

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
NORTHERN DIVISION  
(at Covington)

	)	
	)	Master File No. 2: 11-md-2226-DCR
	)	MDL Docket No. 2226
	)	ALL CASES
	)	
IN RE: DARVOCET, DARVON AND	)	
PROPOXYPHENE PRODUCTS	)	
LIABILITY LITIGATION	)	<b>ORDER REGARDING PRACTICE</b>
	)	<b>AND PROCEDURE UPON TRANSFER</b>
	)	<b>AND</b>
	)	<b>SETTING INITIAL CONFERENCE</b>
	)	

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The United States Judicial Panel on Multidistrict Litigation advised this Court in its Transfer Order [Record No. 1] entered August 16, 2011, that certain matters involving Darvocet, Darvon, and Propoxyphene products and pending outside of the Eastern District of Kentucky are transferred to the Eastern District of Kentucky pursuant to 28 U.S.C. § 1407. The Court having consented to this transfer, the Clerk has assigned Master File No. 2:11-md-2226-DCR to the undersigned and opened same as a master docket for all matters filed, removed or transferred to this District that arise out of alleged defects in Darvocet, Darvon and Propoxyphene products. The Court being sufficiently advised, it is hereby

**ORDERED** as follows:

This action is hereby scheduled for a preliminary status conference on **Monday, September 26, 2011**, beginning at the hour of **10:00 a.m.** Eastern Daylight Time, at the United

States Courthouse, 35 West 5th Street, Covington, Kentucky. To minimize costs and facilitate a manageable conference, parties shall appear at the conference by counsel only. Parties with similar interests are encouraged to agree to the extent practicable on a single attorney to act on their behalf at the conference. By designating an attorney to represent its interests at the conference, a party will not be precluded from other direct participation in the various stages of this litigation. Attendance at the conference will not constitute a waiver of objection to jurisdiction, venue, or service.

Any applications or nominations for lead counsel, steering committee, or liaison counsel shall be made no later than **5:00 p.m.**, Eastern Daylight Time, on **Monday, September 12, 2011**. The main criteria for such appointments are: (1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3) professional experience in this type of litigation; and (4) access to sufficient resources to advance the litigation in a timely manner. Applications should also set forth attorney fee proposals, rates, and percentages that applicants expect to seek if the litigation succeeds in creating a common fund.

### **Pre-Conference Submissions**

To familiarize the Court with the pending cases, on or before **5:00 p.m.**, Eastern Daylight Time on **Monday, September 12, 2011**, counsel for the plaintiff(s) and defendant(s) in each case transferred to this Court shall submit to the Court a brief (not to exceed three pages) summary of the case. Submissions shall be made via e-mail to the following address: [Reeves\\_Chambers@kyed.uscourts.gov](mailto:Reeves_Chambers@kyed.uscourts.gov). The summary shall not be filed with the Clerk, but shall be distributed to the other parties; it will not be binding, will not be considered to waive any

claims or defenses, and may not be offered in evidence against a party in later proceedings. The summary should include the following:

- (1) a brief synopsis of the factual allegations involved in the case;
- (2) a brief summary of the legal issues involved in the case;
- (3) a brief description of any discovery that has been completed, including any depositions that have been taken;
- (4) if the case has been filed as a proposed class action, a description of the proposed class and an indication of any discovery that will be necessary before the class certification issue can be briefed, along with an anticipated schedule for that discovery;
- (5) a list of pending motions, with an indication regarding whether they are fully briefed;
- (6) any other matter that counsel believe requires the immediate attention of the Court.

Counsel are also requested to notify the Court whether they plan to attend the September 26, 2011, conference and, if so, to provide the name of counsel who will appear.

#### **Agenda for Initial Conference**

The initial conference is intended to permit counsel to meet with the judicial officer assigned to this case and to raise for discussion any matters requiring the Court's immediate attention. In addition, counsel are invited to suggest in general terms any proposals for the organization and structure of the pre-trial phases of this litigation, by which counsel and the Court will attempt to efficiently manage its development. Any party wishing to address the

Court or to advance such a proposal is requested to submit a succinct written description of the proposal to the Court on or before **5:00 p.m.**, Eastern Daylight Time on **Monday, September 12, 2011**. Such proposal should include a discussion of its anticipated benefits to the litigants in managing the fees and costs associated with litigation of this magnitude. The parties may submit a specific proposed case management order for consideration. Such proposed case management order shall be submitted to the above e-mail address no later than **5:00 p.m.**, Eastern Daylight Time, on **Monday, September 12, 2011**. Counsel will also be invited at the initial conference to propose a schedule of future conferences with the Court, as well as topics for inclusion on the agenda of the next scheduled conference.

**PRACTICE AND PROCEDURE UPON TRANSFER  
PURSUANT TO 28 U.S.C. § 1407(a)**

Those actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to its Transfer Order of August 16, 2011, and all related actions originally filed in this Court or transferred or removed to this Court, as well as any tag-along actions transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 7.1 of the Rules of Procedure of that Panel subsequent to the filing of the final transfer order by the Clerk of this Court, and any related actions subsequently filed in this Court or otherwise transferred or removed to this Court, shall all be governed by the following practices and procedures:

- (1) The actions described above are consolidated for all pre-trial purposes.
- (2) Any document filed in these actions shall bear the identification “MDL Docket No. 2226,” and shall indicate to which of these actions it applies. Counsel are urged to use the caption as it appears above. When the filing relates to all of these consolidated actions, the MDL

docket number shall be followed only by the notation "ALL CASES." If the filing does not relate to all of these actions, the individual docket numbers assigned by the Clerk of this Court (as listed in **Schedule A** hereto and updated on the Court's web site) to those actions to which the filing relates shall also be listed. An abbreviated caption for each of those actions may be listed opposite its docket number. Docket numbers assigned by transferor courts shall not be used in filings with this Court. Any filing should be done in the master file, 2:11-md-2226-DCR, and in the relevant individual cases as well. All pleadings and submissions in these actions shall be electronically filed in both the master docket and in the individual case docket(s) to which the filing pertains. Electronically filing in the master file will present the option to spread the entry to any individual case(s).<sup>1</sup>

(3) Any document which is to be filed in any of these actions shall be filed with the Clerk of this Court and not with the transferor district court.

(4) Counsel who appeared in the transferor district court prior to the transfer need not enter a separate appearance before this Court. Nonresident attorneys in any of these actions will not be required to apply for permission to appear or obtain local counsel in this district, and the requirements of Local Rules 83.1 and 83.2 of this Court are waived as to any attorney appearing in these actions who is duly admitted to practice before any United States District Court.

(5) All attorneys must be registered with this Court's Case Management/Electronic Case Filing (CM/ECF) system no later than **20 days** from the date of entry of this Order, absent application to the Court for relief from this requirement, and all filings in these actions must be

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<sup>1</sup> Filers with questions regarding procedures for electronic filing in the Eastern District of Kentucky are directed to call the ECF Help Desk at (866) 485-6349.

made electronically via the CM/ECF system. The CM/ECF registration form can be found on the Court's web site at <http://www.kyed.uscourts.gov/MDL/mdl.php>. The login and password issued by the Eastern District of Kentucky upon such registration will be used only for the purpose of filing documents in the Darvocet, Darvon, and Propoxyphene Products Liability Litigation and related cases. Said login and password are not to be used to file documents in any other case in the Eastern District of Kentucky unless the attorney is admitted or becomes admitted to practice in this district pursuant to Local Rule 83.1.

(6) All filings shall be served electronically on each of the attorneys on the attorney service list attached hereto as **Schedule B** and continually revised on the Court's web site. A distribution list should not be included on documents filed in this Court; rather, a certificate of service stating that all attorneys appearing on the attorney service list were served is sufficient. Any attorney who wishes to have his or her name added to or deleted from the attorney service list may do so upon request to the Clerk of this Court with notice to all other persons on such service list, provided, however, that at least one counsel for each party separately represented must remain on the list.<sup>2</sup> Service shall be deemed sufficient if made upon all attorneys on the attorney service list. That list will be updated as counsel enter appearances, as tag-along cases are transferred to this Court, and, in particular, after the initial conference on September 26, 2011.

(7) Any document filed in any of these actions which is substantially identical to any other document filed in another of these actions shall be sufficient if it incorporates by reference

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<sup>2</sup> This requirement in no way amends the duties and requirements of counsel under Local Rule 83.6 with regard to the withdrawal of counsel.

the document to which it is substantially identical. Where counsel for multiple parties plan to file substantially identical documents, they shall join in the submission of such documents and shall file only one document on behalf of all the parties so joined.

(8) The Court will be guided by the *Manual for Complex Litigation, Fourth*, approved by the Judicial Conference of the United States. Counsel are directed to familiarize themselves with that publication. The Court wishes to express clearly its expectations that professionalism, courtesy, and civility will endure throughout these proceedings. Section 10.21 of the *Manual for Complex Litigation, Fourth* captures the spirit in these terms:

The added demands and burdens of complex litigation place a premium on attorney professionalism, and the judge should encourage counsel to act responsibly. The certification requirements of Federal Rules of Civil Procedure 11 and 26(g) reflect some of the attorneys' obligations as officers of the court.

Because of the high level of competence and experience that attorneys ordinarily bring to this type of litigation, the Court is confident that this objective will be achieved without judicial intervention.

(9) Hearings shall not be held on any motions filed except by order of the Court and upon such notice as the Court may direct. Pending motions in any of the actions transferred to this Court shall be electronically re-filed using the procedures outlined in paragraph 6 of this Order.

(10) Any orders, including protective orders, previously entered by any transferor district court shall remain in full force and effect unless modified by this Court upon application.

(11) All discovery proceedings in these actions, other than discovery previously scheduled by agreement of counsel, are stayed until further order of this Court, and the time

requirements to perform any acts or file any papers pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure are tolled until a discovery schedule is established in this consolidated action.

(12) The Clerk is directed to serve this Order to counsel of record in the above cases and counsel in any additional case that may be filed, removed, or transferred to the Court in this matter.

This 30<sup>th</sup> day of August, 2011.



**Signed By:**

**Danny C. Reeves** DCR

**United States District Judge**