

40.1 Order Setting Initial Conference

UNITED STATES DISTRICT COURT
 DISTRICT OF _____

In re:)	Master File No. _____ ¹
)	
_____ ² LITIGATION)	
)	This Document Relates To:
)	[All Cases]

Order No. _____³

*Preamble.*⁴ The court wishes to express clearly its expectation that professionalism, courtesy, and civility will endure throughout these proceedings. The *Manual for Complex Litigation, Fourth* at section 10.21 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.

It appearing that [the above styled case(s)] [the cases listed on Attachment _____] may merit special attention as complex litigation, the court ORDERS:

1. *Initial Conference.* All parties shall appear for a conference with the undersigned on the ____ day of ____ [date] _____, at ____ a.m./p.m. in [Court]room _____, United States Courthouse _____.
- (a) *Attendance.* To minimize costs and facilitate a manageable conference, parties are not required to attend the conference, and parties with similar interests are expected to agree to the extent practicable on a single attorney to act on their joint behalf at the conference. A party will not, by designating an attorney to represent its interests at the conference, be precluded from other representation during the litigation; and attendance at the conference will not waive objections to jurisdiction, venue, or service.⁵
- (b) *Service List.* This order is being mailed to the persons shown on Attachment _____, which has been prepared from the list of counsel making appearances with the Judicial Panel on Multidistrict Litigation. Counsel on this list are requested to forward a copy of the order to other attorneys who should be

notified of the conference. A corrected service list will be prepared after the conference.

- (c) *Other Participants.* Persons who are not named as parties in this litigation but may later be joined as parties or are parties in related litigation pending in other federal and state courts are invited to attend in person or by counsel.
2. *Purposes and Agenda.* The conference will be held for the purposes specified in Fed. R. Civ. P. 16(a), 16(b), 16(c), and 26(f) and subject to the sanctions prescribed in Rule 16(f). A tentative agenda is appended as Attachment ____.⁶ Counsel are encouraged to advise the court as soon as possible of any items that should be added to the agenda.
3. *Preparations for Conference*
 - (a) *Procedures for Complex Litigation.* Counsel are expected to familiarize themselves with the *Manual for Complex Litigation, Fourth* and be prepared at the conference to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation.
 - (b) *Initial Conference of Counsel.* Before the conference, counsel shall confer and seek consensus to the extent possible with respect to the items on the agenda, including a proposed discovery plan under Rule 26(f) and a suggested schedule under Rule 16(b) for joinder of parties, amendment of pleadings, consideration of any class action allegations, motions, and trial. [The court designates _____ and _____ to arrange the initial meetings of plaintiffs' and defendants' counsel, respectively.]⁷
 - (c) *Preliminary Reports.* Counsel will submit to the court by ____ [date] ____, a brief written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the clerk, will not be binding, will not waive claims or defenses, and may not be offered into evidence against a party in later proceedings.
 - (d) *List of Affiliated Companies and Counsel.* To assist the court in identifying any problems of recusal or disqualification, counsel will submit to the court by ____ [date] ____, a list of all companies affiliated with the parties and all counsel associated in the litigation.
 - (e) *List of Pending Motions.* Counsel's statement shall list all pending motions.
 - (f) *List of Related Cases.* Counsel's statement shall list all related cases pending in state or federal court and their current status, to the extent known.
4. *Interim Measures.* Until otherwise ordered by the court:
 - (a) *Admission of Counsel.* Attorneys admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation. Association of local cocounsel is not required.
 - (b) *Pleadings.* Each defendant is granted an extension of time for responding by motion or answer to the complaint(s) until a date to be set at the conference.

- (c) *Pending and New Discovery.* Pending the conference, all outstanding disclosure and discovery proceedings are stayed and no further discovery shall be initiated. This order does not (1) preclude voluntary informal discovery regarding the identification and location of relevant documents and witnesses; (2) preclude parties from stipulating to the conduct of a deposition that has already been scheduled; (3) prevent a party from voluntarily making disclosures, responding to an outstanding discovery request under Federal Rule of Civil Procedure 33, 34, or 36; or (4) authorize a party to suspend its efforts in gathering information needed to respond to a request under Rule 33, 34, or 36. Relief from this stay may be granted for good cause shown, such as the ill health of a proposed deponent.
- (d) *Preservation of Records.* [See section 40.25.]
- (e) *Motions.* No motion shall be filed under Rule 11, 12, or 56 without leave of court and unless it includes a certificate that the movant has conferred with opposing counsel in a good-faith effort to resolve the matter without court action.
- [(f) *Orders of Transferor Courts.* All orders by transferor courts imposing dates for pleading or discovery are vacated.]
5. *Later Filed Cases.* This order shall also apply to related cases later filed in, removed to, or transferred to this court.
6. *Applications for Lead and Liaison Counsel Appointments.* The court intends to appoint plaintiffs' lead counsel and/or a plaintiffs' steering committee, as well as plaintiffs' liaison counsel. Applications for these positions must be filed with the clerk's office on or before [insert date in advance of initial pretrial conference] . The court will only consider attorneys who have filed a civil action in this litigation. The main criteria for these 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.]
7. *Other Provisions.* [Include any special instructions, such as procedures for presenting emergency matters prior to conference.]

Dated: _____

United States District Judge

Attachments⁸

Notes:

1. In its order establishing a master case file—a decision that is frequently deferred until the initial conference—the court should include provisions such as those contained in *infra* section 40.21, ¶ 1, and specify a master file number. The multidistrict litigation (MDL) number is used

if the litigation includes cases transferred under 28 U.S.C. § 1407. Documents that apply generally to all constituent cases are so identified; those that apply only to particular cases should specify in their captions or by a separate list the style of case or case number that they apply to.

2. Courts frequently assign multiple litigation a descriptive name, both to serve as an abbreviated caption in orders, pleadings, and other documents, and to minimize confusion if parties are changed or cases are dismissed. In multidistrict proceedings under 28 U.S.C. § 1407, the name given by the Judicial Panel on Multidistrict Litigation is used.

3. If many orders may be entered during the litigation, the court should number its major orders sequentially for convenient reference. An explanatory description of the nature of the order is often added in parentheses. Transcripts of conferences at which rulings are made should be included in the numerical sequence if no separate order incorporating these rulings will be prepared.

4. The court may wish to use these or similar words to set a tone for the litigation. *Supra* section 10.21 may provide further ideas along these lines.

5. In some cases the court may decide that the parties themselves should attend the conference with their counsel. *See supra* section 11.23.

6. As an alternative, the clause might read, “The items listed in the *MCL 4th*, section 11.21, shall, to the extent applicable, constitute a tentative agenda.”

7. Designation of attorneys to organize these initial meetings may be useful both to fix responsibility and to reduce early factionalism among those interested in becoming lead or liaison counsel. The attorneys designated by the court need not be persons who would be considered for appointment as lead or liaison counsel.

8. For ease of drafting, as well as reference, append lists and lengthy directives (e.g., a protective order for confidential documents) as attachments rather than include them within the body of an order. Sample orders and other materials from the *MCL 4th* may be incorporated by reference.