

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**IN RE: EpiPen (Epinephrine
Injection, USP) Marketing,
Sales Practices and Antitrust
Litigation**

MDL No: 2785

Case No. 17-md-2785-DDC-TJJ

(This Document Applies to All Cases),

**ORDER FOR PROCEDURE TO REAPPOINT LIAISON COUNSEL
FOR ALL DEFENDANTS**

On September 12, 2017, the court appointed Brian C. Fries of Lathrop Gage LLP as liaison counsel for all defendants. [Doc. 40](#). The court did so at the request of Mitchell Zamoff, then serving as lead counsel for the Mylan defendants, and with the consent of the Pfizer defendants. *Id.* at 6–7. After making that appointment, the court learned that the Mylan defendants had retained separate counsel for the two channels encompassed by this MDL—one set to represent them on the consumer class claims and another set to represent them on the claims by and against Sanofi. At the April 4, 2018 status conference, the court raised the issue whether Mylan’s retention of separate sets of counsel affected Mr. Fries’s appointment as defendants’ liaison counsel. And it ordered Mylan’s counsel to submit information allowing the court to determine whether a conflict of interest might exist. [Doc. 455 at 5](#).

On April 16, 2018, Mr. Fries submitted a letter to the court, providing information about his firm’s representation of Mylan in the consumer class cases and its simultaneous representation of Sanofi in unrelated, non-litigation matters. Mr. Fries explained that his firm does not believe that his service as defendants’ liaison counsel presented a conflict of interest.

But Mr. Fries offered to step aside from his liaison role if the court or any other party had concerns about his appointment to that position.

On April 19, 2018, Mr. Fries submitted a second letter. It advised that Sanofi had expressed concerns about his service as defendants' liaison counsel. In response to those concerns, Mr. Fries agreed he would step aside as defendants' liaison counsel. Mr. Fries also offered to have another lawyer assume his role. Finally, he suggested that, perhaps, defendants' liaison counsel is unnecessary because this MDL involves just two sets of defendants.

At this juncture, the court is not yet prepared to eliminate the role of liaison counsel for defendants. The court understands the gist of Mr. Fries's point. But still, the defense counsel side of the case is fully populated—more than 30 attorneys have appeared for one or more defendants. The court also is mindful of the valuable role that Mr. Fries has played to date.

Consequently, the court adds the topic of defendants' liaison counsel to the agenda for discussion at the May 9 status conference. To prepare for that discussion, the court directs defense counsel to confer in advance and come to the May 9 status conference prepared to discuss the following subjects: (1) whether the court should appoint replacement liaison counsel for defendants; (2) if so, who should the court appoint for that role; and (3) whether, in light of the experience in the case so far, the court should expand the role of liaison counsel. The court encourages defense counsel to identify one or more counsel to serve in that role—if it continues to exist—and to submit a resume and other supporting materials for such attorney(s) to the court no later than 5:00 p.m. CDT Monday, May 7, 2018. Counsel should submit those materials by email to ksd_crabtree_chambers@ksd.uscourts.gov and ksd_james_chambers@ksd.uscourts.gov.¹

¹ In anticipation of the May 9 status conference, the court already has ordered the parties to submit three-page status reports no later than May 2, 2018, via email to the chambers of Judges James and

Finally, and owing to his conflict, the court hereby terminates Mr. Fries's appointment as defendants' liaison counsel.

IT IS SO ORDERED.

Dated this 30th day of April, 2018, at Topeka, Kansas.

s/ Daniel D. Crabtree
Daniel D. Crabtree
United States District Judge

Crabtree. [Doc. 455 at 5–6](#). The three-page limitation does not apply to recommendations and accompanying materials supporting the recommendation for defendants' liaison counsel.