IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: GLUCAGON-LIKE PEPTIDE-1 RECEPTOR AGONISTS (GLP-1 RAS) PRODUCTS LIABILITY LITIGATION	)))))))	Case No. 24-md-03094-GEKP

MOTION FOR
APPOINTMENT OF PLAINTIFF LEADERSHIP

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Proposed Co-Lead Counsel

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I. INTRODUCTION

Counsel in the vast majority of complaints on file have reached agreement on a proposed leadership structure for the cases consolidated into *In Re Glucagon-like Peptide-1 Receptor Agonists Products Liability Litigation*, MDL No. 3094 (the "GLP-1 MDL").[1] The proposed structure consists of four proposed Co-Lead Counsel: (i) Parvin Aminolroaya of Seeger Weiss, LLP; (ii) Sarah Ruane of Wagstaff & Cartmell, LLP; (iii) Jonathan D. Orent of Motley Rice, LLC; and (iv) Paul Pennock of Morgan & Morgan, P.A.; two proposed Liaison Counsel: (i) Roberta Liebenberg of Fine Kaplan and Black, R.P.C.; and (ii) Nina Spizer of Dilworth Paxson LLP; as well as a Plaintiffs' Executive Committee ("PEC") and Plaintiffs' Steering Committee ("PSC"), to account for the interests of all stakeholders, appropriately distribute resources, and maintain open lines of communication.

In the months leading up to the initial conference before this Court, counsel conferred and, through extensive negotiations, agreed to bring together formerly competing counsel to form a strong and cohesive group that will work cooperatively and efficiently to best represent the interests of the injured plaintiffs in this litigation. The proposed Co-Lead Counsel also have been mindful of the factors the Court considered in establishing leadership structures in other litigations. *See In re Imprelis Herbicide Mktg., Sales Practices & Prods. Liab. Litig.*, No. 11-md-2284-GEKP, Dkt. 55 (E.D. Pa. Jan. 11, 2012) ("*Imprelis*") (appointing four Co-Lead Counsel); *In re Processed Egg Products Antitrust Litig*., No. 08-md-02002-GEKP, Dkt. 3 & 20 (E.D. Pa.) ("*Eggs Antitrust*") (appointing four Co-Lead Counsel for Direct Purchaser class and four Co-Lead Counsel for Indirect Purchaser class); *In re Wawa Inc. Data Security Litigation*, No. 2:19-cv-06019, Dkt. 120 (E.D. Pa. June 12,

[1] As of the time of this filing, the Proposed Co-Leads have confirmed active support from counsel in 68 of the 76 complaints on file.

2020) ("*Wawa*") (appointing four Interim Co-Lead Class Counsel for proposed Consumer Plaintiff class and three Co-Lead Counsel for Financial Institution Plaintiff class). The Proposed Co-Leads submit this proposed leadership structure in connection with the Court's request at the March 14, 2024, initial conference.

The proposed Co-Lead Counsel will closely coordinate with one another and other plaintiffs' counsel to avoid any potential duplication of effort, and to ensure accountability. In order to effectively leverage contributions from firms beyond the four co-leads, including thought leadership, litigation resources, and attorney time, proposed Co-Lead Counsel believe it is appropriate to appoint both a PEC and PSC to assist in the litigation of these cases, as discussed in more detail below.[2]

Proposed Co-Lead Counsel have already undertaken significant efforts to advance this litigation over the past seven months, and readily satisfy all potentially applicable criteria for appointment to lead this litigation.

II. BACKGROUND

As of March 21, 2024, 76 complaints have been filed in or transferred to this docket, by dozens of law firms representing injured users of GLP-1 RAs manufactured and sold by Eli Lilly and Novo Nordisk entities.

All proposed Co-Lead Counsel initially filed separate actions on behalf of individuals injured by GLP-1 RAs and had advocated for a variety of proposed transferee courts before the Judicial Panel on Multidistrict Litigation ("JPML"). Subsequent to the JPML's order transferring these matters to this Court, and mindful of this Court's observation on "how

[2] The Proposed PEC and Proposed PSC are described in the chart attached hereto as Exhibit A. Proposed Co-Lead Counsel are also happy to include plaintiffs' counsel beyond these committees to the extent that other counsel is willing and able to contribute efficiently and productively to advancing this litigation.

unattractive it is for lawyers to be squabbling with each other," (3/14/24 Ct. Conf. Tr. at 15:8-15:9) counsel sought consensus regarding leadership, and were subsequently able to reach agreement with a wide variety of Plaintiff's firms to combine efforts in the spirit of cooperation to form the joint proposed Plaintiff Leadership structure described herein.

Pursuant to the Court's guidance, proposed Co-Lead Counsel solicited applications from over 100 Plaintiffs' attorneys for membership on the PEC and PSC, including all counsel who attended the March 14, 2024 conference, as well as other firms whose cases have not yet been transferred to this MDL. Proposed Co-Leads sought information from applicants on their professional experience in mass torts, their other appointments that might take time away from this MDL, the areas in which they were interested in assisting, and the work they had done to date to develop the GLP-1 litigation. Proposed Co-Leads received a significant number of applications and met in person to review candidates' curriculum vitae and discuss the experience, qualifications, and capabilities of each candidate, while seeking to strike the right balance between keeping groups at a workable size on the one hand and recognizing the tremendous outpouring of support on the other.[3] The resulting Proposed PEC and Proposed PSC are comprised of the most well-qualified applicants, and reflect significant diversity of geography, experience, and perspectives.[4] The Proposed PEC and Proposed PSC also include a number of firms with whom proposed Co-Lead Counsel have not previously collaborated, in order to be inclusive of the wide field of talent interested in

[3] To the extent contributions from non-committee members are needed to efficiently advance this litigation, proposed Co-Leads will reach out to non-committee members who showed interest during the application process.

[4] Proposed Co-Leads also sought to strike the balance the Court described in terms of mentorship, giving younger lawyers opportunity for development without sacrificing quality by selecting a small group of junior attorneys for an informal Leadership Development Committee. March 14, 2024, CMC Tr. at 13:8-12 ("But I do hope that as part of the process there will be consideration for generations of lawyers in the future for the benefit of learning from you all who are experienced.").

participating in this litigation. This structure will enable leadership efficiently to assign counsel to discrete tasks based on their experience, expertise, and availability. In addition to serving as a conduit for information to flow between individual counsel and the Court and defendants, the highly capable Plaintiffs' counsel on the PEC and PSC will be asked to assist on an as-needed basis on certain pre-defined tasks during the litigation.

The proposed Co-Lead Counsel are comprised of experienced and highly accomplished counsel who have decades of experience handling multi-district litigations, including pharmaceutical and failure-to-warn cases, and have a proven track record of success and the ability to work efficiently and cooperatively with one another. In addition, each of the proposed Co-Lead Counsel has the time and resources necessary to litigate this case vigorously on behalf of Plaintiffs.

III. ARGUMENT

A. Criteria Considered in Leadership Appointments

The Manual for Complex Litigation directs judges to select "qualified and responsible" lead and liaison counsel who "will fairly and adequately represent all of the parties on their side, and [whose] charges will be reasonable." 10.22. *Coordination in Multiparty Litigation—Lead/Liaison Counsel and Committees*, Ann. Manual Complex Lit. ("MCL") § 10.22 (4th ed.). The MCL sets forth the following factors for the Court's evaluation of proposed leadership:

(1) qualifications, functions, organization, and compensation of designated counsel;

(2) whether there has been full disclosure of all agreements and understandings among counsel;

(3) would-be designated attorneys' competence for assignments;

(4) whether there are clear and satisfactory guidelines for compensation and reimbursement, and whether the arrangements for coordination among counsel are fair, reasonable, and efficient;

(5) whether designated counsel fairly represents the various interests in the litigation;

(6) attorneys' resources, commitment, and qualifications to accomplish the assigned tasks; and

(7) attorneys' ability to command the respect of their colleagues and work cooperatively with opposing counsel and the court.

10.224. *Court's Responsibilities*, MCL § 10.224 (4th ed.)

Consistent with these factors, in the context of prior leadership appointments, this Court has identified "willingness and availability to commit to a time-consuming project, ability to work cooperatively with others, professional experience in this type of litigation, and access to sufficient resources to prosecute the litigation in a timely manner" as the main criteria to be considered. *In re Wawa*, Dkt. 62 at 2. As discussed at the March 14, 2024 hearing, the leadership slate proposed herein is the product of private discussions among plaintiffs' counsel, in accordance with the Third Circuit Task Force Report Selection of Class Counsel, 208 F.R.D. 340, 416 (2002), which found that "[c]ase law and experience indicates that the dominant scenario for appointing class counsel is deference to private ordering." *See also id.* ("[t]he Task Force believes there is generally no reason to hold an auction when the court is presented with qualified counsel who has been chosen through private ordering.").

B. The Proposed Co-Lead Counsel Have Demonstrated a Willingness and Availability to Commit to a Time-Consuming Project

The work already conducted by the proposed Co-Lead Counsel demonstrates their willingness and availability to commit to a time-consuming project. They performed many

substantive tasks that will allow them to continue to advance this litigation on behalf of Plaintiffs once leadership appointments are made. To date, in preparing this litigation over the past year, they have collectively:

- Worked to foster coordination among Plaintiffs' counsel, including dozens of telephonic and video conferences with counsel around the country who are interested in assisting with the prosecution of this large-scale litigation;
- Conferenced with Plaintiffs' counsel who may pursue state court litigation;
- Successfully defended motions to dismiss on numerous grounds;
- Researched and developed the science involving GLP-1 RA induced gastroparesis, ileus (blocked intestine), pulmonary aspiration and related injuries;
- Conducted initial meetings with, and in some cases retained, experts in a variety of relevant fields;
- Analyzed adverse event reports relating to Defendants' knowledge of injuries;
- Marshalled facts regarding Novo Nordisk's marketing plan to sell its GLP-1 RA drugs, including its development of organizations to facilitate sales of the drug, as well as Eli Lilly's marketing approach;
- Drafted and conducted extensive negotiations of proposed orders governing ESI, privilege, preservation and confidentiality;
- Established a central repository for documents received by FOIA request and for medical literature collected by this group;
- Chaired and spoke at legal conferences to educate hundreds of counsel on the issues involved;
- Drafting of a protocol to track and limit time and expenses, to ensure efficient use of resources in this litigation;

- Served preservation letters to defendants;
- Commenced negotiations with experienced vendors, with whom the Proposed Co-Leads have extensive history, including vendors involved in large, complex litigations such as *In re 3M Combat Arms Earplugs Prods. Liab. Litig.*, MDL No. 2885, and *In re National Prescription Opiate Litig.*, MDL No. 2804. Proposed Co-Leads are presently awaiting final bids from these litigation vendors, and in accordance with the Court's guidance[5] will not use any new or untested vendors in this litigation.

Since August 2023, collectively, Proposed Co-Leads have participated in approximately 20 meet-and-confers with the defendants on the items discussed above.

Each proposed Co-Lead Counsel is committed to devoting substantial resources to vigorously litigate this case, just as they have done in countless other MDLs that they have successfully brought to resolution. Also, each Co-Lead Counsel and/or their respective law firm have jury trial experience in the complex litigation context, demonstrating their proven willingness and ability to commit to a time-consuming process.

C. Each Proposed Co-Lead Counsel Has a History of Working Cooperatively with Other Counsel in These Proceedings

Each proposed Co-Lead Counsel has a long history of working cooperatively with others, including with each other and with many other counsel in these proceedings. Ms. Aminolroaya and Mr. Pennock served as co-lead counsel together in *In re Elmiron Prods. Liab. Litig.*, MDL No. 2973, and Mr. Pennock and Ms. Aminolroaya's firm have worked together for decades, including in *In re Proton Pump Inhibitor Prods. Liab. Litig.*, MDL No. 2789, which resulted in a $425 million settlement. Motley Rice and Wagstaff & Cartmell also collaborated on *Pelvic Mesh*,

[5] March 14, 2024, CMC Tr. at 24:2-12.

MDL No. 2326, and Motley Rice and Seeger Weiss worked together on experts and the *Daubert* drafting team in *In re National Prescription Opiate Litig.*, MDL No. 2804. All four Proposed Co-Lead firms have worked together in *In re Social Media*, MDL No. 3047.

In addition to a history of collaboration with one another, proposed Co-Lead Counsel and their firms also have a history of successful cooperation with other counsel in this litigation. For example, Seeger Weiss collaborates with Levin Papantonio in the ongoing *In re Allergan Biocell Prods. Liab. Litig.*, MDL No. 2921, and the two firms worked together on bellwether trials in *In re Testosterone Replacement Therapy Prods. Liab. Litig.*, MDL No. 2545. Levin Papantonio, Aylstock Witkin Kreis & Overholtz, the Gori Law Firm, and Goza & Honnold also worked with all four Proposed Co-Lead firms on *In re 3M*, MDL No. 2885, which resulted in an approximately $6 billion settlement. There are also numerous cases in which the proposed Co-Lead Counsel or their firms worked cooperatively as co-counsel with other counsel who filed cases on behalf of individual Plaintiffs in these proceedings. Proposed Co-Lead Counsel have also had repeated cooperative contact with Defense counsel in this case, engaging in approximately twenty calls, videoconferences, and in-person meetings with counsel for Lilly and Novo to discuss case management issues, coordinating presentations for the initial conference, and negotiating orders governing confidentiality and document discovery.

Just as they have done in the past, each proposed Co-Lead Counsel is committed to working cooperatively with each other and all other counsel in this matter.

D. Each Proposed Co-Lead Counsel Has Extensive Experience in This Type of Litigation

Experience in pharmaceutical and failure-to-warn litigation is an important leadership factor in cases such as this, which present technical issues of fact and law that are constantly evolving. For example, this case will require – to name just a few issues – an understanding of the science relating to GLP-1 RAs, gastroparesis, ileus, and the other injuries at issue in

these cases; the FDA approval process, and the FDA process for changing pharmaceutical labels; and the individual actions. Thus, appointing a leadership team experienced in other large-scale pharmaceutical litigation is critical and in the best interest of all Plaintiffs. Below are high-level summaries of the Proposed Co-Lead's relevant experience:

1. Parvin Aminolroaya, Seeger Weiss LLP

Parvin Aminolroaya is a partner in the New Jersey office of Seeger Weiss LLP. Ms. Aminolroaya has extensive experience with large scale, mass tort litigation where bellwether trials are expected. In these MDL litigations, Ms. Aminolroaya has served as co-lead counsel or led or co-led the development of key regulatory and scientific experts (including in the national Opioids litigation and the federal Hernia Mesh MDL litigation, among others). She has also been a member of four bellwether trial teams where over $400 million in initial verdicts were obtained for bellwether plaintiffs.

Ms. Aminolroaya was appointed co-lead counsel of the *In re Elmiron Products Liability Litigation*, MDL No. 2973, involving allegations that the drug Elmiron caused pigmentary maculopathy (a permanent vision injury which leads to significant vision limitations). Along with her co-lead counsel, Mr. Pennock, she developed crucial strategies for the litigation's failure to warn and causation experts. In addition, she handled key corporate depositions and led the defense to *Daubert* challenges to the plaintiff's experts in the first bellwether case. The litigation is now in the resolution phase.

Ms. Aminolroaya also worked on the development of key general causation and damages experts who testified in multiple bellwether trials in the *In re 3M Combat Arms Products Liability Litigation*, and co-led the development of a key regulatory expert in *In re Nat'l Prescription Opiate Litig.*, where she also drafted multiple *Daubert* opposition briefs. Ms. Aminolroaya also co-led the development of the key regulatory expert in *In re Davol,*

Inc./C.R. Bard, Inc. and was a member of the trial teams for the first three bellwether cases in *In re TRT* resulting in $290 million in initial verdicts.

2. Sarah Ruane, Wagstaff & Cartmell LLP

Sarah Ruane is a partner and Chair of the Litigation Management Committee at the Kansas City-based Wagstaff & Cartmell LLP. Ms. Ruane has served as trial counsel, including lead counsel, in 10 jury trials in federal and state court, nearly all of which were cases involving drugs, medical devices, and health care services.

Ms. Ruane worked extensively on trials and in discovery over the past decade in the national Pelvic Mesh Repair System Products Liability Litigation, which included *In Re: C.R. Bard, Inc.,* MDL No. 2187; *In Re: American Medical Systems, Inc.,* MDL No. 2325; *In Re: Boston Scientific Corp.,* MDL No. 2326; and *In Re: Ethicon, Inc.,* MDL No. 2327. In these cases, Ms. Ruane assisted in general causation expert reports, briefed and argued *Daubert* motions, defended case-specific depositions and deposed case-specific physician, sales representative and expert witnesses. Ms. Ruane also second-chaired the first (and only) pelvic mesh jury trial against the defendant Coloplast, which resulted in a $2.5 million verdict for the plaintiff.

Ms. Ruane is a current member of the District of Kansas Bench-Bar Committee. In this role, she works with six sitting judges from the District of Kansas to study and consider the Rules of the Court and serves as a liaison among the court, its bar and the public.

3. Jonathan Orent, Motley Rice LLC

Jonathan Orent is a partner at Motley Rice. Mr. Orent was appointed lead counsel in the hernia mesh litigation *In re Atrium Medical Corp. C-QUR Mesh Products Liability Litigation,* MDL No. 2753, and serves as co-lead in the largest hernia mesh litigation in the country, *In re Davol/C.R. Bard Hernia Mesh Multi-Case Management Coordination*, MDL

No. 2864. Mr. Orent was appointed to serve on Science and Expert committees in the *In re 3M Combat Arms Products Liability Litigation*, MDL No. 2885. Mr. Orent has led and been a member of multiple trial teams, including the following: lead trial counsel, securing a $ 4.8 million verdict in *Trevino v. C.R. Bard* (2022); trial counsel, helped win a $100 million verdict in *Barba v. Boston Scientific Corp.* (2015) (later reduced by appeal to $10 million); and lead appellate counsel successfully reversed defense verdict in *Albright v. Boston Scientific Corp*.

Outside of his medical device work, Jonathan represents children and parents who allege Instagram purposefully designed its platform to be addictive to young people and increased its user growth at the expense of the mental health of its users. Mr. Orent currently serves as Co-Chair of the Science & Expert committee in the *In re: Social Media Cases*, JCCP No. 5255 (Cal. Sup. Ct.).

In addition to his litigation experience, Mr. Orent is active in the Sedona Conference and regularly speaks in regard to ESI and discovery issues. Mr. Orent currently serves on the Sedona Conference Working Group 1 Drafting committee that publishes important and influential commentary in the field of e-discovery. Mr. Orent also serves as an adjunct professor at the Roger Williams University School of Law, where he teaches mass torts seminars, and serves on the Board of Governors for the Rhode Island Association for Justice.

4. Paul Pennock, Morgan & Morgan P.A.

Paul Pennock is the Managing Partner of the Mass Tort Litigation Practice Group at Morgan & Morgan, P.A.. Previously, Mr. Pennock was the Co-Chair of the Pharmaceutical and Medical Device group at Weitz & Luxenberg, P.C. Mr. Pennock filed the first action in federal court in August 2023 related to the GLP-1 class of medications. In December 2023, Mr. Pennock moved for the consolidation of Novo Nordisk and Eli Lilly in this

MDL. Mr. Pennock and his firm are investigating over 10,000 individuals who have allegedly been injured by this class of medications.

Over the decades, Mr. Pennock has been appointed to several leadership roles including liaison counsel, plaintiff steering committees, and/or co-lead counsel in numerous state and federal MDL mass tort litigations. Mr. Pennock previously served as co-lead counsel for *In Re: Actos Products Liability Litigation*, MDL 2299; *In Re: Ethicon, Inc., Power Morcellator Products Liability Litigation*, MDL 2652; and *In Re: Seroquel Products Liability Litigation*, MDL 1769. As co-lead counsel for *In Re: Actos Products Liability Litigation*, Global Settlement Resolution occurred approximately 28 months following MDL creation where Mr. Pennock was part of the trial teams in both federal and state court. In 2015, as co-lead counsel of the *In Re: Ethicon, Inc., Power Morcellator Products Liability Litigation*, Mr. Pennock helped lead a settlement within one year of the MDL's inception.

Currently, Mr. Pennock is co-lead counsel, along with Ms. Aminolroaya, for *In Re: Elmiron (Pentosan Polysulfate Sodium) Products Liability Litigation*, MDL 2973, in the District of New Jersey, which is now in the resolution phase with almost all settlements processed. Mr. Pennock was a member of the Plaintiffs' Executive Committee for *In Re: 3M Combat Arms Earplug Products Liability Litigation,* MDL 2885,before the Hon. M. Casey Rodgers, and *In Re: Proton-Pump Inhibitor Products Liability Litigation*, MDL 2789, which are also both in the resolution phase and settlements being processed. Mr. Pennock is co-lead counsel for *In Re: Gardasil Products Liability Litigation*, MDL 3036; this litigation has been ongoing for several years and discovery is significantly underway. Mr. Pennock's role in this litigation has been primarily focused on expert discovery, which is in a good posture allowing for his principal time and devotion to this matter.

Many of the litigations Mr. Pennock has been involved with involved the trial of

bellwether cases where Mr. Pennock was lead or co-lead counsel. Most recently, Mr. Pennock was co-counsel in a bellwether trial for *In Re: 3M Combat Arms Earplug Products Liability Litigation*, MDL 2885, which resulted in a $13.2 million verdict. Mr. Pennock has also served as lead counsel in many science/*Daubert* hearings in both state and federal court since 1995.

E. Each Proposed Co-Lead Counsel Has Access to Sufficient Resources to Prosecute the Litigation in a Timely Manner

Each proposed Co-Lead Counsel has access to a large professional staff of attorneys, paralegals, and administrative staff. Ms. Aminolroaya's firm has 42 attorneys, Ms. Ruane's firm has 34 attorneys, Mr. Orent's firm has over 100 attorneys, and Mr. Pennock's firm has over 1,000 attorneys. As discussed above, the proposed Co-Lead Counsel would also draw upon the expertise and resources of other plaintiffs' counsel in these proceedings on an as-needed basis to handle discrete assignments and tasks.

Each proposed Co-Lead Counsel also has adequate financial resources to litigate this case to a successful completion, including through trial and appeal if necessary, and have developed unique insights into the staffing and funding needed to litigate large mass tort actions like this one.

IV. CONCLUSION

The undersigned respectfully seek appointment of (1) the following attorneys as Co-Lead Counsel: (i) Parvin Aminolroaya of Seeger Weiss LLP; (ii) Sarah Ruane of Wagstaff & Cartmell LLP; (iii) Jonathan D. Orent of Motley Rice LLC; and (iv) Paul Pennock of Morgan & Morgan, P.A.; (2) the following attorneys as Liaison Counsel: (i) Roberta Liebenberg of Fine Kaplan and Black, R.P.C.; and (ii) Nina Spizer of Dilworth Paxson LLP; (3) the attorneys so identified in Exhibit A as members of the Plaintiffs' Executive Committee; and (4) the attorneys so identified in Exhibit A as members of the Plaintiffs' Steering Committee.

A Proposed Order granting this requested relief is submitted with this application.

Dated: March 21, 2024

Respectfully submitted,

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Proposed Co-Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of March 2024, a true and correct copy of the accompanying document was filed with the Clerk of Court via the Court's CM/ECF system for electronic service to all counsel of record.

/s/ David Buchanan
David R. Buchanan