

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

In re: Allergan Biocell Textured Breast
Implant Product Liability Litigation

MDL No. 02921
Case No. 2:19-md-02921 (BRM) (JAD)

This Document Relates to:
All Cases

**AMENDED CASE MANAGEMENT ORDER # 6
(Direct Filing)**

I. SCOPE OF THE ORDER

This Order shall govern: (1) cases transferred to this Court by the Judicial Panel on Multidistrict Litigation, pursuant to its Order of December 18, 2019; (2) any tag-along actions subsequently transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to Rule 7.1 of the Rules of Procedure of that Panel; and (3) all related cases originally filed in this Court or transferred or removed to this Court.

This Order only applies to cases brought by United States citizens or residents who presently or previously had Allergan Biocell® textured breast implants or tissue expanders that were implanted in the United States and who assert claims related to Breast Implant Associated Anaplastic Large Cell Lymphoma (“BIA-ALCL” or “BIA-ALCL Cases”).

II. DIRECT FILING OF CASES INTO MDL 2921

A. Direct Filing. To eliminate delays associated with transfer of cases filed in or removed from other federal district courts to this Court, and to promote judicial efficiency, any Plaintiff whose case would be subject to transfer to MDL 2921 may elect to file his or her case directly in MDL 2921 in the District of New Jersey. Any complaint that is filed directly in the District of New Jersey pursuant to this Order shall be filed as a new civil action through the Court’s electronic filing system. At the time of filing, the complaint shall bear the caption set forth in

Section I below and come with a civil cover sheet. The civil cover sheet shall specify under the “Related Case(s)” section that this case relates to MDL 2921. Once the case is filed, it shall be assigned an individual civil case number. After review by the Clerk of Court’s office, the case will be automatically consolidated in MDL 2921.

B. Designation in Complaint. For cases directly filed in the MDL pursuant to this Order, the Complaint must utilize the caption set forth in Section I below and include: (1) a statement indicating that it is being filed in accordance with Case Management Order No. 6, and (2) a designation of venue that will be the presumptive place of remand absent a showing by the Plaintiff or Defendants that the place of remand should be elsewhere based upon good cause pursuant to Section E below. For any case filed in the District of New Jersey before entry of this Order, to be considered a direct-filed case pursuant to this Order, the Plaintiff(s) must file within forty-five (45) days of entry of this Order a “Notice of Direct Filed Action Pursuant to Case Management Order No. 6” that includes a designation of venue, which will be the presumptive place of remand absent a showing by the Plaintiff or Defendants that the place of remand should be elsewhere based upon good cause pursuant to Section E below.

C. Pretrial Proceedings Only; No *Lexecon* Waiver. Each case filed directly in MDL 2921 that emanates from a district court outside the District of New Jersey will be filed in MDL 2921 for pretrial proceedings only, consistent with the Judicial Panel on Multidistrict Litigation’s December 18, 2019 Transfer Order. Plaintiffs and Defendants’ agreement to this Order does not constitute a waiver under *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), by either party.

D. No Concession as to Jurisdiction or Proper Venue. The inclusion of any action in MDL 2921, whether such action was or will be filed originally or directly in the District of New

Jersey, shall not constitute a determination by this Court that venue is proper in this District or that the Court has personal jurisdiction over any named party. Defendants' agreement to this direct filing order shall not constitute an appearance by or for any Defendant not properly served and/or not subject to personal jurisdiction. Nothing in this Order shall be construed as a waiver of personal jurisdiction by any named Defendant.

E. Transfer for Trial to Federal District Court of Proper Venue. Upon completion of all pretrial proceedings applicable to a case directly before this Court in MDL 2921 pursuant to this Order, this Court, pursuant to 28 U.S.C. § 1404(a), will transfer each case to the federal district court in the district of proper venue as defined by 28 U.S.C. § 1391, based on the district that the Plaintiff(s) designate(s) in his/her direct filed Complaint, in the manner set forth in Section J below. This designated venue will be the presumptive place of remand, absent a showing by the Plaintiff or Defendants that the place of remand should be elsewhere based upon good cause and pursuant to applicable law. Further, the parties may agree to a place of remand different than what the Plaintiff so designates. 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 District of New Jersey.

F. Choice of Law. Filing a case directly in MDL 2921 pursuant to this Order will not determine the choice of law, including the statute of limitations. Any choice of law principles will be decided at a later date.

G. Statute of Limitations. All Defendants stipulate and agree that the filing of a Complaint directly in MDL 2921 pursuant to this Order shall stop the running of any statute of limitations, statute of repose, or prescriptive or preemptive period as if the Complaint had been filed in an appropriate venue.

H. Motions to Dismiss. Defendants reserve all rights to move to dismiss under Rule

12 or Rule 9 any and all causes of action in any Direct Filed Complaint following discovery in these cases.

I. Caption. The caption for any Complaint that is directly filed in MDL 2921 before this Court shall bear the following caption:

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY

IN RE: ALLERGAN BIOCELL TEXTURED
BREAST IMPLANT PRODUCTS LIABILITY
LITIGATION

Plaintiff

v.

Defendants.

Case No. 2:19-md-02921 (BRM) (JAD)
MDL NO. 2921

JUDGE BRIAN R. MARTINOTTI
JUDGE JOSEPH A. DICKSON

DIRECT FILED COMPLAINT
PURSUANT TO CASE MANAGEMENT
ORDER NO. 6

Civil Action No:

J. Filing Under this Order: When utilizing and invoking this Order to file a case directly in this MDL, Plaintiff shall assert the following leading paragraph:

Plaintiff(s) file this Complaint pursuant to CMO No. 6, and are to be bound by the rights, protections, privileges, and obligations of that CMO. In accordance with CMO No. 6, Plaintiff(s) hereby designate the United States District Court for the _____ as the place of remand as this case may have originally been filed there.

K. Signature Block. When electronically filing the pleadings, the signature block shall follow the below format:

RESPECTFULLY SUBMITTED,

/s/ Plaintiff's Counsel's Name

NAME OF LAW FIRM

ADDRESS

TELEPHONE

FACSIMILE

EMAIL@EMAIL.com

Bar Identification No.:

Attorney for Plaintiff(s)

L. Filing Fees. Internet credit card payments shall be required for all Complaints and made online through Pay.gov. Plaintiff's counsel will be prompted to pay the required filing fee at the time of the filing of the Complaint. Information regarding filing fees can be found at **<http://www.njd.uscourts.gov/sites/njd/files/efile.complaint.removal.appeal.pdf>**.

Date: August 19, 2020



HON. BRIAN R. MARTINOTTI
UNITED STATES DISTRICT JUDGE