



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE DIGITEK[®] LITIGATION

CIVIL ACTION NO. 08-C-5555

THIS DOCUMENT APPLIES TO ALL CASES

CASE MANAGEMENT AND SCHEDULING ORDER NO. 3 [“CMO 3”]

This Order shall govern all cases (1) transferred to this Court in the State of West Virginia for the *Digitek[®] Litigation*; and (2) all related cases originally filed in this Court. This Order applies to all Plaintiffs in West Virginia state actions and to Defendants Actavis Totowa LLC, Actavis Inc., and Actavis Elizabeth LLC (“Defendants Actavis”)¹ and Defendants Mylan Pharmaceuticals, Inc., UDL Laboratories, Inc., Mylan, Inc. and Mylan Bertek Pharmaceuticals, Inc. (“Defendants Mylan”).²

Pursuant to request of the parties in the related MDL proceedings, *In re Digitek Products Liability Litigation, MDL No. 1968*, and with the concurrence of this Court and other State court judges, proceedings in the *Digitek[®] Litigation* were informally stayed on or about July 12, 2010, to allow the parties to investigate the possibility of a global settlement of *Digitek[®]* cases. Thereafter, by Orders entered August 17, 2010, and October 26, 2010, this Court imposed a formal stay of all discovery, motion practice and scheduled hearings in this litigation to allow the parties in the related federal MDL Proceedings to develop and implement a program for

¹ Defendants Actavis maintain that Actavis Elizabeth LLC is not a proper party and explicitly do not waive any argument regarding their inclusion in this litigation.

² Defendants Mylan maintain that Mylan, Inc. and Mylan Bertek Pharmaceuticals, Inc. are not proper Parties and explicitly do not waive any argument regarding their inclusion in this litigation.

settlement of Digitek[®] cases in both federal and State courts, including this Court. A program for settlement was subsequently implemented in the MDL Proceedings and was adopted by this Court by Order entered September 27, 2010. Pursuant to that settlement program, all cases in this *Digitek[®] Litigation* were given an opportunity to opt-in to the MDL settlement by October 15, 2010.

The Court is advised that the settlement program is in the process of being finalized and that the following seven cases filed in the *Digitek[®] Litigation* did not opt-in to the MDL settlement program:

- *Diana L. Adkins, Administratrix of the Estate of Donald B. Adkins, deceased, v. Mylan Pharmaceuticals, et al.*, Civil Action No. 09-C-40 KAN;
- *John Anthony “Jack” Conte, as Administrator of the Estate of Scottye Helton Conte, deceased v. Mylan Pharmaceuticals, Inc., et al.*, Civil Action No. 08-C-1995 KAN;
- *Bobbi J. Myers, as Administratrix of the Estate of Elizabeth J. Starr, deceased v. Mylan Pharmaceuticals, Inc., et al.*, Civil Action No. 08-C-999 KAN;
- *Carl Brown, Executor of the Estate of Patricia Ileen Brown, deceased, v. Mylan Pharmaceuticals, Inc., et al.*, Civil Action No. 09-C-123;
- *Melvin L. Pennington and Sharon R. Pennington v. Mylan Pharmaceuticals, Inc., et al.*, Civil Action No. 08-C-172;
- *James Christian, Administrator of the Estate of Pansy Mae Christian, deceased, v. Mylan Pharmaceuticals, Inc., et al.*, Civil Action No. 09-C-292; and
- *Lola Jean Smith v. Johnnie H. Smith v. Mylan Pharmaceuticals, Inc., et al.*, Civil Action No. 09-C-1069.

Inasmuch as these cases elected to forego the settlement program in the MDL proceedings, the stay previously imposed by this Court is hereby lifted to allow continuing prosecution of these cases.

It is the purpose of this Order to establish a schedule governing all of the cases identified above. The Court notes that three of these cases, *Adkins*, *Conte* and *Myers*, were previously

selected as Trial Group 1 cases and were thus governed by the schedule imposed in Case Management and Scheduling Order No. 2 (“CMO 2”) entered April 26, 2010. Pursuant to CMO 2, all fact discovery in those cases was scheduled to be completed by June 30, 2010, with disclosure of plaintiffs’ expert reports due July 14, 2010. The Court is advised plaintiffs’ expert reports were not disclosed in those cases on July 14, 2010, due to the informal stay agreed upon by the parties and the Court two days earlier, on July 12, 2010.

With this as background, this Order supersedes the below-delineated sections of Part VI only of CMO 2 entered by this Court on April 26, 2010, which superseded Part IV of Case Management and Scheduling Order No. 1 entered by this Court on April 13, 2009. As noted, this schedule applies to the seven cases identified above.

VI. DISCOVERY DATES AND ORDER

E) Scheduling Orders

1) Fact Discovery

(a) No later than **June 1, 2011**, the Parties shall complete all fact discovery.

2) Expert Discovery

(a) Plaintiffs shall serve all general liability expert report(s) no later than **March 17, 2011**.

(b) Defendants shall serve all general liability expert report(s) no later than **April 19, 2011**.

(c) The Parties shall complete the depositions of Plaintiffs’ general liability expert(s) no later than **May 2, 2011**.

(d) The Parties shall complete the depositions of Defendants’ general liability expert(s) no later than **June 6, 2011**.

- (e) Plaintiffs shall serve all case-specific expert report(s) no later than **June 15, 2011**.
- (f) Defendants shall serve all case-specific expert report(s) no later than **July 13, 2011**.
- (g) The Parties shall complete the depositions of Plaintiffs' case-specific expert(s) no later than **August 3, 2011**.
- (h) The Parties shall complete the depositions of Defendants' case-specific expert(s) no later than **September 1, 2011**.

3) Filing of Dispositive and *Daubert/Wilt* Motions

- (a) Filing of *Daubert/Wilt* Motions Regarding General Liability Expert(s)
 - (i) All *Daubert/Wilt* motions regarding general liability expert(s) shall be filed and served no later than **August 3, 2011**.
 - (ii) All responses to *Daubert/Wilt* motions regarding general liability expert(s) shall be filed and served no later than **August 17, 2011**.
 - (iii) All replies in support of *Daubert/Wilt* motions regarding general liability expert(s) shall be filed and served no later than **September 1, 2011**.
 - (iv) The Court will conduct a hearing on *Daubert/Wilt* motions regarding general liability expert(s) filed in this litigation in conjunction with the *Daubert* hearing scheduled by the Honorable Joseph R. Goodwin in the Digitek[®] MDL on

September 14-15, 2011 in the U.S. District Court for the Southern District of West Virginia.

(b) Filing of Dispositive and *Daubert/Wilt* Motions Regarding Case-Specific Experts

(i) All dispositive motions and *Daubert/Wilt* motions regarding case-specific expert(s) shall be filed and served no later than **September 22, 2011**.

(ii) All responses to dispositive motions and *Daubert/Wilt* motions regarding case-specific expert(s) shall be filed and served no later than **October 6, 2011**.

(iii) All replies in support of dispositive motions and *Daubert/Wilt* motions regarding case-specific expert(s) shall be filed and served no later than **October 13, 2011**.

(iv) The Court will also hold a separate hearing for disposition of all dispositive and other *Daubert/Wilt* motions regarding case-specific expert(s) no later than **November 15, 2011**.

4) Mediation

The Court will advise the parties of the date and location of mediation.

5) Pretrial Conference

The Court will schedule dates for a final pretrial conference and trial start dates following the decisions on *Daubert/Wilt* and dispositive motions.

ENTER: December 9, 2010

/s/ Alan D. Moats
Lead Presiding Judge