end of the name.

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CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE