

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**IN RE: GENERIC DIGOXIN AND  
DOXYCYCLINE ANTITRUST  
LITIGATION**

**MDL No. 2724  
No. 16-md-2724**

**THIS DOCUMENT RELATES TO:  
ALL ACTIONS**

**HON. CYNTHIA M. RUFÉ**

**PRETRIAL ORDER NO. 10  
(DUTIES AND AUTHORITY OF CO-LEAD COUNSEL)**

AND NOW, this 24<sup>th</sup> day of March, 2017, the Court hereby enters the following

Order respecting the duties and authority of Plaintiffs' Co-Lead Counsel:

In Pretrial Order No. 6 [MDL Dkt. No. 84] this Court appointed Plaintiffs' Co-Lead Counsel (Roberta D. Liebenberg, Esquire and the law firm of Fine, Kaplan and Black, R.P.C. for the End-Payer Plaintiffs ("EPPs"); and Dianne M. Nast, Esquire and the law firm of NastLaw LLC for the Direct-Purchaser Plaintiffs ("DPPs") and a Plaintiffs' Steering Committee ("PSC") comprised of twelve additional attorneys and their law firms. Co-Lead Counsel serve *as ex-officio* members of the PSC.

Pretrial Order No. 6 also provided that the specific duties of Co-Lead Counsel may be set forth in future pretrial orders as necessary. Provided herein are the specific duties and authority of Co-Lead Counsel that are necessary and appropriate for the efficient management of pretrial proceedings on behalf of all plaintiffs in this litigation.

**A. AUTHORITY OF CO-LEAD COUNSEL TO ACT ON BEHALF OF  
COMMON INTERESTS OF ALL PLAINTIFFS**

On many issues, though not all, the interests of all plaintiffs in maintaining this litigation are aligned. Where interests are aligned, Plaintiffs' Co-Lead Counsel shall be responsible for

coordinating the activities of all plaintiffs during pretrial proceedings and shall, after joint consultation with the PSC and also each Co-Lead consulting separately with their respective DPP and EPP PSC representatives, have final decision-making authority to:

1. Determine and present (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the common position of the plaintiffs on all matters arising during pretrial proceedings;
2. Enter into stipulations with opposing counsel, any intervenors and third parties and file motions on behalf of all plaintiffs on common issues as necessary for the conduct of the litigation;
3. Develop and propose to the Court appropriate schedules for the commencement, execution, and completion of all discovery on behalf of all plaintiffs;
4. Negotiate with Defendants and third parties concerning areas of discovery common to all plaintiffs, including the development of ESI and Document Preservation Protocols;
5. Cause to be issued in the name of all plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents;
6. Conduct discovery in a coordinated and consolidated manner on behalf of and for the benefit of all plaintiffs, in a fashion in keeping with practice guidelines to be established in subsequent discovery plans or orders of this Court;
7. Delegate specific tasks to other counsel or committees of counsel in a manner to ensure that plaintiffs' pretrial preparation is conducted efficiently and effectively;
8. Prepare and distribute periodic status reports to the Court;

9. Monitor the activities of plaintiffs' counsel to ensure that schedules are met and unnecessary or duplicative expenditures of time and funds are avoided;

10. Perform the duties previously assigned to Liaison Counsel as set forth in Pretrial Order No. 1; and

11. Perform such other duties as may be incidental to proper coordination of plaintiffs' pretrial activities or authorized by further Order of the Court.<sup>1</sup>

Opposing counsel may rely on the conduct and representations by Co-Lead Counsel made in their discharge of the foregoing responsibilities.

**B. WHERE PSC MEMBERS' INTERESTS MAY DIVERGE**

In those instances where the interests of all PSC members are not aligned, it may be appropriate for certain plaintiff groups to separately undertake responsibility for certain activities. In such cases, those activities may be undertaken separately by the DPPs and EPPs provided they are non-duplicative. For the sake of illustration (and not limitation), these activities may include:

1. Determining (after such consultation with Co-Counsel as may be appropriate) and presenting (in briefs, oral argument, or such other fashion as may be appropriate, personally or by a designee) to the Court and opposing parties the position of DPPs or EPPs on factual or legal issues unique to them, mindful of the need to avoid duplicative effort, briefing and argument on any common issues;

2. Separately conducting settlement negotiations on behalf of DPPs and EPPs;

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<sup>1</sup> The Court draws this list of responsibilities from Part 4.B of Pretrial Order No. 1 (MDL Dkt. No. 2) and the *Manual for Complex Litigation (Fourth)* § 40.22 (Responsibilities of Designated Counsel).

3. Conducting non-duplicative discovery on issues unique to the claims of DPPs and EPPs;
4. Separately monitoring and maintaining records of the time and expenses of counsel for DPPs and EPPs; and
5. Separately retaining experts and preparation of expert reports.

It is so **ORDERED**.

**BY THE COURT:**

  
CYNTHIA M. RUFÉ, J.