

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	22md3043 (DLC)
:	22mc3043 (DLC)
IN RE: Acetaminophen - ASD-ADHD :	
Products Liability Litigation :	<u>DRAFT ORDER:</u>
:	<u>DIRECT FILING</u>
-----X	

On November 16, 2022, the parties submitted proposed orders governing the direct filing of actions in In re Acetaminophen - ASD/ADHD Products Liability Litigation, 22md3043 ("MDL"), in the Southern District of New York. For the reasons stated on the record at a November 17 conference with the parties, it is hereby

ORDERED:

I. SCOPE OF THE ORDER

1. This Order applies only to personal injury claims brought by United States residents and filed directly in the MDL.

II. DIRECT FILING OF CASES INTO THE MDL

2. To eliminate delays associated with the transfer to this Court of cases filed in or removed to other federal district courts and to promote judicial efficiency, any plaintiff(s) whose case would be subject to transfer to this MDL may directly file his or her complaint against any or all Defendants in the United States District Court for the Southern

District of New York as related to the MDL.

3. Any complaint that is filed directly in the Southern District of New York pursuant to this Order shall be deemed directly filed in the MDL and filed as a new civil action in the Court's electronic filing system. At the time of filing, the complaint shall bear the caption set forth in Paragraph 4(c) of this Order and be accompanied by a civil cover sheet and summons. The civil cover sheet shall be completed in accordance with the instructions set forth therein. The filing party shall use the origin code 8 on the civil cover sheet. The Clerk of Court is directed to assign the action to the MDL Judge's docket. After review by the Clerk of Court's office, the case will be automatically consolidated for pretrial purposes in the MDL and listed as a Member Case. If counsel have any questions regarding opening a civil case, contact the Civil Case Openings unit of the Southern District of New York at 212-805-0632 or case_openings@nysd.uscourts.gov.

4. The process for direct filing will be as follows:

a. Attorneys who are subject to the Local Rules of this District must file the complaint in accordance with the Local Rules. Attorneys who are not admitted to practice in the United States District Court for the Southern District of New York shall seek admission prior to the direct filing of the cases in accordance with this Court's October 19, 2022 Order:

Attorney Admissions.

b. All plaintiffs directly filing in the MDL are required to pay the standard New Action Filing Fee to initiate the case.

c. Any complaint that is directly filed in the MDL shall bear following caption:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	22md3043 (DLC)
	:	
IN RE: Acetaminophen - ASD-ADHD	:	
Products Liability Litigation	:	
	:	DIRECT FILED COMPLAINT [&
This Document Relates To:	:	JURY DEMAND] PURSUANT TO CASE
	:	MANAGEMENT ORDER: DIRECT
_____,'	:	FILING
	:	
Plaintiffs,	:	
	:	CIVIL ACTION NO.
-v-	:	_____
	:	
_____,'	:	
	:	
Defendants.	:	
-----	X	

d. Each case filed directly in the MDL that emanates from a district outside the Southern District of New York will be filed in the MDL for pretrial proceedings only, consistent with the Judicial Panel on Multidistrict Litigation's October 5, 2022 Transfer Order.

e. In any complaint directly filed in the Southern District of New York pursuant to this Order, plaintiff's counsel shall identify the federal district or districts in

which the individual plaintiff resides or any other district in which the action otherwise would have been appropriately filed absent direct filing. Specifically, each plaintiff filing directly in this MDL shall plead the following language in the leading paragraph of the complaint:

Plaintiff files this Complaint pursuant to Case Management Order: Direct Filing, and is bound by the rights, protections, privileges, and obligations of that Order. Further, in accordance with said Order, Plaintiff hereby designates the United States District Court for the _____ as Plaintiff's home venue, as this case may have originally been filed there as Plaintiff currently resides in _____ (city), _____ (state).

f. Upon completion of all pretrial proceedings applicable to a case directly filed in this Court, pursuant to 28 U.S.C. § 1404(a), if the Court determines that transfer of a given case or cases is warranted, the Court will transfer each such case to the identified federal district of the plaintiff's residence unless that designation is subject to challenge, pursuant to Paragraph 4(h) of this Order, or to another district which the parties to the action jointly request that the case be transferred.

g. Plaintiffs, through Co-Lead Counsel, and Defendants in the applicable Member Case shall have fourteen (14) days from the date the action is listed as a Member Case, pursuant to Paragraph 3, supra, to confer and object by letter motion to the inclusion of the case in the MDL. The party in

favor of inclusion in the MDL shall then have three (3) days to file a response to any such objection. Failure to object as set forth herein shall constitute a waiver of any objection to inclusion of the case in the MDL for pretrial proceedings.

h. Plaintiffs, through Co-Lead Counsel, and Defendants shall have fourteen (14) days from the date the action is listed as a Member Case to object to a plaintiff's designation of home venue in any directly filed Complaint. Objections regarding a plaintiff's designated home venue may be raised by letter motion at any time thereafter upon a showing of good cause, but no later than the deadline for the conclusion of fact discovery in the individual directly filed action.

5. Nothing contained in this Order shall preclude the parties from agreeing, at a future date, to try cases filed pursuant to this Order in the Southern District of New York.

6. All Defendants currently before this Court as of the date of this Order stipulate and agree that they will not assert any objection of improper venue pursuant to Fed. R. Civ. P. 12(b) as to any Member Case filed directly in the Southern District of New York where the plaintiff has designated in the complaint another district as the plaintiff's home venue unless and until the Court determines that transfer to a plaintiff or plaintiffs' designated home venue is appropriate.

7. The inclusion of any action in the MDL, whether such

action was or will be filed originally or directly in the Southern District of New York, shall have no impact on the choice of law determination that otherwise would apply to an individual case had it been originally filed in another district court and transferred to this Court pursuant to 28 U.S.C. § 1407.

8. The direct filing of a case in the MDL shall not constitute a determination by this Court that venue is proper in this district, nor a waiver of personal jurisdiction or service by any named Defendant. Nor shall the filing of an action directly in the MDL constitute, for any party, a waiver pursuant to Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26 (1998). The Court understands that Defendants expressly reserve all rights pursuant to Lexecon.

9. The filing of a complaint directly in the MDL pursuant to this Order shall stop the running of any statute of limitations or prescriptive or preemptive period as if the complaint had been filed in an appropriate venue.

10. Defendants reserve all rights to move to dismiss any directly filed individual complaint under Rule 12 or Rule 9, consistent with a schedule to be entered by the Court.

11. The references to "Defendants" herein shall not constitute an appearance by or for any Defendant not yet named in the MDL and/or not properly served.

Dated: New York, New York
November 17, 2022

DENISE COTE
United States District Judge