

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION



**IN RE: ABBOTT LABORATORIES, ET  
AL., PRETERM INFANT NUTRITION  
PRODUCTS LIABILITY LITIGATION**

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**This Document Relates to:**

**ALL ACTIONS**

**Case No. 1:22-cv-00071**

**CASE MANAGEMENT ORDER NO. 11  
DIRECT FILING ORDER**

**Judge Rebecca R. Pallmeyer**

**CASE MANAGEMENT ORDER NO. 11**

**I. Scope of Order**

This Order shall govern all actions in the above-captioned MDL proceeding (MDL No. 3026) that are directly filed in this District against Mead Johnson & Company, LLC and/or Mead Johnson Nutrition Company (“the Mead Johnson Defendants”), either individually or in cases filed jointly against the Mead Johnson Defendants and Abbott Laboratories, after the date of this Order. For purposes of this Order, “the Parties” shall include only the Plaintiffs and the Mead Johnson Defendants, not Abbott Laboratories.

**A. Direct Filing of Actions into the MDL:** To eliminate potential delays associated with transfer to this Court of actions filed in or removed from other federal district courts, and to promote judicial efficiency, any Plaintiff whose action qualifies for transfer to the MDL may, subject to the provisions set forth below, file his or her action against one or both of the Mead Johnson Defendants directly in this District as a member case of the MDL. Nothing in this Order prohibits (1) any plaintiff from filing a complaint in another court of proper venue and jurisdiction, (2) any plaintiff or the Mead Johnson Defendants from filing a notice of tag-along action to the JPML, or (3) any plaintiff or the Mead Johnson Defendants from objecting to a conditional transfer

order with the JPML. Moreover, as set forth in the JPML's April 8, 2022 Transfer Order, plaintiffs seeking to directly file cases into this MDL may only do so for cases in which plaintiffs contend that cow's-milk-based preterm infant formula products caused necrotizing enterocolitis in premature babies. *See* MDL No. 3026, ECF No. 119, Apr. 8, 2022.

Cases filed directly in this MDL pursuant to this Order shall not name more than a single plaintiff in each directly filed case, provided, however, that any case may include consortium plaintiff(s), as permitted by law, or the appropriate representative(s) of an Estate or Incapacitated Plaintiff.

Should the volume of cases being filed present an undue burden on the Parties or the Court, the Parties reserve the right to approach the Court on that issue.

**B. Pretrial Proceedings Only; No *Lexecon* Waiver:** Each action filed directly in this District will be deemed related to and become a member case in this MDL for pretrial proceedings only, consistent with the JPML's April 8, 2022, 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) ("*Lexecon*") by any party of that party's right to challenge jurisdiction, choice of law, statutes of limitation, *forum non conveniens*, the location of any trials to be held, or any other legal rights and remedies. However, nothing in this Order shall preclude the parties from agreeing to such waivers in the future. Moreover, this Court shall not be deemed to be the "transferor court" simply by virtue of the complaint having been directly filed into this MDL.

**C. Designated Forum – Mead Johnson Defendants.** Any Plaintiff who resides outside the territorial confines of the Northern District of Illinois who directly files an action against Mead Johnson & Co. LLC and/or Mead Johnson Nutrition Company pursuant to this Order

must file the Cover Sheet, attached hereto as Exhibit A, and include all information requested therein. Specifically, any Plaintiff who directly files an action against Mead Johnson & Co. LLC and/or Mead Johnson Nutrition Company pursuant to this Order, must identify a U.S. District Court outside the Northern District of Illinois to which the case shall be remanded at the conclusion of pretrial proceedings. Any Plaintiff who directly files a Complaint pursuant to this Order agrees and stipulates that (1) Defendant Mead Johnson & Company, LLC is a Delaware limited liability corporation with its principal place of business located at 2400 W. Lloyd Expwy., Evansville, Indiana 47721; (2) Defendant Mead Johnson Nutrition Company is a Delaware corporation with its principal place of business located at 2400 W. Lloyd Expwy., Evansville, Indiana 47721; and (3) that personal jurisdiction over the Mead Johnson Defendants is lacking in Illinois except to the extent that Plaintiffs' alleged use of Mead Johnson products and resulting injuries occurred in Illinois. The Designated Forum shall not, standing alone, constitute a determination by this Court that jurisdiction or venue is proper in the designated forum.

At the completion of all pretrial proceedings applicable to such cases, and subject to any agreement that may be reached concerning a waiver of the requirements for transfer pursuant to *Lexecon*, this Court will transfer such cases to a federal district court outside of the Northern District of Illinois where personal jurisdiction exists as to Mead Johnson, and where venue is proper as defined by 28 U.S.C. § 1391, which presumptively shall be the federal district in which a preterm infant allegedly developed necrotizing enterocolitis after ingesting a cow's-milk-based preterm infant formula. The parties reserve all challenges to personal jurisdiction, venue, *forum non conveniens*, and any post-remand jurisdictional, venue, or *forum non conveniens* challenges or motions, including pursuant to 28 U.S.C. § 1404(a).

**D. Procedure for Improper or Incomplete Directly Filed Complaints.** Any directly

filed complaint that does not comply with the foregoing provisions, including by failing to attach or properly fill out the Cover Sheet included with this Direct Filing Order, is subject to dismissal and/or presumptive transfer to the District in which the pre-term infant allegedly developed necrotizing enterocolitis after ingesting cow's-milk-based preterm formula. Upon receiving an improper or incomplete directly filed complaint, Defendants' counsel will attempt to meet and confer with plaintiff's counsel, and if the parties cannot reach a resolution, Defendants may file a motion to dismiss and/or transfer before this Court.

**E. Choice of Law.** Directly filing an action as a member case of the MDL pursuant to this Order will not determine the applicable choice of law, including the choice of law for any of the claims in the action and/or for statute of limitations purposes. The parties' agreement to this Order shall not constitute a waiver of or agreement to the application of any choice of law principles or substantive choice of law applicable to a particular Plaintiff's action. The fact that an action was filed in this District as a member case of the MDL pursuant to this Order will have no impact on choice of law. Choice of law issues are reserved and shall be briefed, as appropriate, at a later date.

**F. Electronic Filing of Complaints.** All complaints must be filed electronically. Filing of a complaint in this District requires the completion of a Civil Cover Sheet which can be found here: [https://www.ilnd.uscourts.gov/\\_assets/\\_documents/\\_forms/\\_online/js44-05fill.pdf](https://www.ilnd.uscourts.gov/_assets/_documents/_forms/_online/js44-05fill.pdf). When filing a complaint in this District pursuant to this Order, plaintiff's counsel must identify the MDL Case name and number in Section VIII of the Civil Cover Sheet to ensure the case is included as a member case of the MDL.

**G. Attorney Admission:** In accordance with Case Management Order No. 1, any attorney admitted to practice and in good standing in any United States District Court is admitted

*pro hac* vice in this litigation. Association of local co-counsel for purposes of litigation, including direct filing pursuant to this Order, is not required.

**H. Attorney Filing:** Prior to any Plaintiff's attorney filing a complaint in the United States District Court for the Northern District of Illinois or directly in the MDL Proceedings pursuant to this Order, that attorney must register for and/or have a Northern District of Illinois CM/ECF log in name and password.

**I. Service of Process.** For Complaints that are properly filed in, removed to, or transferred to this MDL, Defendants Mead Johnson & Company, LLC and Mead Johnson Nutrition Company agree to waive formal service of summons pursuant to Rule 4 of the Federal Rules of Civil Procedure. Service upon these entities will be deemed complete upon providing copies of the Complaint, Summons, Civil Cover Sheet and copies of this Order to the following email addresses:

**For the Mead Johnson Defendants:** [sjnecmdl@steptoe.com](mailto:sjnecmdl@steptoe.com)

**J. Filing Fees.** Internet credit card payments shall be required for all electronically filed complaints and made online through pay.gov. Plaintiff's counsel will be prompted to pay the required filing fee. Information regarding filing fees may be found at <https://www.cand.uscourts.gov/ecf/payments>.

**K. Response to Complaint.** The Mead Johnson Defendants need not move, plead, or otherwise respond to any Complaint directly filed in this District as a member case of the MDL until so ordered by the Court

**IT IS SO ORDERED.**

Dated: January 6, 2023

A handwritten signature in black ink, reading "Rebecca R. Pallmeyer", written over a horizontal line.

HON. REBECCA R. PALLMEYER  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**IN RE: ABBOTT LABORATORIES, ET  
AL., PRETERM INFANT NUTRITION  
PRODUCTS LIABILITY LITIGATION**

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**MDL NO. 3026**

**Master Docket No. 1:22-cv-00071**

**This Document Relates to:**

**Hon. Rebecca R. Pallmeyer**

**ALL ACTIONS**

**COVER SHEET FOR DIRECTLY FILED COMPLAINTS**

Pursuant to Case Management Order No. 11, any Plaintiff who resides outside the territorial confines of the Northern District of Illinois who directly files an action against Mead Johnson & Co. LLC and/or Mead Johnson Nutrition Company (collectively “Mead Johnson”) in MDL No. 3026 must concurrently fill out and file this Cover Sheet.

1. Plaintiff hereby states the U.S. District Court, outside of the Northern District of Illinois, to which this case shall be remanded at the conclusion of pretrial proceedings is \_\_\_\_\_ because that is the location where the preterm infant allegedly developed necrotizing enterocolitis after ingesting cow’s milk-based preterm formula.

2. Plaintiff stipulates that Defendant Mead Johnson & Company, LLC is a Delaware limited liability corporation with its principal place of business located at 2400 W. Lloyd Expwy., Evansville, Indiana 47721; and (2) Defendant Mead Johnson Nutrition Company is a Delaware corporation with its principal place of business located at 2400 W. Lloyd Expwy., Evansville, Indiana 47721.



3. Plaintiff further stipulates that personal jurisdiction over Mead Johnson is lacking in Illinois except to the extent that Plaintiffs' alleged use of Mead Johnson products and resulting injuries occurred in Illinois.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
Counsel for Plaintiff