
IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PENNSYLVANIA

IN RE: AVANDIA LITIGATION

February Term, 2008

Case No. 2733

THIS DOCUMENT RELATES TO ALL
ACTIONS

**GLAXOSMITHKLINE LLC'S MOTION
FOR A LONE PINE CASE MANAGEMENT ORDER**

Motion: Defendant GlaxoSmithKline LLC ("GSK"), by its undersigned counsel, moves this Court for a *Lone Pine* case management order, requiring all plaintiffs to demonstrate that they can sustain key elements of their burdens of proof. In support of its motion, GSK submits the attached Letter Brief.

Control Number: _____

Filing Date: January 3, 2011

Response Date: January 10, 2011

Opposing Counsel: Dianne Nast, Esquire
Sol Weiss, Esquire
(Plaintiffs' Liaison Counsel)

Respectfully submitted,

/s/ Nina M. Gussack

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Date: January 3, 2011

Attorneys for Defendant GlaxoSmithKline LLC

**Summary of GlaxoSmithKline LLC's
Motion for a *Lone Pine* Case Management Order**

The Court should enter a *Lone Pine* case management order, requiring plaintiffs to demonstrate that they can meet key elements of their burdens of proof.

During all of the time this MTP has been pending, plaintiffs' counsel have filed non-viable claims and have allowed them to remain on the docket, usurping the resources of the parties and the Court. For more than one-third of the cases in Discovery Group I, for example, there was no evidentiary support for plaintiffs' claims that they had been injured by Avandia. Seventeen of the 45 Discovery Group 1 plaintiffs eventually conceded this and dismissed their cases, but only after GSK assumed the burden and cost of gathering and analyzing plaintiffs' medical records. (A chart of dismissed Discovery Group 1 cases is attached as Exhibit A.)

Moreover, as of the end of 2010, 256 plaintiffs were required to have submitted fact sheets and basic medical records satisfying the requirements of CMO 8. Sixty-six plaintiffs – more than 25% – have failed to provide any medical records, and nearly half of these plaintiffs have not even submitted fact sheets. Even among plaintiffs who have submitted fact sheets and medical records, many have not substantiated their alleged Avandia-related injuries.

Neither GSK nor this Court should bear the burden of claims that should never have been filed. This Court should enter an order in the form provided, requiring plaintiffs to provide Physician Certifications of Avandia use and claimed Avandia-related injuries, and all records relied upon by the physicians to so certify.

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January 3, 2011

The Honorable Sandra Mazer Moss
Court of Common Pleas
of Philadelphia County
Complex Litigation Center
City Hall - Room 622
Philadelphia, PA 19107

Re: **In re: Avandia Litigation, Feb. Term 2008, No. 2733**
This Document Applies to All Actions
Motion Of Defendant GlaxoSmithKline LLC For A “*Lone Pine*” Case Management
Order

Dear Judge Moss:

This MTP has been pending for nearly three years. During all of that time, plaintiffs’ counsel have habitually filed non-viable claims and allowed them to remain pending, usurping the resources of the parties and the Court. It should not fall to GSK to invest the time and money to cull claims that have no merit. Nor should the Court or the Special Master be saddled with consideration of claims that would not have survived reasonable pre-complaint investigation. In situations like these, numerous federal and state courts handling mass tort litigation, including this Court and the Avandia MDL, have entered “*Lone Pine*” case management orders, requiring plaintiffs to demonstrate that they can meet key elements of their burdens of proof.

The Honorable Sandra Mazer Moss

Page 2

January 3, 2011

I. INTRODUCTION

Before filing plaintiffs' Avandia complaints, plaintiffs' attorneys were obligated to perform an "inquiry reasonable under the circumstances" and to conclude that the "factual contentions ha[d] evidentiary support." Pa. R. Civ. P. 1023.1. Nevertheless, for more than one-third of the cases in Discovery Group I, there was no evidentiary support for plaintiffs' claims that they had been injured by Avandia.¹ Seventeen of the 45 Discovery Group 1 plaintiffs eventually conceded this and dismissed their cases. However, these cases were dismissed only after GSK assumed the considerable burden and cost of gathering and analyzing medical records.²

As of the end of 2010, 256³ plaintiffs were required to have submitted fact sheets and basic medical records satisfying the requirements of CMO 8. Sixty-six plaintiffs – more than 25% – have failed to provide any medical records,⁴ and nearly half of these plaintiffs have

¹ A chart of Discovery Group I cases, indicating which have been dismissed, is attached as Exhibit A.

² Two cases – *Tartack v. GSK*, October Term, 2007, No. 004010, and *Carrasquillo v. GSK*, January Term, 2008, No. 003671 – were dismissed only after GSK chose them as trial cases. For *Tartack*, in particular, GSK spent large amounts of time and money on extensive discovery before plaintiff's counsel agreed to dismiss the case.

³ Currently, 260 active cases, comprising 298 plaintiffs remain pending in this MTP. (Recently, The Webster Firm filed two multi-plaintiff cases: *Surber et al vs. GSK*, November Term, 2010, No.002542 (32 plaintiffs) and *Anderson et al. vs GSK*, November Term, 2010, No. 003540 (eight plaintiffs)).

⁴ Approximately 20 of these plaintiffs provided "proof of ordering," in technical compliance with CMO 8. However, no records have ever been received, though each of these cases was filed more than a year ago, and, in each case, months have passed since the records were ostensibly ordered.

The Honorable Sandra Mazer Moss
Page 3
January 3, 2011

not even submitted fact sheets. Even among plaintiffs who have submitted fact sheets and medical records, deficiencies and inconsistencies are rampant.

Despite their obligations under CMO 8, numerous plaintiffs have failed to provide prescriber records dating back one year before their claimed injuries or have failed to provide adequate post-injury records, or both. In addition, of 190 plaintiffs whose records have been reviewed, 26 plaintiffs' records do not confirm the plaintiff's fact sheet-alleged injury. It was such deficiencies that recently led the Avandia MDL Court to conclude that plaintiffs' claims "are often unsupported by [their own] submitted documents." *See In re: Avandia Marketing, Sales Practices and Products Liability Litigation* (MDL No. 1871), Pretrial Order No. 121 ("MDL P.T.O. 121"), (E.D. Pa. Nov. 15, 2010), attached as Exhibit B.

Even in cases where CMO 8 has been facially satisfied, plaintiffs' grossly inadequate pre-filing "triage" has repeatedly forced GSK to engage in expensive and extensive record collection before plaintiffs concede that their cases are not viable. For example, after GSK collected and analyzed nearly 7,500 pages of plaintiff's medical records **and prepared for four scheduled depositions**, plaintiff's counsel notified GSK that they intended to dismiss *Victoria Lopez v. GSK*,⁵ one business day before the depositions were to begin.

⁵ April Term, 2009, No. 000076.

The Honorable Sandra Mazer Moss

Page 4

January 3, 2011

II. ARGUMENT: PLAINTIFFS' HISTORY OF FILING MERITLESS CASES DEMANDS ENTRY OF A *LONE PINE* CASE MANAGEMENT ORDER

This Court is familiar with the need for so-called *Lone Pine* case management orders, having recently granted defendant's *Lone Pine* motion in the Paxil pregnancy litigation. Such orders enable courts "to identify and cull potentially meritless claims and streamline litigation in complex cases." *Baker v. Chevron USA, Inc.*, 2007 U.S. Dist. LEXIS 6601, 2007 WL 315346, at *1 (S.D. Ohio Jan. 30, 2007).

These orders can be traced to the case of *Lore v. Lone Pine Corp.*, 1986 N.J. Super. LEXIS 1626 (Law Div. Nov. 18, 1986). In *Lone Pine*, plaintiffs sued for personal injuries allegedly caused by polluted waters in the Lone Pine Landfill. Six months after suit was filed, the Court, on defendants' motion, entered a case management order requiring plaintiffs to provide "[r]eports of treating physicians and medical or other experts, supporting each individual plaintiff's claim of injury and causation." *Id.* at *3. When plaintiffs failed to submit the required case-specific expert reports, their claims were dismissed with prejudice. *Id.* at *9-10.

In the ensuing years, *Lone Pine* orders "have been routinely used by courts to manage mass tort cases." *In re Vioxx Prods. Liab. Litig.*, 557 F. Supp. 2d 741, 743 (E.D. La. 2008), citing *Acuna v. Brown & Root, Inc.*, 200 F.3d 335, 340 (5th Cir. 2000); *In re Rezulin Prods. Liab. Litig.*, 441 F. Supp. 2d 567, 570 (S.D.N.Y. 2006); *In re Silica Prods. Liab. Litig.*, 398 F. Supp. 2d 563, 576 (S.D. Tex. 2005) (additional citations omitted). They "are designed to handle the complex issues and potential burdens on defendants and the court in mass tort litigation." *Acuna*, 200 F.3d at 340.

The Honorable Sandra Mazer Moss

Page 5

January 3, 2011

Lone Pine orders are particularly common in pharmaceutical mass tort litigation.

In *In re Rezulin*, for example, Judge Kaplan of the Southern District of New York granted defendants' motion for an order requiring plaintiffs – who were already required to produce completed fact sheets – to produce early case-specific expert reports. Noting that “[t]he Court is satisfied that this course is essential to the fair and efficient administration of this litigation,” Judge Kaplan ordered that every plaintiff “consider whether there are good grounds to continue the action in light of the plaintiff’s individual circumstances and the Court’s decisions.” *In re Rezulin Prods. Liab. Litig.*, 2005 U.S. Dist. LEXIS 46919, at *24 (S.D.N.Y. May 9, 2005).

Judge Kaplan explained,

If a plaintiff and that plaintiff’s counsel conclude that there are good grounds to continue prosecuting the plaintiff’s claim, then the plaintiff -- in addition to discharging the plaintiff’s obligation to serve timely, fully completed Fact Sheets with the necessary declaration and HIPAA-compliant authorizations -- shall serve a Rule 26(a)(2) case-specific declaration, signed and sworn to by a physician or other medical expert (“Expert Report”). . . . Each Expert Report shall include the following information: . . . The dates during which the plaintiff used Rezulin and copies of the documents relied upon as evidence of such use . . . [and] [t]he expert’s opinion on causation of each claimed injury and, if the expert has such an opinion, the date of onset of each claimed injury. The declaration shall include (i) the injury or injuries . . . that the expert opines was caused by Rezulin, and (ii) all grounds for opinions expressed by the expert.

Id. at *24-26.⁶

⁶ Judge Kaplan established rolling deadlines for submissions by plaintiffs with pending claims, and required that new plaintiffs submit the required expert reports within ninety days of filing their complaints. 2005 (continued...)

The Honorable Sandra Mazer Moss

Page 6

January 3, 2011

Similarly, in the Bextra/Celebrex MDL, Judge Breyer entered an order providing,

In addition to each plaintiff's obligation . . . to serve a Plaintiff Fact Sheet ("PFS"), all responsive documents . . . , and properly executed authorizations, each plaintiff listed in Schedule A . . . and the plaintiff's counsel, in consultation with such medical advisor(s) as they see fit to consult, shall consider whether there are good grounds to continue the action in light of the plaintiff's individual circumstances. If so, then the plaintiff shall serve a Rule 26(a)(2) case-specific expert report regarding medical information, signed and sworn by a physician or other medical expert

In re Bextra and Celebrex Marketing Sales Practices Prod. Liab. Litig., MDL No. 1699, No. 05-MD-01699-CRB, Order at 1 (N.D. Cal. Aug. 1 and Aug. 5, 2008).⁷

In *In re Vioxx*, the Vioxx MDL court rejected plaintiffs' motion to suspend or modify an order requiring plaintiffs opting out of a global settlement to provide case-specific expert reports substantiating their claims, because, as here, the MDL was "no longer in its embryonic stage." *In re Vioxx*, 557 F. Supp. at 744.⁸

(continued...)

U.S. Dist. LEXIS 46919, at *24-26. After plaintiffs submitted their experts' reports, the court entered summary judgment on the claims of 28 of the plaintiffs for failing to sustain their burden on causation. *In re Rezulin Prods. Liab. Litig.*, 441 F. Supp. 2d 567 (S.D.N.Y. 2006).

⁷ The original order, dated August 1, 2008, was amended on August 5, 2008. The original order and the amendment are attached collectively as Exhibit C.

⁸ State courts managing coordinated pharmaceutical litigation also routinely utilize *Lone Pine* orders. *See, e.g., In re: N.Y. Rezulin Prods. Liab. Litig.*, Master Index No. 752,000/00, Order, *passim* (N.Y. Sup. Ct. N.Y. Cty. July 7, 2004) (ordering plaintiffs to provide, within sixty days of the date of the order, case-specific expert reports with expert opinion on injury, causation, and prognosis, among other things); *In re Baycol Litig.*, November Term, 2001, No. 0001, Order, *passim* (Ct. Com. Pl. Phila. Cty. Dec. 12, 2003) (granting defendants' *Lone Pine* motion and requiring plaintiffs to provide case-specific expert reports). Copies of these orders are attached as Exhibit D.

The Honorable Sandra Mazer Moss

Page 7

January 3, 2011

Recently, in the Avandia MDL, Judge Cynthia Rufe entered a *Lone Pine* order applying to all filed and tolled cases. Judge Rufe noted,

It is now clear to the Court [that] additional support for Plaintiffs' claims is necessary in furtherance of settlement agreements, for the selection of cases for bellwether trials, and for the timely remand of cases to the sending courts for resolution. . . . The Court's overriding concern is the need to objectively identify which of the many thousand plaintiffs have injuries which can credibly be attributed to Avandia usage, as alleged in their complaints (or Plaintiff Fact Sheets if the filing of a complaint has been tolled). The Order issued below merely requires information which plaintiffs and their counsel should have possessed before filing their claims: proof of Avandia usage, proof of injury, information about the nature of the injury, and the relation in time of the injury to the Avandia usage.⁹

The MDL order requires each plaintiff, on a schedule of rolling deadlines beginning 60 days after the date of the order, to produce a signed certification from a licensed physician including: (1) a determination that the plaintiff used Avandia, and the dates of usage; (2) either (a) a determination that the plaintiff suffered one or more specified injuries during Avandia usage or within one year after cessation of Avandia usage; or (b) a determination that the plaintiff suffered one or more specified injuries more than one year after cessation of Avandia usage, and that the Avandia usage caused the injury or injuries; and (3) an identification of the relevant injuries and a listing of the medical records that document the injuries. In addition to the physician certification, each plaintiff must provide copies of all medical records that the physician

⁹ MDL P.T.O. 121, Ex. B, at 1-2.

The Honorable Sandra Mazer Moss
Page 8
January 3, 2011

reviewed in documenting usage, dates of usage and injury. If any plaintiff fails to comply by the applicable deadline, the Court may, on GSK's motion, dismiss the plaintiff's case with prejudice.

In this MTP, a similar *Lone Pine* order will conserve the resources of the Court, the Special Master, and the parties by forcing plaintiffs to confront and confirm the viability of their claims.

III. CONCLUSION

This MTP has been pending for nearly three years. By filing unsubstantiated claims and allowing them to remain pending, plaintiffs have continually usurped the resources of the parties and the Court.

Plaintiffs have had ample time to demonstrate that they can support the bare allegations of their complaints. As the *Vioxx* court observed, "if Plaintiffs' counsel believe that [their] claims have merit, they must have some basis for that belief . . . [and] it is reasonable to require Plaintiffs to come forward" with case-specific expert reports. *In re Vioxx*, 557 F. Supp. at 744.

The Honorable Sandra Mazer Moss

Page 9

January 3, 2011

Accordingly, GSK requests that this Court enter a *Lone Pine* order in the form provided, to identify and cull meritless claims before additional resources are wasted on them.

Dated: January 3, 2011

Respectfully submitted,

/s/ Nina M. Gussack

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GlaxoSmithKline LLC

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Dianne Nast, Esquire (via PDF and first class mail)
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**IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, PENNSYLVANIA**

IN RE: AVANDIA LITIGATION

February Term, 2008

Case No. 2733

**THIS DOCUMENT RELATES TO ALL
ACTIONS**

**MOTION OF DEFENDANT
GLAXOSMITHKLINE LLC
FOR A "LONE PINE" CASE
MANAGEMENT ORDER**

**ATTORNEY CERTIFICATION OF GOOD FAITH
PURSUANT TO PHILA. CIV. R. 208.2(e)**

The undersigned counsel for movant hereby certifies and attests that counsel for GlaxoSmithKline LLC ("GSK") has contacted opposing counsel regarding the discovery deficiencies giving rise to the foregoing Motion for a "*Lone Pine*" Case Management Order in a good faith effort to resolve the matter, but has been unable to do so.

CERTIFIED TO THE COURT BY:

/s/Andrew E. Schinzel
Andrew E. Schinzel

CERTIFICATE OF SERVICE

I hereby certify that, on January 3, 2011, true and correct copies of GlaxoSmithKline LLC's Motion for a "*Lone Pine*" Case Management Order were served via electronic filing (ECF), electronic mail, and United States first class mail on the following Plaintiffs' Liaison Counsel:

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/s/Andrew E. Schinzel

Andrew E. Schinzel

EXHIBIT A

Seventeen Dismissed Cases from “Discovery Group 1”

Tartack v. GSK, Case No. 004010, October Term, 2007
Kozar v. GSK, Case No. 004897, October Term, 2007
Bosak v. GSK, Case No. 000521, January Term, 2008
Carrasquillo v. GSK, Case No. 003671, January Term, 2008
White v. GSK, Case No. 003674, January Term, 2008
Garcia v. GSK, Case No. 001967, February Term, 2008
Walker v. GSK, Case No. 001054, March Term, 2008
Long v. GSK, Case No. 004370, March Term, 2008
Moon v. GSK, Case No. 003976, April Term, 2008
Richmond v. GSK, Case No. 001380, May Term, 2008
Arendall v. GSK, Case No. 001383, May Term, 2008
Mauro v. GSK, Case No. 001141, May Term, 2008
Greer v. GSK, Case No. 001233, May Term, 2008
Frensky v. GSK, Case No. 002516, May Term, 2008
Fox v. GSK, Case No. 002523, May Term, 2008
Johnson v. GSK, Case No. 000286, July Term, 2008
Harbol v. GSK, Case No. 001754, July Term, 2008

EXHIBIT B

filing their claims: proof of Avandia usage, proof of injury, information about the nature of the injury, and the relation in time of the injury to the Avandia usage. Accordingly, the Court hereby **GRANTS** Defendant's Motion in part, and **DENIES** the Motion in part, as follows:

1. Physician Certification of Avandia Usage and Injury. In addition to all existing pre-trial disclosure obligations, each plaintiff and claimant, including each personal representative of an estate of any deceased or any incompetent user of Avandia (collectively, "plaintiff") shall, within the time limits set forth in Paragraph 3 below, serve upon counsel for GSK a signed certification from a licensed physician that includes the following:

- a. plaintiff's name, address, and date of birth;
- b. a determination that the plaintiff used Avandia, along with a listing of the records reviewed by the physician that document such usage and the dates of such usage;
- c. either (1) a determination that the plaintiff suffered one or more injuries listed in Exhibit A to this Order during Avandia usage or within one year of cessation of Avandia usage, or (2) a determination that (i) the plaintiff suffered one or more injuries listed in Exhibit A to this Order more than one year after cessation of Avandia usage and (ii) the Avandia usage caused such injury or injuries;
- d. an identification of the injury or injuries set forth in Paragraph 1.c; a listing of the records reviewed by the physician that document such injury or injuries; and the dates of the records that document such injury or injuries; and
- e. copies of all records listed in Paragraphs 1.b and 1.d.

2. Documentation of Avandia Usage. At the same time that each plaintiff serves on counsel for GSK the Physician Certification described in Paragraph 1,

each plaintiff must serve GSK counsel with records documenting all period(s) of Avandia usage.

3. Schedule for Serving Physician Certification Pursuant to Paragraph 1 and Usage Documents Pursuant to Paragraph 2:

a. For all cases filed or made subject to a tolling agreement on or after January 1, 2010 and before the date of this Order, the Physician Certification and Documents shall be served within 60 days of the filing of this Order.

b. For all cases filed or made subject to a tolling agreement on or after January 1, 2009, and before January 1, 2010, the Physician Certification and Documents shall be served within 90 days of the filing of this Order.

c. For all cases filed or made subject to a tolling agreement on or after January 1, 2008, and before January 1, 2009, the Physician Certification and Documents shall be served within 120 days of the filing of this Order.

d. For all cases filed or made subject to a tolling agreement before January 1, 2008, the Physician Certification and Documents shall be served within 150 days of the filing of this Order.

e. For all cases filed or made subject to a tolling agreement on or after the date of this Order, the Physician Certification and Documents shall be served within 60 days of the filing or the date on which the claim was made subject to a tolling agreement.

f. If any plaintiff is unable to comply with the foregoing deadlines after making reasonable efforts to do so, that plaintiff may apply to the Special Master for an extension of the deadlines for good cause shown; provided, however, that

any request for an extension must be made in writing and submitted to the Special Master at least 15 days before the deadline for submission of the Physician Certification and Documents.

4. Dismissal of Plaintiffs Who Fail to Provide Required Documents.

When any plaintiff fails to provide the documents required by this Order by the required deadline, the Court may, on GSK's motion, dismiss plaintiff's claims with prejudice.

5. Rule 26 Expert Obligations. The Physician Certification required by this Order is not a substitute for any Rule 26 expert obligations required under the law or separate order of the Court. No physician who completes a Physician Certification pursuant to this Order is subject to fact or expert discovery solely because of his or her role in completing the Physician Certification.

Dated: *November 15th,*
2010

IT IS SO ORDERED.

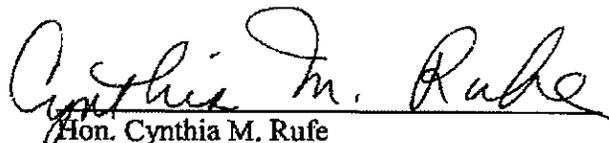

Hon. Cynthia M. Rufe
United States District Judge

EXHIBIT A

The following contains a list of injuries alleged by plaintiffs to be related to Avandia use. There may be other specific injuries alleged by plaintiffs, not listed below, that are covered by the "other" category below. GSK has disputed, and continues to dispute, these allegations, and this list has not been endorsed in whole or in part by GSK.

Myocardial Infarction	Ischemic Heart Disease
Acute Coronary Syndrome	Percutaneous coronary intervention (PCI)/Coronary Angioplasty
Angina Pectoris	Angiogram
Angina Unstable	Dyspnea
Postinfarction Angina	Edema
Prinzmetal Angina	Cardiovascular Accident (Stroke)
Coronary Artery Vasospasm	Transient ischemic attack
Arteriospasm Coronary	Heart failure
Coronary Artery Occlusion	Fluid retention
Coronary Artery Reocclusion	Fracture
Coronary Artery Thrombosis	Hepatic effects
Coronary Artery Disorder	Percutaneous transluminal renal angioplasty (PTRA), other renal injuries
Coronary Artery Disease or Syndrome	Hypoglycemia
Coronary Bypass Thrombosis	Hyperlipidemia/Dyslipidemia
Stenting	Hypertension
Coronary Artery Bypass Grafting	Macular edema
Myocardial Ischemia	Atrial Fibrillation
Arrhythmia	Percutaneous transluminal coronary angioplasty
Subendocardial Ischemia	Coronary clot extraction
Abnormal ECG/EKG	Thrombolytic therapy
Ventricular Tachycardia	Liver injury
Ventricular Fibrillation	Other (identify)
Ventricular Asystole	
Chest Pain	
Cardiac Arrest	
Death	

EXHIBIT C

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: BEXTRA AND CELEBREX
MARKETING SALES PRACTICES AND
PRODUCT LIABILITY LITIGATION

CASE NO. M:05-CV-01699-CRB
MDL No. 1699

This Order Relates to:

ALL PLAINTIFFS LISTED IN
SCHEDULE A.

**PRETRIAL ORDER NO. 29: PROVISION OF
CASE-SPECIFIC EXPERT REPORTS
REGARDING SPECIFIC CAUSATION**

1. Order Applicable to All Cases Listed in Schedule A. This Order shall apply to all plaintiffs listed in Schedule A.

2. Plaintiffs' Obligation to Service Case-Specific Expert Reports. In addition to each plaintiff's obligation under Pretrial Order No. 6 to serve a Plaintiff Fact Sheet ("PFS"), all responsive documents (or a written notice that none are in the possession of plaintiff or plaintiff's counsel), and properly executed authorizations, each plaintiff listed in Schedule A (including each personal representative of an estate of any deceased or of any incompetent user of Celebrex® and/or Bextra®) and the plaintiff's counsel, in consultation with such medical advisor(s) as they see fit to consult, shall consider whether there are good grounds to continue the action in light of the plaintiff's individual circumstances. If so, then the plaintiff shall serve a Rule 26(a)(2) case-specific expert report regarding specific causation, signed and sworn to by a physician or other

1 medical expert (a "Case-Specific Expert Report"). Plaintiffs shall send the Case-Specific Expert
2 Reports to Defendants' counsel by a manner agreed to by the parties.

3 3. Contents of Case-Specific Expert Report. Each Case-Specific Expert
4 Report shall include the following information:

5 a. Plaintiff's Information. The plaintiff's name and date of birth;

6 b. Expert's Information. The name, professional address, and
7 curriculum vitae of the expert, including a list of all publications authored by the witness within
8 the preceding ten years;

9 c. Plaintiff's Medical Records. A list of the plaintiff's medical
10 records reviewed by the expert prior to the preparation of the Case-Specific Expert Report by
11 Bates number, as well as copies of any such records not posted on the web site of the medical
12 record vendor hired jointly by the parties;

13 d. Use Dates. The dates during which the plaintiff used Celebrex®
14 and/or Bextra® and references to the Bates numbers of the particular pages relied upon as
15 evidence of such use (or the actual pages if the pages are not Bates stamped);

16 e. Plaintiff's Prescribing Physician. The name(s) of the physician(s)
17 who prescribed Bextra and/or Celebrex to the plaintiff;

18 f. Plaintiff's Injury. Whether the plaintiff's medical records report
19 that the plaintiff experienced a myocardial infarction, ischemic stroke, sudden death, or any other
20 injury while the plaintiff was taking Celebrex® and/or Bextra® and, if so: (i) the nature of the
21 alleged injury; (ii) the date of the alleged injury; and (iii) references to the particular pages relied
22 upon as evidence of such myocardial infarction, ischemic stroke, sudden death, or other injury.

23 4. Schedule for Serving Case-Specific Expert Reports. Each plaintiff listed in
24 Schedule A shall have 45 days from entry of this Order to serve upon defendants' counsel a
25 complete and signed Case-Specific Expert Report.

26 5. Dismissal of Plaintiffs Who Fail to Provide Case-Specific Expert Reports.
27 Any plaintiff who fails to provide a Case-Specific Expert Report that complies with this Order
28

1 within the applicable timeline will be subject to having his or her claims, as well as any derivative
2 claim(s), dismissed with prejudice pursuant to the following procedure:

3 a. Deficiency Letter. When any plaintiff fails to provide a Case-
4 Specific Expert Report that complies with this Order, defendants' counsel may write a letter to
5 plaintiff's counsel and identify with particularity the alleged deficiency ("the deficiency letter").
6 The letter shall state that the plaintiff will have seven (7) days to cure the alleged deficiency and
7 that absent cure of the alleged deficiency within that time (or within any extension of that time as
8 agreed to by the parties), defendants may move for dismissal of plaintiff's claims, including
9 dismissal with prejudice.

10 b. Compliance Motion. If plaintiff's counsel does not provide a Case-
11 Specific Expert Report that complies with this Order within seven days of receipt of the
12 deficiency letter, defendants' counsel may file a motion with the Special Master seeking an order
13 requiring plaintiff to comply with this Order or face a motion to dismiss with prejudice, or other
14 sanctions (a "compliance motion"). Such compliance motions shall be heard on an expedited
15 basis. A compliance motion may be noticed fourteen (14) calendar days before the hearing date,
16 with any opposition to be filed seven (7) calendar days before the hearing and any reply to be
17 filed three (3) calendar days before the hearing.

18 c. Compliance Order. If the Special Master determines that a plaintiff
19 has failed to provide a Case-Specific Expert Report that complies with this Order, the Special
20 Master shall order plaintiff to comply with this Order within seven (7) days or face dismissal or
21 other appropriate sanctions as determined by the Court ("the compliance order").

22 d. Failure to Comply with Special Master's Order and Motion to
23 Dismiss. If plaintiff does not comply with the compliance order within seven (7) days,
24 defendants' counsel may file a motion with the Court to dismiss plaintiff's claims with prejudice
25 or for other appropriate sanctions (a "motion to dismiss"). No further notice to plaintiff's counsel
26 shall be required. Such motions to dismiss shall be heard on an expedited basis. A motion to
27 dismiss may be noticed fourteen (14) calendar days before the hearing date, with any opposition
28 to be filed seven (7) calendar days before the hearing and any reply to be filed three (3) calendar

1 days before the hearing. If the Court determines that plaintiff has not complied with the
2 compliance order, it may dismiss plaintiff's claims with prejudice or impose other sanctions as it
3 deems appropriate.

4 6. A Written Report to the Court. On or before September 29, 2008, the
5 parties, either jointly or separately, shall provide the Court with a written report on the status of
6 plaintiffs' compliance with PTO 29 and a recommendation as to how the Court should proceed to
7 expeditiously resolve any pending cases.

8 **IT IS SO ORDERED.**

9 Dated: August 1, 2008

10 /s/
HONORABLE CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: BEXTRA AND CELEBREX
MARKETING SALES PRACTICES AND
PRODUCT LIABILITY LITIGATION

CASE NO. M:05-CV-01699 CRB

MDL No. 1699

This Order Relates to:

ORDER

ALL PLAINTIFFS LISTED IN
SCHEDULE A.

The word "causation" on Page 1, line 28 of this Court's order dated August 1, 2008 is hereby stricken and replaced by the words "medical information."

IT IS SO ORDERED.

Dated: August 5, 2008



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PRESENT: _____
Justice

PART 35

0752000/2000

ALLEN, ALMA
vs
WARNER LAMBERT CO.

INDEX NO. 752,000/00
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

SEQ 1
COMPEL

The following papers, numbered 1 to _____ were read on this motion to/for _____

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause -- Affidavits -- Exhibits ...

Answering Affidavits. -- Exhibits _____

Replying Affidavits _____

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion *to compel is decided*
as per order signed today. Order
submitted by defense counsel
is signed as modified

Dated: 8/6/04

[Signature]
J.S.C.

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

DO NOT POST

FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
IN RE: NEW YORK REZULIN PRODUCTS : Master Index Number
LIABILITY LITIGATION : 752,000/00
: :
: :
-----X
THIS DOCUMENT APPLIES TO ALL REZULIN : PROPOSED ORDER
CASES PENDING IN THE SUPREME COURT OF :
THE STATE OF NEW YORK : Respectfully Refer to
: Honorable Helen E. Freedman
: :
-----X

Defendants, Pfizer Inc., and Warner-Lambert Company LLC having moved for an Order on April 29, 2004 requiring plaintiffs to provide expert reports and other documentation of Rezulin usage and injuries resulting from Rezulin use; and plaintiffs having opposed such Order on May 18, 2004, May 28, 2004, June 2, 2004, and June 3, 2004 respectively; and defendants having replied to the motion on June 16, 2004 and oral argument having been heard before this Court on July 1, 2004; it is hereby,

ORDERED, that pursuant to CPLR 3101(d), and § 202.17 of the Uniform New York Rules of Court, and the inherent authority of this Court, each plaintiff in the New York Rezulin Products Liability Litigation shall be required to serve a disclosure to substantiate and document plaintiff's alleged claims; and it is further

ORDERED, that the disclosure will specifically include, in reasonable detail, the following information:

1. The name, professional address, title, ~~employer and the curriculum vitae~~ of plaintiff's medical expert; *curriculum vitae to follow asap-*
2. The exact date(s) that the medical expert examined and/or treated plaintiff;
3. The identification and production of copies of the medical records (by date

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and provider) actually reviewed by the medical expert prior to the preparation of the disclosure provided for herein;

4. The identification and production of copies of the lab reports, studies, x-rays, scans, MRIs and any other diagnostic tests (by date and health care facility/provider) actually reviewed and relied upon by the medical expert; *(within 120 days)*
5. The number of hours ~~actually spent~~ by the medical expert reviewing the medical records of the ~~Rezulin~~ plaintiff; *HEX*
6. The dates of Rezulin use specifying the documentary evidence of such use;
7. The injuries that the medical expert opines were caused by plaintiff's Rezulin use and the summary of the grounds for such opinion;
8. The diagnosis made by the medical expert *or by any other provider whom the expert relied upon.*
9. The date(s) that plaintiff was injured by Rezulin use;
10. The prognosis made by the medical expert;
11. The plan of care or treatment rendered to plaintiff by the medical expert; and it

is further,

12. *HIPPA medical authorizations signed by plaintiffs*
- ORDERED, that in the instance of a wrongful death action, in addition to the

above-mentioned, the disclosure will specifically include:

1. A statement with respect to what role, if any, Rezulin had in the death of the Rezulin user;
2. The identification and production of any post-mortem records, autopsy reports or reports of other diagnostic studies prepared at or about the time of death;

and it is further,

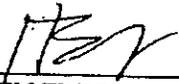
ORDERED, that plaintiff will serve these disclosures within sixty (60) days from the date *twice* of this Order; and it is further,

ORDERED, that the service of this disclosure by each plaintiff will not prejudice the right to substitute a different medical expert at the time of trial, ~~for good cause shown~~, so long as the *is identified and* substituted medical expert testifies as disclosed pursuant to this Order; and it is further,

ORDERED, that each plaintiff, who has not yet done so, will file a Request For Judicial

Intervention (RJI) and purchase an index number within thirty (30) days from the date of this Order.

Dated: New York, New York
July 7, 2004



HELEN FREEDMAN
J.S.C.

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

IN RE: BAYCOL LITIGATION : NOVEMBER TERM, 2001
: NO. 0001

ORDER

AND NOW, this 12th day of *December*, 2003, upon consideration of the Defendants' Motion Requiring Production of Case-Specific Expert Reports and the Plaintiffs' Response thereto, it is hereby ORDERED that the Defendants' Motion is granted as follows.

For purposes of clarity, this Court has distinguished the various diagnosis rendered in this litigation as Rhabdomyolysis and Non-Rhabdomyolysis. The parties therefore are ORDERED and DIRECTED to follow the procedures hereinafter set forth.

Diagnosis: Non-Rhabdomyolysis
(Plaintiffs deposed)
Actions commenced: 2001 and 2002

1. All Counsel are hereby Directed to present a list of all cases commenced in the years 2001 and 2002, wherein the Plaintiff has been deposed, not later than December 19, 2003 by forwarding the same to the undersigned, attention Mary McGovern, 622 City Hall, Philadelphia, PA.
2. Plaintiffs are Ordered and Directed to serve case-specific expert reports not later than January 15, 2004. Said expert reports shall be prepared in accordance with the directive set forth in Order Amending Trial Settings and Discovery Order No. 2 (Expert Discovery).

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PURSUANT TO Pa. R.C.P. 236(b)

DEC 12 2003

First Judicial District of Pa.
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K. DORSEY

3. Plaintiffs shall submit to the Court, via Mary McGovern, proposed groupings of said cases not later than January 30, 2004 wherein case-specific expert reports have been served.
4. Defendants shall serve case-specific expert reports not later than 60 days prior to trial.
5. Trials shall commence in May, 2004 at the direction of this Court. Said trial scheduling will be published in The Legal Intelligencer and on the Court's Website.

Diagnosis: Non-Rhabdomyolysis
(Plaintiffs NOT deposited)
Actions commenced: 2001 and 2002

6. Case-specific expert reports for all remaining cases wherein the Plaintiff has not been deposed shall be served not later than February 15, 2004.
7. Plaintiffs shall submit to the Court, via Mary McGovern, proposed groupings of said cases not later than February 29, 2004 wherein case-specific expert reports have been served. Said expert reports shall be prepared in accordance with the directive set forth in Order Amending Trial Settings and Discovery Order No. 2 (Expert Discovery).
8. Trials shall commence during the year 2004 at the direction of this Court.

Diagnosis: Rhabdomyolysis
Actions commenced: 2001 and 2002

1. All Counsel are Directed to meet and confer in Order to establish an agreed upon list of Rhabdomyolysis cases commenced in the years 2001 and 2002. A list of cases designated "Diagnosis of Rhabdomyolysis" and

"Diagnosis Contested Rhabdomyolysis" shall be submitted to this Court, via Mary McGovern, in the following manner:

- a. The following Plaintiffs' firms shall meet and confer with Defense Counsel and submit their list of the aforesaid cases not later than January 15, 2004.

Weitz & Luxenberg

- b. The following Plaintiffs' firms shall meet and confer with Defense Counsel and submit their list of the aforesaid cases not later than February 15, 2004.

The Beasley Firm
Anapol, Schwartz, Weiss, Cohan, Feldman & Smalley
Schiffirin & Barroway
Greitzer & Locks
Roda & Nast
Kline & Specter
Curran & Byrne
Brookman, Rosenberg, Brown & Sandler
Raynes, McCarty, Binder, Ross & Mundy
~~Weitz & Luxenberg~~
Kolsby, Gordon, Robin, Shore & Bezar
Levin, Fishbein, Sedran & Berman

2. The parties are further Directed to serve Case-Specific Expert Reports in all cases categorized as "Diagnosis Contested Rhabdomyolysis" in the following manner:

- a. Plaintiffs shall serve their reports not later than March 15, 2004.
- b. Defense shall serve their reports not later than April 15, 2004.

- c. Said expert reports shall be prepared in accordance with the directive set forth in Order Amending Trial Settings and Discovery Order No. 2 (Expert Discovery).
3. Designation Deadlines of case-specific expert reports shall remain consistent with this Court's previous Order wherein Plaintiffs expert reports are due 120 days prior to trial and Defense expert reports due 60 days prior to trial for all cases which have been designated as "Diagnosis of Rhabdomyolysis".
4. Trials shall commence during the year 2004 at the direction of this Court.

Actions commenced in 2003

1. The Court shall present a similar rolling schedule for actions commenced in the year 2003 in a Case Management Order to be entered at a future date.

Notice of Non-Compliance

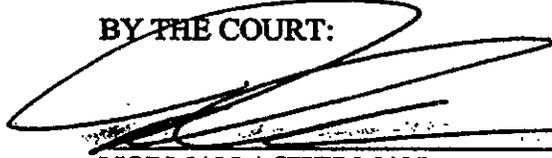
1. Defense Counsel are hereby Directed to submit to this Court, via Mary McGovern, 622 City Hall, Philadelphia, PA, a list of cases by Plaintiff's firm who have failed to comply with this Order. Said list shall be submitted not later than 2 weeks of the aforementioned submission dates contained in this Order.

Failure to Comply

Failure to comply with the terms of this Order shall result in the scheduling of a Rule Returnable Hearing to show cause why a Judgment of Non Pros should not be entered for failure to diligently prosecute.

It is further ORDERED and DIRECTED that the terms and conditions set forth in this Order shall also be designated as Case Management Order No. 2 and shall be filed in the above-captioned Master Docket.

BY THE COURT:



NORMAN ACKERMAN,
Coordinating Judge
Complex Litigation Center