
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 REPLY IN FURTHER SUPPORT OF
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.

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Opposing Counsel: Dianne Nast, Esquire
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Respectfully submitted,

/s/ Nina M. Gussack

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January 28, 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

Reply Of Defendant GlaxoSmithKline LLC in Further Support of Motion For A “*Lone Pine*” Case Management Order

Dear Judge Moss:

Despite plaintiffs’ protestations, a *Lone Pine* case management order is necessary at this advanced stage of the Avandia litigation. Recent status conferences with Your Honor have confirmed that the plaintiffs remaining in this litigation have failed to perform adequate pre-complaint investigation, have done very little (if anything) since filing their complaints and have very few (if any) medical records documenting their medical condition and alleged injuries. Even where plaintiffs have submitted a Court-ordered Fact Sheet, this Court understands that when plaintiffs’ counsel fail to verify plaintiffs’ self-reporting of conditions and alleged injuries through medical records – as they are doing here – any ability to rely on the Fact Sheets is lost. GSK’s motion has nothing to do with whether “the system” is broken, and plaintiff’s efforts to redirect the Court’s attention through such an argument is misplaced.

The basis for GSK’s motion is simple. The plaintiffs remaining in this litigation have repeatedly shirked their obligations to document their alleged injuries and identify and

produce relevant records. They have forced GSK to assume the burden of weeding out claims that never should have been filed. As in similar mass tort litigation, a *Lone Pine* order will do nothing more than require plaintiffs to come forward with the information they should have had in hand before filing their complaint.

A. As in the Cases Cited in GSK's Opening Brief, a *Lone Pine* Case Management Order Is Appropriate and Necessary at This Stage of This MTP

As explained in GSK's opening brief, it is hardly extraordinary for *Lone Pine* orders to be entered in mass tort litigation. *See, e.g., In re Vioxx Prods. Liab. Litig.*, 557 F. Supp. 2d 741, 743 (E.D. La. 2008); *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); *see also* additional orders discussed in GSK's opening brief, at pp. 5-7. In this litigation, a *Lone Pine* order is demanded by plaintiffs' history of filing meritless claims. Under Rule 1023.1 of the Pennsylvania Rules of Civil Procedure, plaintiffs were required to investigate and substantiate their causation cases before they ever filed their lawsuits. That this often did not happen is illustrated by the large number of cases that have been abandoned by plaintiffs or dismissed on GSK's motions when GSK has forced plaintiffs' hands.¹ Moreover, plaintiffs have repeatedly violated this Court's procedures, producing incomplete records and forcing GSK to spend its time and money to identify and obtain relevant records.

Plaintiffs focus on the purported differences between this MTP and other mass tort litigation in which *Lone Pine* orders have been entered. In fact, there are important

¹ Plaintiffs have not disputed this reality.

similarities among the cited cases, and between those cases and this MTP. In *Vioxx*, as here, the Court was faced with cases remaining after numerous plaintiffs settled their claims. The Court pointed out that the litigation had been pending for over three years and had included comprehensive discovery against the defendant, and that plaintiffs' counsel "throughout the country have been studying the effect of Vioxx on the human body."² The Court concluded, "The Court finds that at this advanced stage of the litigation, it is not too much to ask a Plaintiff to provide some kind of evidence to support their claim that Vioxx caused them personal injury."³

In *Rezulin*, the litigation had been pending for more than four years. Discovery, and the Court's resulting decisions, had provided plaintiffs with guidance about the parameters of viable claims. Defendants argued that

[i]ssuing [a *Lone Pine*] order will relieve the Court and the parties of filing follow-up motions that would, less efficiently, flush out claims that are inconsistent with the Court's prior rulings or are otherwise baseless . . . In short, an order requiring case-specific expert reports will place the burden of weeding out meritless claims where the law places it in the first instance – on the plaintiffs and their counsel.⁴

² *Id.*

³ *Id.*

⁴ A copy of Defendants' Memorandum of Law in Support of Their Motion for an Order Requiring Plaintiffs to Produce Case-Specific Expert Reports, *In re Rezulin Prod. Liab. Litig.* (MDL No. 1348), a copy of which is attached at Exhibit A, at 1.

Concluding that it was “satisfied that this course is essential to the fair and efficient administration of this litigation,”⁵ the Court granted defendants’ motion, “substantially for the reasons set forth in defendants’ [briefs.]”⁶

Most recently, in the Avandia MDL – despite the presence of a case management requiring identical pretrial disclosures as is required in this Court, including fact sheets and medical record production – 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. . . .”⁷

Plaintiffs’ counsel in the Avandia MDL argued, as they do here, that the system was not broken, pretrial orders were already in place to deal with meritless claims and any further requirements would not change the landscape of the litigation. They were wrong. After the *Lone Pine* order was entered in the Avandia MDL, over 2,000 plaintiffs with filed and tolled claims were subject to a January 14, 2011 deadline to produce medical certifications. After the deadline passed, approximately half were unable to submit certifications documenting their use of Avandia and alleged injuries. GSK has moved to dismiss hundreds of cases and is terminating hundreds of tolling agreements.

More refined scrutiny is equally necessary here. This is a mature MTP, and it has included comprehensive factual and scientific discovery. As in *Vioxx*, *Rezulin*, and the Avandia

⁵ *In re Rezulin*, 2005 U.S. Dist. LEXIS 46919, at *23.

⁶ *Id.*

⁷ A copy of Judge Rufe’s Order was attached as Exhibit B to GSK’s opening brief.

MDL, there is ample evidence that plaintiffs have filed meritless cases and have allowed them to remain pending, abusing the litigation process and usurping the resources of the parties and of this Court.

The fact that mass tort judges have also entered *Lone Pine* orders in a variety of scenarios not identical to this one is both beside the point and exactly the point. Whether to issue case management orders, and what such orders may require, are decisions left to the broad and sound discretion of this Court. As set forth in GSK's initial brief, *Lone Pine* orders are becoming increasingly commonplace in the mass tort setting where, as here, they are necessary to identify and eliminate meritless claims.

B. Plaintiffs' Lack of Diligence Places an Ongoing Burden on GSK

Plaintiffs argue that GSK is not harmed by plaintiffs' delay in proving specific causation, because current procedures "are effectively managing this proceeding . . . and GSK can point to no significant problem here that would even come close to necessitating the use of a *Lone Pine* order."⁸

In fact, while this Court's procedures have always provided the framework for orderly management of this litigation, plaintiffs have consistently shirked the obligations, imposed by this Court, to scrutinize their cases and to produce relevant information to GSK. GSK has, far too often, been forced to assume the burden of gathering records because it was the only way it would ever have access to them. This litigation is replete with examples of records plaintiffs did not produce, even after specific and repeated requests by GSK.

⁸ Plaintiffs' Opposition to Defendant GlaxoSmithKline LLC's Motion for a *Lone Pine* Case Management Order, at 6.

The reality of this litigation is that plaintiffs have not performed adequate pre-complaint investigation, have not discharged their obligations to come forward with relevant records, and have forced GSK to assume the burdens created by their pervasive lack of diligence.

C. Plaintiffs Will Not Be Unreasonably Burdened by a *Lone Pine* Order

Plaintiffs argue that they will be required to produce expert reports eventually, and it is burdensome and unreasonable to require them to do it now.

In fact, fewer than 200 cases remain pending in this MTP – counsel are not being asked to simultaneously substantiate the claims of thousands of plaintiffs. Discovery against GSK is essentially complete, and nothing that remains to be discovered can bear on the issue of whether Avandia caused a given plaintiff’s injuries. Requiring medical certifications now will allow the Court to eliminate the cases that are not viable and to better plan and manage the cases that are.

As the *Vioxx* court held, “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.⁹ As in *Vioxx*, the *Lone Pine* order requested here by GSK will do nothing more than require plaintiffs to come forward with the information they should have had in hand before filing their complaint. Given the maturity of this litigation, it is now time for plaintiffs to support their claims.

⁹ *In re Vioxx*, 557 F. Supp. 2d at 744.

CONCLUSION

This Court should therefore enter an order in the form provided, requiring plaintiffs to produce, within 60 days, medical certifications substantiating plaintiffs' claims, and all records relevant to such certifications.

Dated: January 28, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on January 28, 2011, true and correct copies of the foregoing GlaxoSmithKline LLC's Reply in Further Support of 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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EXHIBIT A

105045

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ORIGINAL

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In re: :
: :
REZULIN PRODUCT LIABILITY :
LITIGATION (MDL NO. 1348) :
: :
This Document Relates To: All Cases :
: :
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**MASTER FILE
00 Civ. 2843 (LAK)**

**DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF
THEIR MOTION FOR AN ORDER REQUIRING PLAINTIFFS
TO PRODUCE CASE-SPECIFIC EXPERT REPORTS**

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Defendants seek an order requiring each Rezulin recipient in this MDL to produce a Rule 26(a)(2) case-specific report from a medical expert.¹ This Court has granted numerous motions – including defendants’ motion *in limine* to exclude expert testimony on silent liver injury and various summary judgment motions filed in test cases – that have significantly narrowed the claims that may be pursued in this MDL. Issuing the requested order will relieve the Court and the parties of the burdens of filing follow-up motions that would, less efficiently, flush out claims that are inconsistent with the Court’s prior rulings or are otherwise baseless. For example, in response to defendants’ second motion for summary judgment as to non-liver-related claims (which was based on the Court’s first ruling regarding non-liver-related claims), many plaintiffs did not submit *any* expert testimony to support their claims, and others merely re-filed the same insufficient expert reports that the Court had already rejected. In short, an order requiring case-specific expert reports will place the burden of weeding out meritless claims where the law places it in the first instance – on the plaintiffs and their counsel.

I. PRIOR RULINGS AND THE PROPOSED ORDER

There are currently approximately 1,002 cases involving approximately 3,865 Rezulin recipients pending in this MDL. In addition, approximately 18 cases involving approximately 1,308 recipients are in the process of being transferred to this MDL.² As this MDL has progressed, it has become apparent that many plaintiffs have asserted claims that have

¹ A copy of the Proposed Order is attached as Exhibit A to the Declaration of David Klingsberg, dated April 7, 2005 (“Klingsberg Decl.”).

² These numbers were generated on April 1, 2005, and are approximate.

no factual or legal basis. For example, many plaintiffs admit in their Fact Sheets that they did not consult a physician before filing suit.³

Many claims in this MDL are probably precluded by one or more of this Court's prior rulings:

- Granting defendants' Motion to Exclude Expert Opinions on "Silent" Liver Injury, *In re Rezulin Prod. Liab. Litig.*, – F. Supp. 2d –, 2005 WL 583751 (S.D.N.Y. Mar. 14, 2005);
- Granting defendants' Motions for Summary Judgment as to Non-Liver-Related Claims (filed in test cases), *In re Rezulin Prod. Liab. Litig.*, 2004 WL 1161248 (S.D.N.Y. May 25, 2004); *In re Rezulin Prod. Liab. Litig.*, Pretrial Order No. 358 (S.D.N.Y. Mar. 18, 2005); *In re Rezulin Prod. Liab. Litig.*, Pretrial Order No. 360 (S.D.N.Y. Mar. 21, 2005);
- Granting defendants' Motion for Summary Judgment as to Certain Side-Effects Warned About in the Adverse Reactions Table of the Rezulin Labeling (filed in test cases), *In re Rezulin Prod. Liab. Litig.*, 2004 WL 2029404 (S.D.N.Y. Sept. 9, 2004);

³ Plaintiffs are asked in their Fact Sheets: "Have you had discussions with any doctor about whether your condition is related to Rezulin." Fact Sheet Question VI.A. Defendants reviewed a random sample of 25% of the Fact Sheets. Of the 562 randomly-selected recipients, 415 (nearly 75%) admitted that they had no such discussions or did not know whether they had such discussions. The random sample was generated by alphabetizing the Fact Sheets by recipient last name and reviewing every fourth Fact Sheet.

- Granting defendants' Motion for Summary Judgment as to No-Injury and Fear-of-Future Injury Claims (filed in test cases), *In re Rezulin Prod. Liab. Litig.*, 2005 WL 591125 (S.D.N.Y. March 15, 2005);
- Granting defendants' Motion for Judgment on the Pleadings on Limitations Grounds (filed in test cases), *In re Rezulin Prod. Liab. Litig.*, Pretrial Order No. 342 (S.D.N.Y. Jan. 13, 2005); *In re Rezulin Prod. Liab. Litig.*, Pretrial Order No. 362 (S.D.N.Y. Mar. 29, 2005).

The expert report described in defendants' proposed order takes the Court's prior rulings to the next logical step. The order would require each Rezulin recipient to reconsider his or her claims in light of these rulings, and in consultation with a medical expert. If plaintiffs decide that there are good grounds for proceeding, the order would require a Rule 26(a)(2) case-specific report from a medical expert. The expert report would provide relevant information from medical records indicating whether the claim is foreclosed by the Court's prior rulings, the expert's opinion on causation, and the grounds for that opinion.

Requiring expert reports also will help weed out time-barred claims; the experts must opine as to the date of each recipient's alleged injury that the expert concludes was caused by Rezulin, thus facilitating motions to dismiss time barred claims. After settlements were announced in January 2004 – and nearly four years after Rezulin was withdrawn from the market – more than 135 new cases involving more than 3,330 recipients have been filed, and are currently pending in this MDL or are in the process of being transferred.⁴ The vast majority of

Some plaintiffs had tolling agreements before they filed their complaints. In many cases, however, these agreements are irrelevant because the statute of limitations had already expired before they were signed.

these new recipients – over 3,000 – are represented by Girardi & Keese. In 2004 and 2005, Girardi & Keese filed 48 complaints in Sierra County, California on behalf of more than 3,000 Rezulin recipients from 49 states.⁵

All of the recipients represented by Girardi & Keese are named in complaints that are identical in all material respects to the complaint that this Court held “does not adequately allege any basis for equitable tolling or facts sufficient to demonstrate timeliness under the discovery rule, even assuming it applies.” *In re Rezulin Prod. Liab. Litig.*, Pretrial Order No. 342 (S.D.N.Y. Jan. 13, 2005). Nearly half of the recipients dismissed by Pretrial Order No. 342 made no attempt to supplement their allegations in their consolidated amended complaint, which indicates that they had no reasonable basis for filing their actions.

In addition, defendants’ attempts to identify insufficient claims are often hampered by plaintiffs’ failure to provide sufficient answers in their Fact Sheets. For example, numerous plaintiffs represented by McAfee Law Firm or Littlepage & Associates allege vague, boilerplate injuries that do not sufficiently put defendants on notice as to what injuries plaintiffs are claiming. In the note below are two examples of Fact Sheet responses that are virtually

⁵ Aside from 3 plaintiffs who reside in California, none of the plaintiffs whose cases were filed in Sierra County has any connection to California, let alone Sierra County, which is one of the most remote and least populated counties in California.

identical to the “injuries” alleged respectively by over 200 plaintiffs represented by those two firms.⁶

II. LEGAL AUTHORITY

Expert testimony on both general and specific causation is required in order for plaintiffs to prove their claims. *In re Rezulin Prod. Liab. Litig.*, 2004 WL 2029404, at *4 (S.D.N.Y. Sept. 9, 2004); *In re Baycol Prod. Liab. Litig.*, 321 F. Supp. 2d 1118, 1126 (D. Minn. 2004) (“personal injury cases involving pharmaceuticals . . . involve complex questions of medical causation beyond the understanding of a lay person”) (citing cases).

⁶ “At this time I am uncertain as to the exact nature of my injuries. I understand that I will be required to have medical monitoring done for an indefinite period of time to determine the full extent of damage to my liver and other organs caused by the Rezulin. I understand that there is some risk for future development of liver cancer depending upon the severity of the damage. I expect that I will need to be evaluated by appropriate medical personnel to determine the full extent of my injuries.” McGlothlin Answer to Fact Sheet Question I.C.2 (represented by McAfee Law Firm, P.C.) (Klingsberg Decl. Ex. B)

“The plaintiff claims that Rezulin causes injury to many organs and bodily functions as well as mitochondrial damage. The plaintiff claims that he has suffered both cellular and subcellular injury from Rezulin. He has also suffered severe emotional distress and mental anguish because of this experience. The plaintiff claims that his exposure to Rezulin caused, contributed to, exaggerated or accelerated his health problems including but not limited to liver problems; . . . problems with his heart; . . . problems with his blood; [and] problems with his liver and/or kidneys. The plaintiff claims that he suffered an adverse reaction to Rezulin, which impacted his health including but not limited to weight gain; . . . swelling in his extremities; . . . fatigue; . . . [and] muscle pain and/or muscle weakness. The plaintiff claims that Rezulin was not effective at treating his diabetes and that Rezulin caused or contributed to a worsening of his diabetes including causing them [sic] to suffer an episode of hypoglycemia [sic].” Spivey Answer to Fact Sheet Question I.C.2. (represented by Littlepage & Associates, P.C.) (Klingsberg Decl. Ex. C).

Expert disclosures “shall be made at the times and in the sequence directed by the court.” Fed. R. Civ. P. 26(a)(2)(C). “It is axiomatic” that a district court “enjoys wide discretion in its handling of pre-trial discovery.” *Wills v. Amerada Hess Corp.*, 379 F.3d 32, 51-52 (2d Cir. 2004) (“In a complex toxic tort suit, the district court properly limited discovery to those requests tailored to provide evidence of the salient issue – causation”). There is ample precedent supporting an order requiring each plaintiff to produce a case-specific expert report at this stage of the litigation.

In *Acuna v. Brown & Root Inc.*, 200 F.3d 335, 338 (5th Cir. 2000), the district court had “issued pre-discovery scheduling orders that required plaintiffs to establish certain elements of their claims through expert affidavits.” The expert affidavits had to specify, *inter alia*, “the injuries or illnesses suffered by the plaintiff that were caused by the alleged uranium exposure,” “the dates or circumstances and means of exposure to the injurious materials, and the scientific and medical bases for the expert’s opinions.” *Id.* “The pre-discovery orders in issue are of a type known as *Lone Pine* orders, named for *Lore v. Lone Pine Corp.*, 1986 WL 637507 (N.J. Super. Ct. Nov. 18, 1986).⁷ *Lone Pine* orders are designed to handle the complex issues and potential burdens on defendants and the court in mass tort litigation.” *Acuna*, 200 F.3d at

⁷ In *Lone Pine*, the court issued an order requiring plaintiffs to produce “[r]eports of treating physicians and medical or other experts, supporting each individual plaintiff’s claim of injury and causation by substances from Lone Pine Landfill.” *Lone Pine*, 1986 WL 637507, at *2. In dismissing the case with prejudice after plaintiffs failed to comply with the court’s order, the court held that, “[i]n a case such as this, preliminary expert reports should have been obtained prior to filing suit.” *Id.* at *3. “[I]t is time that prior to the institution of such a cause of action, attorneys for plaintiffs must be prepared to substantiate, to a reasonable degree, the allegations of personal injury . . . and proximate cause.” *Id.* at *4.

340. "In the federal courts, such orders are issued under the wide discretion afforded district judges over the management of discovery under Fed. R. Civ. P. 16." *Acuna*, 200 F.3d at 340.⁸

In *Acuna*, plaintiffs "contend[ed] that the pre-discovery orders requiring expert support for the details of each plaintiff's claim imposed too high a burden for that stage of litigation." *Id.* at 340. The Fifth Circuit held that "[i]t was well within the court's discretion to take steps to manage the complex and potentially very burdensome discovery that the cases would require." *Id.* (citations omitted). Because the plaintiffs failed to provide the information required by the district court's orders, the Fifth Circuit affirmed dismissal of their cases. *Id.* at 340. As the Court stated, "The scheduling orders . . . essentially required that information which plaintiffs should have had before filing their claims pursuant to Fed. R. Civ. P. 11(b)(3). Each plaintiff should have had at least some information regarding the nature of his injuries . . . and the basis for believing that the named defendants were responsible for his injuries." *Id.* at 340. Indeed, it was incumbent on plaintiffs' counsel to ascertain, *before* filing these lawsuits, whether plaintiffs had viable claims for injuries allegedly caused by Rezulin, and what those claims were. As the Second Circuit has stated: "Pleadings, motions, and other papers must be justifiable at the time they are signed; this Court will not countenance belated rationalizations concocted to conceal chicanery." *U.S. v. Int'l Brotherhood of Teamsters*, 948 F.2d 1338, 1344 (2d Cir. 1991).

⁸ Rule 16 gives courts the authority to "take appropriate action[] with respect to . . . the elimination of frivolous claims"; "the control and scheduling of discovery, including orders affecting disclosures and discovery pursuant to Rule 26 and Rules 29 through 37"; "the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues [or] multiple parties"; and "such other matters as may facilitate the just, speedy, and inexpensive disposition of the action." Fed. R. Civ. P. 16(c). *See also* Fed. R. Civ. P. 16(b)(4) (court may enter a scheduling order that modifies "the times for disclosures under Rules 26(a)").

A similar order was issued by the MDL Court in the *Baycol* litigation. “In order to promote the fair and efficient administration of [the *Baycol Litigation*] and to comply with its continuing obligations as an MDL court,” the *Baycol* court ordered that – “[i]n addition to each plaintiff’s obligation to serve timely a completed Plaintiff’s Fact Sheet [“PFS”], properly executed authorizations, and responsive documents” – “[e]ach plaintiff must serve a Rule 26(a)(2) case-specific report from a medical expert attesting that Baycol caused the plaintiff to suffer injuries or damages.” *In re Baycol Prod. Liab. Litig.*, 2004 WL 626866, at *1 (D. Minn. Mar. 18, 2004) (Pretrial Order No. 114). The court subsequently adopted a form for the reports that required the expert to identify, *inter alia*, the medical records and other information that the expert relied upon in reaching his opinion; the dates the plaintiff was treated with Baycol; the injuries that were caused by Baycol; the dates that each injury caused by Baycol started and ended (or are ongoing); “the case specific bases and reasons for [the expert’s] opinion that Baycol caused the plaintiff to suffer the injuries listed”; possible alternative causes for the injuries, and the reasons for excluding each of the possible alternative causes. *In re Baycol Prod. Liab. Litig.*, 2004 WL 2578976, at *3-*4 (D. Minn. Nov. 1, 2004) (Pretrial Order No. 131).

Justice Helen E. Freedman also issued an order requiring “each plaintiff in the New York Rezulin Products Liability Litigation . . . to serve [an expert] disclosure to substantiate and document plaintiff’s alleged claims.” *In re New York Rezulin Prod. Liab. Litig.*, Order (Sup. Ct. N.Y. Co. Aug. 6, 2004) (Klingsberg Decl. Ex. D). The court required that the expert disclosure include, *inter alia*, “the medical records (by date and provider) actually reviewed by the medical expert prior to the preparation of the disclosure”; “dates of Rezulin use specifying the documentary evidence of such use”; “[t]he injuries that the medical expert opines were

caused by plaintiff's Rezulin use and the summary of the grounds for such opinion"; and "[t]he date(s) that plaintiff was injured by Rezulin use." *Id.*

More than 85% of the plaintiffs in the *New York Rezulin Products Liability Litigation* failed to submit expert reports as required by the court's order, even after defendants agreed to a significant extension. More than a month after the extended deadline expired – and more than 6 months after the Court's original order – only 143 out of 1,046 plaintiffs had submitted the required expert reports. Notably, most of the New York plaintiffs who defaulted are represented by Littlepage & Associates, P.C. or Girardi & Keese. Those two firms represent the vast majority of the plaintiffs in this MDL, as well.

CONCLUSION

The proposed order will place the burden of weeding out meritless and time-barred claims on plaintiffs where -- as a matter of law -- it belongs. For the reasons set forth above, the Court should enter the proposed order which requires plaintiffs to submit case-specific expert reports, or else have their cases dismissed with prejudice.

Dated: April 7, 2005

Respectfully submitted,

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