

DEC 3 2010

IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY, PENNSYLVANIA

J. STEWART

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION – CIVIL (MASS TORTS)

IN RE:

YAZ®, YASMIN®, OCELLA® PRODUCT  
LIABILITY LITIGATION

SEPTEMBER TERM, 2009  
NO. 1307

In Re: Yaz/Yasmin/Ocella Litigation-ORDER



09090130700165

CASE MANAGEMENT ORDER NO. 14  
(FIRST-TRIAL SELECTION PLAN)

THIS MATTER, having been opened to the Court by counsel for the parties, and the parties having consented, IT IS, on this 2nd day of Jan, 2010, hereby

**ORDERED** as follows:

**I. INITIAL TRIAL SETTINGS<sup>1</sup>**

1. In order to advance the objective of minimizing expenses, eliminating the duplication of effort and promoting judicial economy, the initial trials in this litigation shall be organized into three (3) separate groups by the type of injury alleged by the Plaintiff, as was ordered in the Federal Multidistrict Litigation (“MDL”). A group of Pulmonary Embolism (“PE”) cases shall be tried first, followed by a group of Gallbladder removal (“GB”) cases and then a group of Venous Thromboembolism (“VTE”) cases.

**A. GROUP-1 TRIALS - (PULMONARY EMBOLISM)**

2. The first group of cases to be set for trial will be cases where the Plaintiff’s alleged injury is Pulmonary Embolism (PE).

<sup>1</sup> None of the cases set for trial pursuant to this Order shall involve the generic drugs Ocella or Gianvi.

3. The trial dates for PE trials, and which party shall select the case to be tried, are as follows:

TRIAL DATE	Injury	Selecting Party
September, 26, 2011	PE	Plaintiff
October 24, 2011	PE	Bayer

**B. GROUP-2 TRIALS - (GALLBLADDER)**

4. The second group of cases to be set for trial will be cases where the Plaintiff's alleged injury is the removal of her ("GB").

5. The trial dates for GB trials, and which party shall select the case to be tried, are as follows:

TRIAL DATE	Injury	Selecting Party
January 23, 2012	GB	Plaintiff
February 20, 2012	GB	Bayer

**C. GROUP-3 TRIALS- (VENOUS THROMBOEMBOLISM)**

6. The third group of cases to be set for trial will be cases where the Plaintiff's alleged injury is Venous Thromboembolism ("VTE") other than a PE.

7. The trial dates for VTE trials, and which party shall select the case to be tried, are as follows:

TRIAL DATE	Injury	Selecting Party
April 30, 2012	VTE	Plaintiff
May 30, 2012	VTE	Bayer

## II. SELECTION PROCESS FOR GROUPS 1-3

8. The pool of cases from which “*Core Discovery*” will be pursued and from which the initial trials in each of the three (3) injury groups will be drawn will consist of a total of twenty-four (24) cases (“*Core-Discovery Pool*”).

9. The “*Core-Discovery Pool*” shall be comprised of the following:

- a) Four (4) PE cases selected by the Plaintiffs;
- b) Four (4) PE cases selected by the Bayer Defendants
- c) Four (4) GB removal cases selected by the Plaintiffs;
- d) Four (4) GB removal cases selected by the Bayer Defendants;
- e) Four (4) VTE cases selected by the Plaintiffs;
- f) Four (4) VTE cases selected by the Bayer Defendant.

10. Plaintiffs’ Liaison Counsel and Defendants’ Liaison Counsel shall exchange lists that set forth their “*Core-Discovery Pool*” selections and shall submit a copy of the list to the Court as follows:

Date of Exchange for <i>Core-Discovery Pool</i> Selections	Group
December 15, 2010	Group 1 - PE
March 15, 2011	Group 2 – GB
May 15, 2011	Group 3- VTE

11. To be eligible for selection to Group 2 (GB), a case must have a complete PFS and a complete set of required authorizations served on or before February 1, 2011, and to be eligible for selection to Group 3 (VTE), a case must have a complete PFS and a complete set of required authorizations served on or before April 1, 2011.

### III. PRODUCTION OF SALES FORCE MATERIALS AND PRESCRIBING DATA

12. *Case Management Order* No. 4(d), Section B and *Case Management Order* No. 4(g) are hereby amended as follows for the cases in the “Core-Discovery Pools” as follows:

13. Bayer shall produce the following documents to Plaintiffs’ counsel on or before the following dates, in each of the specified groups:

Date	Group
January 30, 2011	Group 1 - PE
May 1, 2011	Group 2 – GB
July 1, 2011	Group 3- VTE

(a) copies of the complete custodial file, as defined in *CMO-4(d)* at (B)(3)-(4), for each Sales Representative or detail person identified in Section II(B)(2) of the DFS (or any supplement to the DFS)(“Sales Representative”); District Manager of each Sales Representative as identified in Section II(B)(2) of the DFS (“District Manager”); and,

(b) all data relating to Plaintiffs’ Dispensing/Prescribing Health Care Providers as it relates to Yaz, Yasmin, and Ocella (hereinafter “Prescriber Data) if Plaintiff’s counsel has provided Bayer with the *Third Party Data Use Agreement*, if not already produced.

14. All of *CMO-4(d)* including Section II(B), paragraphs 4 and 5 [incorrectly numbered as 4], other than as amended herein, shall remain unchanged and in full force and effect.

IV. **“CORE-DISCOVERY” IN INJURY GROUP 1-3 CASES**

15. “*Core-Discovery*” in the cases selected for the “*Core-Discovery Pool*” shall begin and shall be completed as follows:

	<i>Core-Discovery Start-Date</i>	<i>Core-Discovery End-Date</i>
<b>PE Cases</b>	December 16, 2010	April 20, 2011
<b>GB Cases</b>	May 1, 2011	September 2, 2011
<b>VTE Cases</b>	July 1, 2011	December 4, 2011

16. The Parties agree that the discovery deadlines above may be modified by written agreement of the parties or leave of Court.

17. The Parties agree that ten (10) days before seeking discovery in any cases not in the *Core-Discovery Pool*, they will meet and confer about such discovery and, if no agreement is reached, the Parties shall promptly and jointly seek the guidance of the Court or *Discovery Master* before commencing discovery. In the interim period before the matter is ruled on by the Court or the *Discovery Master* no discovery shall occur. Notwithstanding the foregoing, service of the *Plaintiff's Fact Sheet* (“PFS”) and the associated records and Authorizations provided for in *CMOs* 4, 4(a), 4(b), 4(c), 4(e) and the *Defendant's Fact Sheet* (“DFS”) and *Defendant's Supplemental Fact Sheet* (“SDFS”) and the documents provided for in *CMOs* 4(d), or as set forth in this order shall proceed.

18. “*Core Discovery*” in the cases in the “*Core-Discovery Pool*” consists of only the following depositions:

- a) Plaintiff;
- b) One (1) additional non-medical fact witness;

- c) The health care provider(s) who prescribed Yaz or Yasmin to the Plaintiff, provided that after a good faith review of the medical records and available discovery in a case it appears that the health care provider had substantive contact(s) with plaintiff;
- d) Plaintiffs' primary treating physician (limited to two (2)) who provided significant care related to Plaintiff's alleged physical injuries;
- e) Sales Representative or detail persons who interacted with Plaintiffs' prescribing physician (limited to two (2)); and
- f) District Manager of any Sales Representative or detail persons who interacted with Plaintiffs' prescribing physician (limited to one (1)).

19. In the event either party seeks "*Core Discovery*" beyond these core discovery depositions in an individual plaintiff's case, agreement, in writing, between Primary Counsel must be obtained or, if no agreement can be obtained after a good-faith attempt, leave of Court or the *Discovery Master* must be obtained upon a showing of good-cause. The limitations on discovery set forth in paragraphs 17 and 18 hereof do not apply to any case selected for trial pursuant to paragraph 22, *infra*. The Parties shall meet and confer regarding establishing a fact discovery deadline in the *Core Discovery Pool* cases.

20. The limitations set forth in paragraph 18 above do not apply to trial preservation depositions.

21. As part of "*Core Discovery*," the Bayer defendants shall provide a DFS and SDFS, if one has not already been provided, if "*Core-Criteria*" has been provided as defined in paragraphs 2-3 of CMO 4-D, on the earlier of (1) its original due date under CMO No. 4(d), or (2) twenty-one (21) days after the Plaintiffs production of a PFS and authorizations pursuant to paragraph 4. If the Bayer defendants have a DFS or SDFS ready before the twenty-one (21) day deadline, the Bayer defendants shall not hold-back the production until the 21st day but will produce them as early as practicable.

**V. NOTIFICATION OF GROUP 1-3 TRIAL SELECTIONS**

22. The Parties shall inform each other, and the Court, by E-mail<sup>2</sup> of their trial selections on or before the following dates:

<b>Group /Injury</b>	<b>Case Selection Notification Date</b>
<b>Group 1 (PE cases)</b> (1 – Plaintiff) (1 – Bayer)	April 22, 2011
<b>Group 2 (GB cases)</b> (1 – Plaintiff) (1 – Bayer)	September 5, 2011
<b>Group 3 (VTE cases)</b> (1 – Plaintiff) (1 – Bayer)	December 5, 2011

**VI. PROCEDURE FOR REPLACEMENT OF CASES**

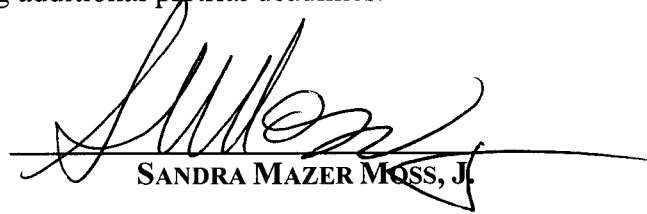
23. If a case selected for trial by the Plaintiffs is settled, dismissed or otherwise cannot be tried as scheduled, then the next available trial-ready Plaintiffs’ selection shall replace it. If there are no more Plaintiffs’ selections ready to be tried in a given month, the Court will consult with the Parties regarding the next available trial-ready case to be called for trial. If Plaintiffs elect to discontinue a case, they shall inform Bayer of their intent to do so as early as possible and no later than 21 days after the depositions of case specific experts in the case. If a case selected by Bayer is dismissed, then Bayer shall select a case to replace it and, if necessary, the Court shall consult with the Parties concerning assigning a trial date to that case in a month in which there is not another trial case scheduled. Bayer will be allowed additional time to conduct discovery or otherwise prepare that case, if needed. The Parties will meet and confer concerning a schedule governing generic and case specific experts.

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<sup>2</sup> Plaintiffs’ co-liaison counsel and the Plaintiffs’ individual counsel in each case (if different) shall receive the E-mail notification from Bayer.

24. The Parties shall meet and confer in order to prepare a further *Case Management Order* governing schedules for generic and case-specific experts. The deadlines for expert reports and expert discovery set forth in *Case Management Order 7* are hereby suspended pending preparation of that further *Case Management Order*.

25. The Parties shall meet and confer for the purposes of scheduling additional trials and to prepare a *Case Management Order* governing additional pretrial deadlines.



SANDRA MAZER MOOSS, J.