IN THE COURT OF COMMON PLEAS
PHILADELPHIA COUNTY, CIVIL TRIAL DIVISION

IN RE: YAZ®/YASMIN®/OCELLA® PRODUCT LIABILITY LITIGATION *Applicable to all cases*	**September Term, 2009** **No. 1307**

DOCKETED
COMPLEX LIT CENTER
MAY 21 2010
J. STEWART

CASE MANAGEMENTORDER NO. 8

**(Agreed Order Regarding
Service of Process in Cases Naming Particular Defendants)**

THIS MATTER, having been opened to the Court by counsel for the Parties, and the Parties having consented, stipulated and agreed to the terms set forth herein, and good cause appearing therefore;

IT IS, on this 20th day of May, 2010, hereby **ORDERED** as follows:

I. SCOPE OF ORDER

This Order applies to lawsuits brought by a U.S. citizen or resident based on ingestion or purchase of YAZ®, Yasmin® and Ocella that (i) currently are in litigation that have been filed in this Court and are pending in this Court as of the date of this Order and (ii) will be filed in this Court subsequent to the date of this Order.

II. SERVICE OF PROCESS

A. MASTER AND FIRST AMENDED MASTER COMPLAINT

1. The *Master Long Form Complaint* and thereafter, the *First Amended Master Long Form* Complaint, name as defendants Bayer AG and Bayer Schering Pharma AG, in addition to other Defendants.

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COPIES SENT PURSUANT TO Pa.R.C.P. 236(b) D. WILLIAMS 05/26/2010

2. The *Master Long Form Complaint* was properly served upon Defendants Bayer AG and Bayer Schering Pharma AG pursuant to the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965 ("Hague Service Convention") and the Pennsylvania Rules of Civil Procedure. (*See* Affidavit(s) of Service filed on the Master docket July 28, 2009).

3. The *Master Long Form Complaint* and the *First Amended Master Long Form Complaint* were properly served upon Defendants Bayer Corporation, Bayer Healthcare, LLC, Bayer Pharmaceuticals Corporation, Bayer Healthcare Pharmaceuticals, Inc., Berlex Laboratories, Inc. and Berlex Inc. (collectively referred to herein as "US Bayer/Berlex Defendants") pursuant to the Pennsylvania Rules of Civil Procedure on October 6, 2009. (*See* Affidavit(s) of Service filed on the Master docket).

4. Defendants' Liaison counsel accepted service of the *First Amended Master Long Form Complaint* on behalf of Bayer AG and Bayer Schering Pharma AG.

5. Bayer Schering Pharma AG admits that it manufactures drospirenone and ethinyl estradiol, the progestin and estrogen contained in YAZ, Yasmin and Ocella.

6. Bayer Schering Pharma AG admits that it formerly was known as Schering AG and is the same corporate entity as Schering AG.

7. Bayer AG denies that it manufactures, sells or markets drospirenone and ethinyl estradiol, the progestin and estrogen contained in YAZ, Yasmin and Ocella in the United States.

8. Defendant Bayer Schering Pharma AG agrees, without waiver of any defenses, to accept service of process pursuant to the terms of this Order in certain YAZ, Yasmin or Ocella cases previously commenced in this Court or to be commenced in this Court in the future.

III. SERVICE OF BAYER SCHERING PHARMA AG VIA REGISTERED MAIL

9. Plaintiffs who have not already served Bayer Schering Pharma AG, with a *Short Form Complaint*,[1] through original process, shall have **ninety (90) days** after the date of this Order or, for cases filed hereafter, **sixty (60) days** after the date a case is filed in this action, to serve the *Short Form Complaint*, upon Bayer Schering Pharma AG, as follows:

By Registered Mail, Return Receipt Requested, upon the following Representative of Bayer Schering Pharma AG:

Eva Gardyan-Eisenlohr
Head of Law & Patents
Bayer Schering Pharma AG
Müllerstrasse 178
D- 13353 Berlin
Germany

10. A copy of each *Short Form Complaint* that is subject to the previous *Section III. 9* shall also be e-mailed to yazservice@eckertseamans.com.

11. Service shall be effective on Bayer Schering Pharma AG only if served in the form and manner and addressed as stated in *Section III. 9 and 10*, above. General mailing to Bayer Schering Pharma AG, such as by first class mail, or use of other methods of transmission (*e.g.*, Federal Express or DHL) shall not be sufficient to effect service. Service shall be effective immediately upon delivery. Other than those rights and defenses based on formal service of process, Defendants reserve all other rights and defenses available to them under federal or state law and under applicable treaties and conventions. Prior to moving to dismiss a case for a defect in service , Defendants shall serve notice of

[1] As used herein, "Short Form Complaint" shall also mean "First Amended Short Form Complaint" or Writ of Summons. See CMO 1 (IV) (C), CMO 1(a) and CMO 1(c).

the defect on Plaintiff's counsel and provide **30 days** for Plaintiff to cure or dispute the defect. In the event the alleged defect is not amicably resolved within the **permitted 30 day period**, Defendants shall then be permitted to file a motion to dismiss for the alleged defect in service to which Plaintiff shall have an opportunity to respond in accordance with the Rules of Civil Procedure and any scheduling Order of this Court.

IV. BAYER AG

12. The Parties agree that Plaintiffs shall have a period of due diligence to determine and confirm representations made by Bayer AG and Bayer Schering Pharma AG that Bayer AG should not be a Defendant in this litigation and that it should be dismissed from each individual case where the Plaintiff named Bayer AG as a defendant in a Short Form Complaint. The period of due diligence shall end (hereinafter "due diligence period") on December 31, 2010, unless application is made to the Court by Plaintiffs to extend this period for good-cause. In the event that after the expiration of the due diligence period, Plaintiffs are satisfied that the representations made by Bayer AG and Bayer Schering Pharma AG are accurate and Plaintiffs confirm that Bayer AG should not be a Defendant in this litigation, Bayer AG shall be dismissed from each individual case.

13. Bayer AG is named as a Defendant in the *First Amended Master Long Form Complaint* and is identified as a possible check-off Defendant in the *Short Form Complaints* that adopt the *First Amended Master Long Form Complaint*. Through December 31, 2010, Plaintiffs who file a *Short Form Complaint* shall still have the right to check-off Bayer AG as a Defendant, but Bayer AG shall not have any obligation to answer or plead to either the *First Amended Master Long Form Complaint* or the *Short Form Complaint* during the due diligence period. A footnote shall be added next to the check-off for Bayer AG in the *Short Form Complaint* referring to this Case Management Order and advising that if

Bayer AG is checked-off that expedited service is not available as set forth in *Section III* above for Bayer AG.

14. Assuming that as of December 31, 2010, due diligence confirms to Plaintiffs' satisfaction that Bayer AG should be dismissed from the case, Plaintiffs shall so advise and cooperate to take the appropriate steps for Bayer AG to be dismissed from all *Short Form Complaints* filed prior to December 31, 2010, provided however that this provision does not bind those Plaintiffs in individual cases who do not agree that Bayer AG should be dismissed. As for those Plaintiffs in individual cases who do not agree by December 31, 2010 that Bayer AG should be dismissed, those Plaintiffs in the individual cases shall remain subject to the Hague Service Convention to serve Bayer AG pursuant to the terms of the Hague Service Convention. Any Plaintiff in an individual case who does not agree to the dismissal of Bayer AG and who therefore remains subject to the Hague Service Convention for the service of Bayer AG shall be required to timely serve Bayer AG with their *Short Form Complaint(s)* that named Bayer AG as a Defendant, and in the event of the failure to do so, Bayer AG shall be dismissed from such all such *Short Form Complaints* naming Bayer AG.

15. Beginning from the date of this Order until December 31, 2010, all *Short Form Complaints* naming Bayer AG and Bayer Schering Pharma AG as Defendants shall be deemed automatically reinstated as to Bayer AG every 30 days pursuant to this Order without the need to file a Praecipe to Reinstate pursuant to Pa. R.Civ. P. 401, provided however that the Plaintiff had properly reinstated any such *Short Form Complaints* prior to the entry of this Order. In the event a Plaintiff had not properly reinstated a *Short Form Complaint* prior to the entry of this Order, Defendants reserve the right to raise the alleged failure of proper and timely reinstatement as a defense. However, as to any *Short Form Complaint* that was timely and properly reinstated as of the date of the entry of this Order or as to which the date for filing a Praecipe to Reinstate had not yet occurred, then this Order shall deem

such *Short Form Complaints* automatically reinstated. Plaintiffs are cautioned, notwithstanding this paragraph, that the service and reinstatement rules set forth in the Pennsylvania Rules of Civil Procedure including Rule 401 are in full force and effect as to all other Defendants including the US Bayer/Berlex Defendants and the Barr/Teva Defendants.

16. If the due diligence and discovery that Plaintiffs undertake leads Plaintiffs to believe that Bayer AG should remain a Defendant in this litigation Plaintiffs shall meet and confer with Defendants concerning whether further discovery is required from Bayer AG. If no agreement is reached after meeting and conferring with the Defendants, the parties shall seek the Court's guidance before Plaintiffs commence any such discovery directed to Bayer AG. Plaintiffs shall not be entitled to seek discovery from Bayer AG prior to October 31, 2010, subject to the Court's guidance thereby providing Plaintiffs with time to perform their due diligence and obtain discovery from other Defendants in the Litigation.

17. Bayer AG shall not be removed from or deleted from either the *Master Long Form Complaint* or the *Short Form Complaints.* Therefore, after December 31, 2010, while Bayer AG will remain on the *Master Long Form Complaint* (or amendments) so that any newly filed case shall still have the opportunity to name (check off in a *Short Form Complaint*) Bayer AG as a Defendant in such newly filed case, service in any such newly filed case against BOTH Bayer AG and Bayer Schering Pharma AG must be accomplished pursuant to the Hague Service Convention for BOTH Bayer AG and Bayer Schering Pharma AG, and the expedited service relating to Bayer Schering AG described in *Section III. 9 to 11* above shall not apply. However, for any case filed in this Court in this litigation after December 31, 2010 in which the Plaintiff does not name (check-off on the *Short Form Complaint*) Bayer AG, such Plaintiff shall continue to have the benefit of and shall be entitled to rely on the expedited service provisions described in *Section III 9 to 11* above relating to service upon Bayer Schering Pharma AG.

18. For purposes of facilitating Plaintiffs' due diligence concerning whether Bayer AG is a proper, required and needed Defendant in this litigation, Defendants agree that the representations they have made in the related MDL litigation, *In Re: Yasmin and Yaz (Drospirenone) Marketing, Sales Practices and Products Liability Litigation,* CV-3:09-md-02100-DRH –PMF (S.D. Ill.) that Bayer AG is not a proper, required or needed Defendant in that MDL case shall be deemed to have been made in this Litigation as well. Further, Plaintiffs in this Litigation shall have the right to review discovery obtained from Bayer Schering Parma AG as part of the due diligence process in connection with determining whether the representations that Bayer AG is not a proper, required or needed Defendant.

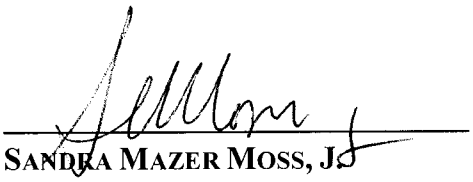
V. CASE-SPECIFIC CAUSATION EXPERT DEPOSITIONS

19. In exchange for Bayer Schering Pharma AG agreeing to accept expedited service as set forth in *Section III. 9 to 11* above, Plaintiffs have agreed that in the bellwether cases scheduled to begin trial on September 19, 2011, the Parties shall each have the opportunity to depose one (1) case specific causation expert per case. This shall permit Plaintiffs one (1) such deposition of a defense expert and Defendants one such deposition of a plaintiff expert. If the deposed expert is subsequently dropped, *i.e.,* will not be testifying as one of the case-specific experts at the trial, the other Party will have the right to depose another one of the case-specific liability experts in that bellwether case. The deposition will be limited to case-specific causation opinions in the individual bellwether cases. This agreement is without prejudice to the Parties' arguments concerning whether there should be other case specific expert depositions allowed. Defendants therefore reserve their right to argue for an Order that they have the right to depose all case specific-experts and Plaintiffs reserve the right, and do in fact oppose any such argument.

VI. CORPORATE STRUCTURE DEPOSITION

20. Defendants agree to produce a witness to testify to the topics in the Corporate Structure Notice of Deposition dated April 23, 2010 who shall be proffered and testify on behalf of the US Bayer Defendants but who shall not be proffered or testify on behalf of the German Bayer Defendants. However, Defendant liaison counsel represents this witness is expected to have some knowledge and be able to provide some information about the topics in the Notice of Deposition relating to Bayer AG and Bayer Schering's Pharma. Plaintiffs reserve the right to seek a corporate designee deposition on the same topics in the Corporate Structure Notice of Deposition from a witness who shall be proffered and testify on behalf of Bayer AG and Bayer Schering Pharma AG provided however that before any such Corporate Structure Deposition of the proffered Bayer AG And Bayer Schering Pharma AG witness shall be Noticed, there shall be a meet and confer with the Defendants. The October 31, 2010 date in *Section IV* above does not apply to this German Corporate Structure Deposition, if Plaintiffs deem it necessary. In the event another case pending in another jurisdiction such as in the MDL, the coordinated and consolidated New Jersey or the coordinated and consolidated California litigation, serves a Notice of Corporate Structure Deposition relating to any German defendant, nothing in this Order shall prohibit Plaintiffs in Pennsylvania from cross-noticing that deposition.

IT IS SO ORDERED,



SANDRA MAZER MOSS, J.S.