

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SAN FRANCISCO HEALTH PLAN,
individually and on behalf of the State of
California and on behalf of a class of political
subdivisions in the State of California, and
THE PEOPLE OF THE STATE OF
CALIFORNIA, acting by and through San
Francisco City Attorney Dennis J. Herrera,

Plaintiffs,

v.

McKESSON CORPORATION, a Delaware
corporation,

Defendant.

Civil Action: 1:08-CV-10843-PBS

Judge Patti B. Saris

STATE OF CONNECTICUT,

Plaintiff,

v.

McKESSON CORPORATION, a Delaware
corporation,

Defendant.

Civil Action: 1:08-CV-10900-PBS

Judge Patti B. Saris

THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS; THE STATE OF OKLAHOMA; THE STATE OF MONTANA CITY OF BALTIMORE, MARYLAND; CITY OF PANAMA CITY, FLORIDA; ANOKA COUNTY, MINNESOTA; CITY OF COLUMBIA, SOUTH CAROLINA; and CITY OF GOLDSBORO, NORTH CAROLINA; on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

McKESSON CORPORATION and FIRST DATABANK, INC.,

Defendants.

Civil Action: 1:08-CV-11349-PBS

Judge Patti B. Saris

[REVISED PROPOSED] CASE MANAGEMENT ORDER NO. 1

I. INTRODUCTION

- a. Pending before this Court are numerous actions brought against defendant McKesson Corporation by several governmental entities alleging, among other things, that McKesson and First DataBank engaged in an unlawful scheme to inflate Average Wholesale Prices (“AWPs”) for certain drugs (collectively the “Public Payor Cases”);
- b. The parties and the Court believe that there exists a sufficient constellation of common issues such that the Public Payor Cases should be coordinated for purposes of pre-trial proceedings, which will facilitate the management of the cases in an expeditious and efficient manner and preserve judicial resources; and
- c. In order to promote judicial economy and avoid duplication, the Court finds that it is appropriate to provide procedures for the coordination of the Public Payor Cases.
- Accordingly,

IT IS HEREBY ORDERED as follows:

II. CONSOLIDATION AND COORDINATION

1. Public Payor Cases other than the two Individual State Public Payor Cases set forth in section II.2. below will be coordinated and/or consolidated for pre-trial purposes and bear the existing Case Number 1:08-CV-11349-PBS. The named Plaintiffs for the Public Payor Cases are: THE STATE OF OKLAHOMA; THE STATE OF MONTANA; THE BOARD OF COUNTY COMMISSIONERS OF DOUGLAS COUNTY, KANSAS; CITY OF BALTIMORE, MARYLAND; CITY OF PANAMA CITY, FLORIDA; ANOKA COUNTY, MINNESOTA; CITY OF COLUMBIA, SOUTH CAROLINA; and CITY OF GOLDSBORO, NORTH CAROLINA.

2. The following “Individual State Public Payor Cases” will not be consolidated and will proceed separately under distinct Case Numbers as follows:¹

Caption	Case Number
SAN FRANCISCO HEALTH PLAN, individually and on behalf of the State of California and on behalf of a class of political subdivisions in the State of California, and THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through San Francisco City Attorney Dennis J. Herrera v. McKESSON CORPORATION, a Delaware corporation.	Civil Action: 1:08-CV-10843-PBS
STATE OF CONNECTICUT v. MCKESSON CORPORATION, a Delaware corporation.	Civil Action: 1:08-CV-10900-PBS

3. Although the Individual State Public Payor Cases will not be consolidated, they will be coordinated with the other Public Payor Cases as set forth further in this Order.

¹ Even though the San Francisco Health Plan brings claims for damages allegedly incurred by the San Francisco Health Plan itself, in addition to claims on behalf of the State of California and a class of political subdivisions within the state, for convenience the Court includes the Plan in the phrase “Individual State Public Payor Cases.”

III. MASTER DOCKET, MASTER FILE, AND SEPARATE ACTION DOCKETS

4. A Master Docket and a Master File are hereby established for these actions.

5. Separate dockets will be maintained for each of the three cases currently pending, and entries shall be made therein in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order or a future order of this Court.

6. When a pleading or other court paper is filed and the caption, pursuant to paragraph nine *infra*, shows that it is to apply to “All Actions,” the Clerk shall file such pleading or other court paper in the Master File and note such filing in the Master Docket. No further copies need be filed nor docket entries made.

7. When a pleading or other court paper is filed and the caption, pursuant to paragraph nine *infra*, shows that it applies to fewer than all actions before this Court, the Clerk need file such pleading or other court paper only in the Master File, but nonetheless shall note such filing in both the Master Docket and in the docket of each such action.

IV. CAPTION OF CASES

8. Every pleading filed in this proceeding or in any separate action included herein shall bear the following caption:

IN RE MCKESSON GOVERNMENTAL
ENTITIES AVERAGE WHOLESALE PRICE
LITIGATION

Master File No.: 1:08-CV-10843-PBS

Judge Patti B. Saris

THIS DOCUMENT RELATES TO:

9. The party filing a pleading or other paper intended to apply to all actions shall place the words “All Actions” immediately after the words “THIS DOCUMENT RELATES

TO” in the caption set out above. When a pleading or other court paper is intended to apply only to one, or some, but not all of these actions, the party filing the document shall indicate the action(s) to which the document is intended to apply by indicating the name of the first named plaintiff and the docket number(s).

V. ORGANIZATION OF PLAINTIFFS’ COUNSEL

10. The Court designates the following firms – referred to as “Co-Lead Counsel” – to act on behalf of all Plaintiffs in the Public Payor Cases (excluding the Individual State Public Payor Cases) with responsibilities as hereinafter described:

Steve W. Berman
Hagens Berman Sobol Shapiro LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

James L. Ward, Jr.
Richardson, Patrick, Westbrook & Brickman, LLC
P.O. Box 1007
Mt. Pleasant, SC 29465

11. Co-Lead Counsel shall have the authority and responsibility for the day-to-day management of the interests of the Plaintiffs in the Public Payor Cases (excluding the Individual State Public Payor Cases), and shall call meetings and otherwise manage the work of all other firms.

12. Co-Lead Counsel shall have sole authority over the following matters on behalf of the Public Payor Plaintiffs (excluding the Individual State Public Payor Cases), unless that authority is expressly delegated to another firm: (a) the initiation, response, scheduling, briefing, and argument of all motions; (b) the scope, order, and conduct of all discovery proceedings; (c) such work assignments to Plaintiffs’ Executive Committee and other Plaintiffs’ counsel as they may deem appropriate; (d) the retention of experts; (e) the designation of which attorneys may appear at hearings and conferences with the Court; (f) the timing and substance of any settlement negotiations with Defendant; and (g) other major matters concerning the prosecution or

resolution of the Actions. Co-Lead Counsel shall have responsibility for major decisions on behalf of Plaintiffs' counsel regarding the overall prosecution of the Public Payor Cases.

13. No motion shall be initiated or filed on behalf of any Public Payor Plaintiff except through Co-Lead Counsel.

14. Co-Lead Counsel shall have sole authority to communicate with Defendant's counsel and the Court on behalf of all Public Payor Plaintiffs (excluding the Individual State Public Payor Cases), unless that authority is expressly delegated to other counsel. Defendant's counsel may rely on all agreements made with Co-Lead Counsel, and such agreements shall be binding on all other class Plaintiffs' counsel in their respective cases (excluding the Individual State Public Payor Cases).

15. The Court designates the following firms as members of Plaintiffs' Executive Committee:

R. Bryant McCulley
Stuart H. McCluer
McCulley McCluer PLLC
One Independent Drive, Suite 3201
Jacksonville, FL 32202

Daniel Kotchen
Daniel Low
Kotchen & Low LLP
2300 M. St., NW, Suite 800
Washington, DC 20037

The Executive Committee shall assist in the prosecution of the Public Payor Cases (excluding the Individual State Public Payor Cases) under the direction of Co-Lead Counsel and shall perform such other duties as Co-Lead counsel deem necessary.

16. Defendant shall effect service of papers on the Public Payor Plaintiffs by serving a copy of the paper electronically on Co-Lead Counsel and the Executive Committee.

VI. COORDINATION OF DISCOVERY

19. The parties are encouraged to craft a discovery plan that avoids duplication and burden on the parties and specifies procedures for coordinating discovery among the cases.

VII. PRESERVATION OF COMMON INTEREST PRIVILEGE

20. The Court recognizes that the cooperation among counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among Plaintiffs' counsel and among Defendant's counsel shall not be deemed a waiver of the attorney-client privilege or the work product doctrine, and no such communication shall be used against any Plaintiff by any Defendant or against any Defendant by any Plaintiff. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

DONE this 13 day of March, 2009.



HONORABLE PATTI B. SARIS
United States District Court