

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

IN RE: TASIGNA (NILOTINIB)
PRODUCTS LIABILITY LITIGATION

Case No. 6:21-md-3006-RBD-DAB
(MDL No. 3006)

This document relates to all actions.

PRETRIAL ORDER NO. 1

By Order of the Judicial Panel on Multidistrict Litigation, the actions listed in Exhibit A were transferred to this District and assigned to this Court—or, if already pending within this District, this Court has accepted transfer—for centralized pretrial proceedings pursuant to [28 U.S.C. § 1407](#). (See [Doc. 1](#).) Because these cases merit special attention as complex litigation, it is **ORDERED AND ADJUDGED:**

I. Consolidation

These actions are **CONSOLIDATED** into one action for all pretrial purposes, pursuant to [Federal Rule of Civil Procedure 42\(a\)](#). This Order governs all actions entered in MDL No. 3006, regardless of whether that case was part of MDL No. 3006 when this Order was entered.¹

All filings made in this consolidated action shall bear the same caption as

¹ Any new cases not in the list attached as Exhibit A shall first be filed in their home district and then transferred into this action.

this Order. If the filing is generally applicable to all actions, the caption shall include the notation, "This document relates to all actions," and the Clerk shall docket the document only in the lead case. If a filing relates only to a particular case, the caption shall include the notation, "This document relates to Member Case [Case No.]," and the Clerk shall docket the document in both the lead case and the member case.

II. Status Conferences

The initial status conference for this consolidated action shall take place on **Tuesday, September 28, 2021, at 10:00 a.m.**, in Courtroom 4A in the Orlando Courthouse, 401 West Central Boulevard, Orlando, Florida. Thereafter, status conferences will be held on a monthly basis or as otherwise directed by the Court.²

All counsel of record are required to attend the initial status conference in person.³ Counsel of parties with similar interests may (but are not required to) agree on a lawyer or group of lawyers to act on their joint behalf at the initial status conference without waiving their right to make a later appearance. After the initial status conference, all counsel are not required to attend subsequent status conferences but may be represented by lead and liaison counsel unless otherwise ordered.

² Notices with dates and times for future conferences will be entered separately.

³ The Court may, in its discretion, set future status conferences via Zoom videoconference.

This Order is provided to all counsel of record on the dockets of the MDL and the member cases. Counsel of record are **DIRECTED** to send a copy of this Order to any other counsel whom they believe should be notified of the initial status conference but are not yet counsel of record. Any party or non-party with an interest in these proceedings, either in the MDL or in other state or federal court litigation, is also invited to attend the initial status conference.

The agenda for the initial status conference is: (1) appointment of lead and liaison counsel; (2) briefing the Court on the current status of each member case; and (3) preliminary discussion of a discovery plan for the consolidated case. The Court **DESIGNATES** Melanie H. Muhlstock, Esq. of Parker Waichman LLP for Plaintiffs and Kelly Jones Howell, Esq. of Harris Beach PLLC for Defendant to arrange the initial conferral among counsel to prepare the submissions and coordinate discussion of the agenda for the initial status conference. These designations are meant to facilitate the initial status conference only and do not constitute a designation of any future leadership role in the case.

As to future status conferences, lead and liaison counsel are **DIRECTED** to meet and confer at least two weeks prior to each future status conference to agree on a proposed conference agenda, which they shall submit to the Court at least five days prior to the conference. The proposed conference agenda shall state whether the issues to be discussed are primarily discovery-related, dispositive, or

otherwise.⁴

III. Counsel

Attorneys admitted to practice and in good standing of the Bar of any U.S. District Court shall be admitted to practice in this litigation upon the filing of a Notice of Appearance in both the lead case and each member case in which they seek to appear. Counsel shall maintain an updated email address so as to receive copies of all filings in this litigation via CM/ECF. The Court waives any *pro hac vice* admission fees associated with this action.

Counsel are **DIRECTED** to familiarize themselves with this District's Local Rules. Counsel are particularly reminded of the meet-and-confer requirement of Local Rule 3.01(g).⁵

⁴ If lead and liaison counsel determine that there are no issues for discussion, the proposed agenda shall include that information; the Court may choose to cancel the monthly conference only as it deems necessary.

⁵ This rule provides:

(1) *Duty*. Before filing a motion in a civil action, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, or to certify a class, the movant must confer with the opposing party in a good faith effort to resolve the motion.

(2) *Certification*. At the end of the motion and under the heading "Local Rule 3.01(g) Certification," the movant:

- (A) must certify that the movant has conferred with the opposing party,
- (B) must state whether the parties agree on the resolution of all or part of the motion, and
- (C) if the motion is opposed, must explain the means by which the conference occurred.

(3) *Unavailability*. If the opposing party is unavailable before the motion's filing, the movant after filing must try diligently for three days to contact the opposing party. Promptly after

The first item on the agenda for the initial status conference will be the appointment of lead and liaison counsel. Lead counsel is “[c]harged with formulating (in consultation with other counsel) and presenting positions on substantive and procedural issues during the litigation.” *See* Manual for Complex Litigation § 10.221 at 25 (Fed. Jud. Ctr. 4th ed. 2004). Liaison counsel is “[c]harged with essentially administrative matters, such as communications between the court and other counsel (including receiving and distributing notices, orders, motions, and briefs on behalf of the group), convening meetings of counsel, advising parties of developments, and otherwise assisting in the coordination of activities and positions.” *See id.* at 24. Specific functions for lead and liaison counsel will be discussed at the initial status conference.

By **Tuesday, September 14, 2021**, interested counsel are **DIRECTED** to submit applications for lead and liaison counsel. Applications should detail counsel’s expertise and experience that brings value to the position, any prior work in multidistrict litigation, the depth of their familiarity with the facts and

either contact or expiration of the three days, the movant must supplement the motion with a statement certifying whether the parties have resolved all or part of the motion. Failure to timely supplement can result in denial of the motion without prejudice. The purposeful evasion of a communication under this rule can result in a sanction.

See Local Rule 3.01(g). To properly “confer” means to “speak to each other in person or by telephone.” *Davis v. Apfel*, No. 6:98-cv-651, [2000 WL 1658575](#), at *2 n.1 (M.D. Fla. Aug. 14, 2000). Letters and emails do not suffice if a motion is opposed. *See, e.g., Broughton v. City of Jacksonville*, No. 3:06-cv-234, [2007 WL 2964174](#), at *2 (M.D. Fla. Oct. 10, 2007).

circumstances of their member case and the litigation as a whole, the extent of their involvement in this case, the size of their firm, their ability to take on the leadership role to the extent it may marginalize their other workload, and their availability and preparedness to appear in person at each status conference and other hearings in this case.

Also by **Tuesday, September 14, 2021**, counsel are **DIRECTED** to meet and confer and file a joint notice advising the Court whether they have come to a consensus regarding the appointment of lead and liaison counsel. Even if the proposed slate is agreed, interested counsel must still submit the required applications. The Court is not bound by the parties' agreement and may appoint any lead and liaison counsel it chooses.

IV. Current Status & Discovery Plan

The second item on the agenda for the initial status conference will be a discussion of the current status of each member case, and the third item will be a preliminary discussion of the overall discovery plan for this consolidated case. By **Tuesday, September 14, 2021**, each party is **DIRECTED** to submit a brief of no more than five pages in each member case outlining their view of:

1. The primary factual allegations, claims, and defenses involved in the litigation, including highlighting any pertinent legal and factual background, common issues to the MDL, unique issues specific to the particular member case (including any health issues relevant to the particular plaintiff), and any other substantive, procedural, or evidentiary issues that will affect the case, such as jurisdictional,

- choice-of-law, damages, statute of limitations, or otherwise unusual issues;
2. The status of the pleadings to date, including whether amended or consolidated pleadings would be useful;
 3. The status of all discovery to date and the necessity of further discovery, including the scope of further proposed discovery, any potential problems with discovery, the use of ESI in the case (including any ESI protocols into which the parties have entered or propose to enter, as well as the estimated volume of ESI discovery), and any trade secrets or other unusual information that may need special protection during discovery;
 4. The status of motions, decisions, and other important events in the litigation to date, including any motions that were denied without prejudice subject to renewal;
 5. A complete list of all related state court proceedings, identifying the case number, the filing date, the assigned judge, and counsel of record, and providing a brief summary of each related state court case;
 6. Suggested methods or procedures for coordinating the federal MDL with the pending state court cases or other areas of overlap or potential efficiencies to bring to this Court's attention;
 7. Whether mediation or other alternative dispute resolution is likely to be productive and whether any efforts at resolution have been made to date;
 8. Whether a scientific presentation or technological tutorial related to the product in question is likely to be of any benefit to the Court;
 9. Whether the parties recommend the appointment of a special master, and if so, for what purposes; and
 10. Any other relevant information.

These briefs are not binding, will not waive any claims or defenses, and may not be referenced or offered in evidence against any party in later proceedings.

The briefs are simply meant to assist the Court with an overview of the litigation.

V. Stay

All of these actions are **STAYED** in all respects pending entry of further Orders of this Court. To the extent that there are existing deadlines, those

deadlines are **STAYED** pending further determination.

All motions pending as of the date of this Order are **DENIED WITHOUT PREJUDICE**. Parties seeking relief should renew any motions by refileing them in the individual member cases or in the lead case as appropriate.

IT IS SO ORDERED.

DONE AND ORDERED in Chambers in Orlando, Florida, on August 31, 2021.




ROY B. DALTON JR.
United States District Judge

EXHIBIT A

**IN RE: TASIGNA (NILETINIB) PRODUCTS
LIABILITY LITIGATION**

MDL No. 3006

SCHEDULE A

Western District of Arkansas

BURKE v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 2:20-02032

District of Connecticut

COLELLA v. NOVARTIS PHARMACEUTICALS CORP, C.A. No. 3:20-00367

Middle District of Florida

TONGE v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 2:20-00168

GIANCASPRO v. NOVARTIS PHARMACEUTICALS CORPORATION,

C.A. No. 3:20-00346

MERCED, ET AL. v. NOVARTIS PHARMACEUTICALS CORPORATION,

C.A. No. 8:20-00587

Southern District of Illinois

GARLAND v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 3:20-00269

District of Maryland

WITT v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 1:20-01249

District of New Jersey

GUSTIN, ET AL. v. NOVARTIS PHARMACEUTICALS CORPORATION,

C.A. No. 2:20-02753

DEAN v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 2:20-02755

District of New Mexico

HURD v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 2:20-00262

Southern District of New York

LALLY v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 1:20-02359

-A2-

Middle District of North Carolina

DAVIS v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 1:20-01127

District of North Dakota

POITRA v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 3:20-00123

ISAACSON v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 3:21-00057

Western District of Washington

CRAIG v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 2:20-01641

PEDERSON v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 3:20-05216

BECKER v. NOVARTIS PHARMACEUTICALS CORPORATION, C.A. No. 3:20-05221

Eastern District of Wisconsin

SCHIMMING, ET AL. v. NOVARTIS PHARMACEUTICALS CORPORATION,
C.A. No. 2:21-00135