

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE**

**IN RE: SIGG SWITZERLAND (USA), INC., ALUMINUM BOTTLES MARKETING  
AND SALES PRACTICES LITIGATION**

**Master File No. 10-md-2137  
MDL No. 2137**

**JUDGE HEYBURN**

**THIS DOCUMENT RELATES TO ALL CASES**

**CASE MANAGEMENT ORDER NO. 1**

This matter came before the undersigned on March 18, 2010, for the purpose of conducting a telephonic scheduling conference.

**APPEARANCES:**

**FOR THE PLAINTIFFS’:** Mr. Michael Flannery, Mr. George Nino, Mr. Michael Caddell and Mr. Scott Dickens.

**FOR THE DEFENDANT:** Mr. John H. Beisner, Ms. Jessica D. Miller, and Mr. Clark C. Johnson.

This Order reflects agreement between the parties with respect to the case management issues governing all proceedings in this matter. **IT IS HEREBY ORDERED:**

**I. DESCRIPTION OF THE CASE**

**1. The Claims.** The cases transferred to this Court by the Judicial Panel on Multi-District Litigation under Docket Number MDL 2137 are all putative class actions involving certain reusable aluminum bottles manufactured or distributed by SIGG Switzerland (USA), Inc., SIGG Switzerland (USA), inc. d/b/a SIGG Switzerland (USA) Brands, Inc., and SIGG Switzerland (USA) Brands, Inc. (collectively “SIGG” or Defendants”). The Complaints allege that consumers who purchased certain SIGG reusable aluminum bottles did not know that they contain bisphenol

A (“BPA”), an industrial chemical that Plaintiffs allege poses health concerns. Plaintiffs claim that they and the proposed class members paid more for certain SIGG bottles than other available alternatives because SIGG represented that the bottles were BPA-free. To be successful in their claims, Plaintiffs say that they need not show that BPA was actually a health danger.

SIGG denies these allegations. Its primary defenses appear to be (1) that it made no representations about the presence of BPA or the degree to which small amounts of the chemical may leak into bottle contents; (2) that even if some representations are found, the purchasers of bottles did not rely upon them in making the purchase; and (3) the amount BPA, if any, that leaks into bottle contents is *de minimus*.

## **II. TRANSFER & COORDINATION**

**2. Transfer and Coordination of Pending Cases.** The terms of this order shall apply automatically to the actions that are currently part of this MDL proceeding and to all other cases that become a part of this proceeding by virtue of being instituted in, removed to or transferred to this Court. This Order vacates any prior scheduling orders issued by a federal court prior to the transfer of a case to MDL 2137. The local rules of a federal transferor court do not bind the parties once a case has been transferred to the MDL 2137.

**3. Procedure for Newly Filed or Transferred Actions.** When a case that relates to the subject matter of these Coordinated Actions is hereafter filed in the Court or transferred here from another court, the Clerk of the Court shall:

- (a) Make an appropriate entry in the Master Docket;
- (b) Place a copy of this Order in the separate file for such action; and
- (c) Mail or e-mail a copy of this Order to the attorneys for the Plaintiffs in the newly filed or transferred case and to the attorneys for any new defendants named in the newly filed

or transferred case.

(d) These cases are subject to the Electronic Case Filing (“ECF”), pursuant to the Joint General Order 05-03, which requires that all documents in such a case be filed electronically. All attorneys of record shall register to become an ECF User. Forms and instruction can be found on the Court’s website at <http://kywd.uscourts.gov/CMECFWelcome.php>. In addition, to the latest information regarding MDL 2137 on the Court’s website, tab Multidistrict Litigation.

**4. Assistance of Counsel.** The Court requests the assistance of counsel in calling to the attention of the Clerk of the Court the filing or transfer of any case that should properly be coordinated with these Coordinated Actions through a Notice of Related Case.

**5. No Effect on Claims or Defenses.** The terms of this Order shall not have the effect of making any person, firm, or corporation a party to any action in which he, she or it has not been properly named, served or joined, in accordance with the Federal Rules of Civil Procedure. The terms of this Order and the coordination ordered herein, and Defendants’ consent thereto, shall not constitute a waiver by any party of any claims in or defenses to any of the actions, including defenses based upon jurisdiction.

**6. Case Caption.** For the convenience of the parties and the Court, the Clerk of this Court will maintain a master docket and master record. When an order, pleading or other document is filed and docketed in the master docket, it shall be deemed filed and docketed in each individual case to the extent applicable and will not ordinarily be separately docketed or filed in any individual cases. Every paper filed in these coordinated proceedings, or in any separate action included therein, should bear the following caption:

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**THIS DOCUMENT RELATES TO ALL CASES**

**7. All Cases.** When a paper is intended to be applicable to all of the actions to which this Order is applicable, the words “ALL CASES” should appear below the case name in the caption as set forth above. The parties shall not make any ex parte submissions to the Court, but rather shall serve all filings via the Court’s electronic filing system. Any and all letters or other submissions made directly to chambers shall be submitted only by Plaintiffs’ or Defendants’ Liaison Counsel.

**8. Specific Cases.** When a paper is intended to apply only to some, but not all of such actions, this Court’s docket number for each individual action to which the paper is intended to be applicable and the last name of the named Plaintiff in said action should appear immediately below the case name in the caption described above, *e.g.*, “Civil Action No. 09-cv-669, Johnson.”

**9. Proposed Orders.** All proposed orders submitted to the Court should be entitled “Proposed Order.”

**10. Proposed Stipulations.** All proposed stipulations submitted to this Court should be entitled “Stipulation.”

**III. ISSUES OF DISQUALIFICATION OR RECUSAL**

**11.** The parties have advised the Court that they are not aware of any issues concerning disqualification or recusal. The parties will submit a list of all companies affiliated with the parties and all counsel associated in the litigation to the Court by **April 1, 2010**.

#### **IV. JURISDICTIONAL CHALLENGES**

12. The parties have advised the Court that they do not anticipate any challenges to subject matter jurisdiction.

#### **V. ORGANIZATION OF ATTORNEYS & APPOINTMENT**

13. **Liaison Counsel.** Plaintiffs' counsel have proposed Scott T. Dickens and the firm of Fultz Maddox Hovious & Dickens PLC as Liaison Counsel. Defendants have proposed Clark Johnson of Stites & Harbison as Liaison Counsel. The Court understands that there is no objection by either party to these proposals, and these counsel are hereby **appointed by order of this Court.**

14. **Plaintiffs' Structure of Counsel.** In addition to Liaison Counsel, Plaintiffs propose the following counsel as Plaintiffs' Interim Class (**also referred to herein as "Co-Lead"**)

**Counsel:**

Michael A. Caddell & George Y. Nino and his firm, Caddell & Chapman; and  
Michael J. Flannery and his firm, Carey, Danis & Lowe.

In addition, Plaintiffs ask that the following firms be **appointed to Plaintiffs' Executive Committee:**

Gergosian & Gralewski LLP;  
Gustafson Gluek PLLC;  
Lieff Cabraser Heimann & Bernstein, LLP; and  
Allen Stewart, P.C.

15. **Defendants' Lead Counsel.** Defendants have proposed John Beisner of Skadden, Arps, Slate, Meagher & Flom LLP as lead counsel.

16. The Court understands that there is no objection by either party to the proposals in Paragraphs 14 and 15, **and these counsel are hereby appointed by order of this Court.**

17. Each attorney acting as counsel for any party herein who is a member of good

standing of the Bar of the Supreme Court of any state or any United States District Court shall be deemed admitted *pro hac vice* before the Court, without further action, in connection with these proceedings. The Court reserves the right to revoke such *pro hac vice* admission if appropriate. No further *pro hac vice* applications for admission to practice by counsel are required.

## **VI. PLEADINGS**

**18.** Plaintiffs shall file a consolidated amended complaint **within 30 days of the entry of this Case Management Order (CMO#1)**. Defendants shall file any motions to dismiss the consolidated amended complaint **within 30 days following service of the consolidated amended complaint. Responses by the Plaintiff due 30 days after the filing of the motion, and Defendants shall file their reply brief 15 days thereafter.**

## **VII. DISCOVERY**

**19.** The parties may file any written discovery requests on or after the date of the consolidated amended complaint. Written responses and objections to the discovery requests shall be provided pursuant to the deadlines imposed by the Federal Rules of Civil Procedure. After the discovery requests are filed, the parties may meet and confer about the scope of the requests. If an agreement is reached on the production of documents and information, that production should proceed. If the parties are unable to agree on the production of documents and information, they may contact the Court to schedule a discovery conference, in accordance with the Dispute Resolution procedures described in Paragraph 22 of this Order. No depositions may proceed until after the Court issues a decision on the pending motion to dismiss. Nor does the Court anticipate that significant discovery responses or production be required until after that date.

**20.** Plaintiffs may proceed with the third party document discovery.

**21.** All other discovery shall be stayed until after the decision on the motion to dismiss.

**22. Dispute Resolution.** To avoid unnecessary litigation concerning discovery

disputes, counsel are directed to meet and confer before contacting the Court on discovery matters or filing a motion concerning discovery. In the event the parties are unable to resolve their differences after meeting and conferring, a party may bring the dispute to the Court's attention by contacting the Court's Deputy, Ms. Andrea Kash, at 502-625-3538 or via email: at [andrea\\_r.kash@kywd.uscourts.gov](mailto:andrea_r.kash@kywd.uscourts.gov)

**23. Document Production.** Documents produced by Defendants shall be produced in an electronic format on a CD or DVD to Plaintiffs' Co-Lead Counsel, who shall copy or reproduce each CD or DVD for the benefit of all of the Plaintiffs. Documents produced by each Plaintiff shall similarly be produced in an electronic format on a CD or DVD to Defendants' Liaison Counsel who shall copy or reproduce each CD or DVD for the benefit of all of the Defendants.

**24. Depositions – Generally.** Counsel are expected to cooperate with, and be courteous to, each other and each deponent. The procedures governing and limiting depositions, including resolution of any disputes arising during depositions, shall be in accordance with the Federal Rules of Civil Procedure, except that the deposition limit shall be extended to twenty depositions for each side.

**25. Scheduling of Depositions.** Absent extraordinary circumstances, counsel shall consult in advance in an effort to schedule depositions at mutually convenient times and places. Plaintiffs' Co-Lead Counsel and Defendants' Lead Counsel shall attempt to establish by mutual agreement a schedule for depositions in this proceeding that reflects sequencing consistent with:

- (a) the availability of documents from among those produced by the parties and third parties; and
- (b) the objective of avoiding the need to subject any person to repeated depositions. The parties shall work cooperatively to ensure a fair and orderly process for the scheduling of depositions, and shall comply with all of the other directives set forth in this Order. Depositions shall not be

allowed, without leave of Court or by agreement of the parties, on less than fourteen days' notice.

**26. Service and Filing of Discovery Documents.** Pursuant to Rule 5(d) of the Federal Rules of Civil Procedure, discovery requests and responses will not be filed with the Court, except when specifically ordered by the Court or to the extent they are presented in connection with a motion. Discovery requests and responses shall be served by electronic mail on Plaintiffs' Co-Lead Counsel (who shall circulate the requests and responses to all of the other counsel representing the Plaintiffs) and Defendants' Liaison Counsel (who shall circulate the requests and responses to all other counsel for Defendants).

**27. Management of Discovery Issues.** The parties shall work together to develop a uniform numbering system to allow for the ease of identification of discovery documents. The parties will create separate document storage systems but work together to eliminate discovery issues as outlined herein.

#### **IX. COOPERATION AMONG THE PARTIES**

**28. Coordination.** Plaintiffs shall, to the extent practicable, seek to coordinate their efforts, including discovery efforts and motion practice, among themselves for efficient and prompt management of the Coordinated Actions.

**29. Privilege of Coordination Efforts.** Cooperation among either Plaintiffs or Defendants to coordinate motion practice, discovery, or to otherwise minimize burdens and expenses in this litigation is encouraged by this Court and shall not constitute evidence of bad faith, conspiracy, concerted action, or any other wrongful or unlawful conduct. The fact of such cooperation and/or communication(s) as a result of such cooperation: (1) shall not be communicated to the trier of fact in this litigation under any circumstances; and (2) shall not be otherwise used in any other litigation. All information and documents exchanged among either

Plaintiffs or Defendants for purposes of prosecuting or defending this litigation are communicated for the limited purpose of assisting in a common cause and shall not constitute a waiver of the attorney-client privilege, work product doctrine, or any other applicable privilege or protection.

**X. ADDITIONAL RULES CONCERNING PRIVILEGE ISSUES**

**30. Privilege Log – Timing.** A privilege log that complies with the requirements of the of the Federal Rules of Civil Procedure and the Local Rules of the Western District of Kentucky shall be served by any party withholding documents on the basis of privilege or work product protection within thirty days after production of the responsive documents from which the allegedly privileged or protected documents are being withheld.

**31. Privilege Log – Categories of documents that do not need to be logged.** The parties do not need to log any withheld documents that constitute attorney work product created after the commencement of this litigation, communications among counsel for the Defendants or among counsel for the Plaintiffs relating to joint litigation efforts, communications between counsel and consulting experts, or communications by counsel with their clients about this litigation.

**32. Draft Expert Reports.** The parties further agree that an expert's draft reports are work product and shall not be discoverable and that communications between an expert and the attorney who retained the expert, including notes reflecting their communications, are not discoverable. However, counsel may obtain through discovery any facts or data the expert is relying upon in forming his or her opinion, including those facts that were provided by counsel. Counsel may also fully question the expert about what facts or data the expert considered in reaching his or her opinion, whether the expert considered alternative approaches, and the

validity of the expert's opinions.

**33. Inadvertent Production of Privileged or Other Protected Information.** The parties are negotiating a protective order that provides the procedure for handling inadvertent production of privileged or other protected information.

**XI. PRESERVATION OF EVIDENCE/INSPECTION**

**34. Duty to Preserve.** The parties shall meet and work together to submit an agreed Preservation Order that will detail the obligations of each to preserve certain evidence and

**XII. TRIAL SCHEDULE**

**35.** The Court will not schedule a trial date at this time.

**XIII. APPLICATION OF RULES OF THE COURT**

**36.** Except as otherwise provided herein or by further order of the Court, the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Western District of Kentucky shall govern all further procedural matters in these consolidated actions.

**XVI. OTHER MATTERS**

**IT IS FURTHER ORDERED** as to the current pending motions in *Johnson v. SIGG* (3:09CR-669-H), motions (DN#25, 30, and 33) are deemed as moot.

Date: March 31, 2010

Copies to:  
Counsel of Record

Court Reporter: Alan Wernecke