

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION - LEXINGTON

IN RE: ONGLYZA (SAXAGLIPTIN) AND
KOMBIGLYZE XR (SAXAGLIPTIN AND
METFORMIN) PRODUCTS LIABILITY
LITIGATION

Master File No. 5:18-md-2809-KKC
MDL No. 2809
All Cases

CASE MANAGEMENT ORDER NO. 3
REGARDING GENERAL CAUSATION
DISCOVERY AND *DAUBERT* MOTIONS

Having conducted a status conference in this matter on December 18, 2018, and having further considered the Joint Discovery Plan submitted by the parties, the Court hereby ORDERS as follows:

Additional Pleadings

- 1. Counter-claims, Cross-Claims, and Third-Party Complaints.** The deadline for filing counter-claims, cross-claims, and third-party complaints, if any, shall be February 1, 2019. The deadlines for filing answers and motions responding to such claims shall be governed by the Local Rules.
- 2. Motions in Individual Cases.** Deadlines for filing motions pursuant to Federal Rule of Civil Procedure 12 in individual cases shall be stayed until after the completion of the first phase of discovery on the issue of general causation.

Discovery Procedures

- 3. Discovery Under the Plan.** No party may conduct any discovery of another party not expressly authorized by the Court's Case Management Order 2 and this Order. This provision shall not preclude third-party fact discovery related to general causation during the fact discovery period of the general causation phase; provided, however, that any party intending to serve third-party discovery shall give ten (10) days written notice to the other

party of the third-party party discovery to be served. Such notice shall include a copy of the discovery to be served.

- 4. Service of Discovery.** Unless otherwise directed by the Court, the parties shall serve all general causation discovery, including deposition notices, interrogatories, requests for documents, requests for admission, responses thereto, and certificates of service thereof, by electronic mail on Plaintiffs' Lead and Liaison Counsel and Defendants' Counsel. Such papers are not to be filed with the Clerk, nor are courtesy copies to be delivered to the Court, except when specifically ordered by the Court or to the extent needed in connection with a motion, and only in accordance with the Protective Order governing the MDL proceedings.
- 5.** All discovery directed to Defendants and non-party witnesses on behalf of Plaintiffs shall be undertaken by, or under the direction of, Plaintiffs' Lead and Liaison Counsel on behalf of all Plaintiffs with cases in these MDL proceedings.
- 6. Extension of Discovery Deadlines.** Nothing in this Order shall be interpreted to restrict the ability of the parties to stipulate in writing to an extension of discovery deadlines or to move for an extension of discovery deadlines as permitted by the Rules. If any discovery extension would impact non-discovery deadlines in this case, the parties must obtain Court approval. The parties further agree that, should any of the deadlines set forth above become infeasible as a result of an unexpected technical or similar matter, the responding or producing party shall provide advance notice and an estimated date for the response or production. If, after meeting and conferring in good faith, the receiving party objects to any modified date for production, it may seek a conference with the Court.

Coordination with State Court Proceedings

7. In order to achieve the full benefits of the MDL proceedings, this Court may coordinate with state courts presiding over related cases, and the parties will coordinate discovery and other appropriate pretrial proceedings with any related state court litigations to the extent possible.
8. The parties will coordinate discovery activities and avoid unnecessary duplication and inconsistency by, at a minimum: (a) conferring with state court attorneys in order to promote consistent case management orders, protective orders, discovery plans, and discovery protocols, including as to electronic production, the form of production, and the number and scope of custodial searches; (b) Plaintiffs' Lead and Liaison Counsel providing access to a common document repository for discovery from common defendants to state court attorneys who agree to be bound by the protective order and common benefit order entered by this Court; (c) cross-noticing, by Defendants, of depositions of defense witnesses and providing for participation of counsel in state court actions at such depositions; (d) making reasonable efforts to promote judicial economy and avoid multiple depositions of the same witness on the same issues and material; (e) timely communicating to Plaintiffs' Lead and Liaison Counsel and Defendants' Counsel relevant documents in, and opportunities for coordinating with, any related state court proceedings; and (f) keeping the Court informed of such activities through regular joint reports.
9. The Court retains the power to enforce these coordination and cooperation requirements, including through protective orders precluding or narrowing duplicative discovery.

General Causation Discovery Deadlines

10. Fact discovery on the issue of general causation may commence upon the entry of this Order.
11. Fact discovery relating to issues of general causation shall conclude by **July 9, 2019**.
12. Plaintiffs shall serve expert reports relating to the issue of general causation by **July 25, 2019**.
13. Defendants shall serve expert reports relating to the issue of general causation by **August 8, 2019**.
14. Plaintiffs shall serve rebuttal expert reports by **August 26, 2019**.
15. Depositions of expert witnesses on the issue of general causation shall be completed by **September 27, 2019**.
16. Parties shall file any *Daubert* motions challenging expert witness testimony on the issue of general causation by **October 28, 2019**. Oppositions to such motions shall be due on **December 4, 2019**. Any replies shall be due on **December 20, 2019**.
17. Hearings on any *Daubert* motions have been scheduled for **January 21-23, 2020**.

SO ORDERED.