

APR 17 2009

IN RE:

COURT OF COMMON PLEAS

TRASYLLOL PRODUCTS LIABILITY
LITIGATION

PHILADELPHIA COUNTY

FIRST JUDICIAL DISTRICT OF PA
USER I.D.:

**DOCKETED
COMPLEX LIT CENTER**

JUNE TERM, 2008

APR 17 2009

No. 5229

In Re: Trasylol Litigation-ORDER

J. STEWART



CASE MANAGEMENT ORDER NO. 5
REGARDING EXPERT DISCOVERY

The Court hereby approves the following protocol for the exchange and discovery of information regarding testifying expert witnesses. Except as otherwise provided herein, this Order applies to all Plaintiffs in the Coordinated Actions, and to Defendants Bayer Corporation; Bayer HealthCare Pharmaceuticals Inc as successor to Bayer Pharmaceuticals Corporation; Bayer HealthCare LLC; Bayer AG; and Bayer Schering Pharma AG as successor to Bayer HealthCare AG in any case in the Coordinated Actions in which each such defendant was properly served.

1. Drafts of expert reports or expert affidavits prepared by experts in the Trasylol litigation shall not be subject to discovery in the Trasylol litigation and shall not be usable in connection with any deposition, hearing, briefing, trial, or appeal in the Trasylol litigation. This provision applies regardless of whether such draft reports or draft affidavits have been disclosed or otherwise transmitted to counsel for the party or parties retaining such expert.

2. Notes and other materials prepared by the expert and/or his or her assistant(s), as part of their investigation of the case or in connection with their preparation of an expert report or expert affidavit, shall not be subject to discovery and shall not be usable in connection with any deposition, hearing, briefing, trial or appeal in the Trasylol litigation, unless the expert uses such notes or other materials to testify in deposition or at trial. This provision applies regardless

of whether such notes or other material have been disclosed or otherwise transmitted to counsel for the party or parties retaining such expert. The parties do not intend this paragraph to apply to materials that were prepared by the expert and/or his or her assistant(s) prior to the time that the expert commenced discussions with counsel for the purpose of becoming retained to provide services to counsel in this litigation.

3. Communications, whether oral, written, or electronic, between experts (including their assistants) and counsel designating them (and their assistants) relating to the Trasylol litigation shall not be discoverable by any other party in the Trasylol litigation and shall not be usable at any deposition, hearing, trial, or appeal in the Trasylol litigation, unless the expert uses such communications to testify in deposition or at trial. This provision applies regardless of whether such communications have been disclosed or otherwise transmitted to counsel for the party or parties retaining such expert.

4. Notwithstanding the foregoing, at least fourteen (14) days in advance of an expert's deposition, the party designating the expert shall produce to lead counsel for the other party the following:

a. The index and documents described in Section IVA of Amended Case Management Order ("CMO") No. 2. It is understood that testifying experts may rely on information in their general knowledge or experience that might not appear in this list.

b. All records of fees and costs incurred or submitted in connection with the expert's work in the Trasylol litigation, whether or not payment has been received by the expert or the expert's designees. This shall include fees and costs incurred or submitted by research assistants or other consultants utilized by the expert in connection with their work in the Trasylol