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

**IN RE: YAZ®, YASMIN®, OCELLA®
PRODUCT LIABILITY LITIGATION**

SEPTEMBER TERM, 2009

NO. 1307

APPLICABLE TO ALL CASES

CASE MANAGEMENT ORDER NO. 4

This matter, having been opened to the Court by counsel for the Parties, and the Parties having consented, stipulated and agreed to the entry of this Case Management Order, and good cause appearing therefore;

IT IS, on this 11th day of Dec., 2009, hereby **ORDERED** as follows:

I. GLOBAL FACT DISCOVERY APPLICABLE TO ALL ACTIONS

A. WRITTEN DISCOVERY ANSWERS/OBJECTIONS AND RESPONSES/OBJECTIONS OF DEFENDANTS¹

1. FNC Discovery

On or about September 21, 2009, Plaintiffs served Interrogatories and Document Production Requests related to Venue and Forum Non Conveniens (“*FNC Discovery*”) upon counsel for Defendants Bayer Corporation, Bayer HealthCare LLC and Bayer HealthCare Pharmaceuticals Inc. (“US Defendants”) in the Coordinated Actions. Plaintiffs shall serve no further FNC discovery on the US Defendants that seeks the same information as the *FNC Discovery*. Plaintiffs may serve the same *FNC Discovery* or other FNC discovery on any Defendant that has not yet been served.

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L. RYANT-DAVIS

¹ As used in this order, “Defendants” refers to the defendants Bayer Corporation, Bayer HealthCare LLC and Bayer HealthCare Pharmaceuticals Inc. Deadlines concerning Foreign Defendants will be the subject of

2. Master Discovery

On **September 22, 2009**, Plaintiffs served Interrogatories and Document Production Requests (the “*Master Discovery*” or “Master Interrogatories and Document Requests”) upon counsel for the US Defendants. The *Master Discovery* shall be deemed to have been served by all Plaintiffs upon the US Defendants in the Coordinated Actions. Plaintiffs shall serve no further discovery on the US Defendants that seeks the same information as the *Master Discovery*. The US Defendants shall serve Answers to Interrogatories/Objections and Responses/Objections to the Document Requests to the previously served *Master Discovery* on or before **December 15, 2009**. Plaintiffs may serve the same *Master Discovery* or other *Master Discovery* on any US Defendant that has not yet been served.

B. DOCUMENT PRODUCTION FROM THE US DEFENDANTS

1. Schedule for Production of Documents by the US Defendants (*FNC Discovery and Master Discovery*)

Except to the extent that a Request for Production is (1) subject to an objection which has not been overruled by the Court, or (2) subject to a claim of privilege which has not been overruled by the Court, the US Defendants’ productions in response to Plaintiffs’ Document Production Requests (for both the *FNC Discovery* and *Master Discovery*) shall be made to each of the Plaintiffs’ Liaison Counsel on a rolling monthly basis beginning on **December 21, 2009**.

2. Redaction of Documents

(a) Defendants shall provide for each redacted document coding field(s) which describe the reason(s) for any redaction in a document, *e.g.* “other product,” “privacy,” “privilege.”

(b) Defendants shall redact only those portions of a document that are the

additional order(s).

subject of the redaction and not the entire document or page unless the entire document or page is the subject of the redaction.

(c) Defendants shall indicate on each redaction a description of each reasons for the redaction *e.g.* “other product,” “privacy,” “privilege.”

(d) Defendants may redact those portions of documents that contain information relating to Bayer products other than Yaz®/Yasmin®/Ocella®, or other non-Drospirenone-containing medicines. With respect to Drospirenone-containing medicines other than Yaz®/Yasmin®/Ocella®, Defendants may redact those portions of any material that relates to any business strategy, marketing, or sales or that otherwise does not contain safety information.

(e) Plaintiffs retain the right to move to compel production of redacted information, and defendants retain the right to object. Any failure to redact information described above does not waive any right to claims of privilege or privacy or any objection, including relevancy, as to the specific document or any other document that is or will be produced.

C. DEPOSITIONS OF DEFENDANTS’ PERSONNEL

The Parties and the Court desire to minimize the expense and inconvenience of this litigation by, *inter alia*, providing for a single deposition of witnesses in all litigation relating to Yaz®, Yasmin® or Ocella®. If a Party cross-notices in these Coordinated Actions a deposition scheduled in other federal or state litigation relating to Yaz®, Yasmin® or Ocella®, it shall provide the notice to Liaison Counsel by E-mail² as soon as possible. If a Party objects to that cross-notice, Defendants’ Liaison Counsel shall within two business days after service of that cross notice, notify this Court of the dispute by letter delivered or faxed to the Court and all interested parties, including

² Unless stated otherwise, all notices by Defendants to Plaintiffs Liaison Counsel shall be made by E-mail to each of the following: Michael M. Weinkowitz, Esquire (MWeinkowitz@lfsbalw.com); Daniel Gallucci, Esquire (dgallucci@rodanast.com) and Laura A. Feldman, Esquire (Lfeldman@feldmanpinto.com).

Plaintiffs' Liaison Counsel. That letter shall ask this Court to convene a conference call to dispose of the dispute as soon as it can be scheduled. The burden shall be on the Party objecting to the cross-notice to demonstrate that the cross-notice shall not proceed. In no event shall witnesses be deposed on multiple occasions in connection with these Coordinated Actions without leave of this Court and for good cause shown. The Parties may submit a further Case Management Order dealing with deposition scheduling of Defendants' Personnel (including coordination with other proceedings, if possible). Plaintiffs are not precluded from deposing Defendants' personnel on the ground that Plaintiffs in Yaz®, Yasmin® or Ocella® litigation in other state or federal jurisdictions have not sought the deposition of those personnel. Plaintiffs are not precluded from asking questions of any witness on non-repetitive topics on the ground that the witness' deposition was originally noticed in a different proceeding and that an examiner from another proceeding asked questions first. Plaintiffs and Defendants shall cooperate on the scheduling of depositions to avoid situations where Plaintiffs in these Coordinate Actions do not have a reasonable opportunity to examine a witness on non-repetitive topics. The Parties may submit a separate Deposition Protocol governing procedures and practices at depositions taken in Yaz®/Yasmin®/Ocella® litigation.

D. DISCLOSURE BY PLAINTIFFS' LIAISON COUNSEL

Plaintiffs' Liaison Counsel shall make accessible any documents, interrogatories, and other items produced by Defendants pursuant to the *Master Discovery*, to any attorney representing any Plaintiff in the Coordinated Actions who has filed an individual action against a specific Defendant upon written request and payment of all reasonable costs to provide such copies. No such disclosure shall be made to any persons not subject to the Confidentiality Order (Case Management Order No. 3) governing these cases.

II. CASE-SPECIFIC DISCOVERY

A. REQUIRED DISCLOSURES BY PLAINTIFFS

(1) PLAINTIFF FACT SHEET ("PFS")

(a) In every case currently part of the *In re Yaz*®, *Yasmin*®, *Ocella*® *Product Liability* litigation and in all other cases that become part of *In re Yaz*®, *Yasmin*®, *Ocella*® *Product Liability* litigation by virtue of being filed in this Court, each Plaintiff shall complete and submit a Plaintiff Fact Sheet ("PFS") to defense counsel. The final PFS will be attached to a future *Case Management Order* which will be entered by the Court on or after the status conference on **December 11, 2009**.

(b) Within **seventy-five (75)** days of the date of this Order for cases currently pending before this Court in *In re Yaz*®, *Yasmin*®, *Ocella*® *Product Liability* or within **seventy-five (75)** days of the date on which services is made on the first Defendant in newly filed cases in *In re Yaz*®, *Yasmin*®, *Ocella*® *Product Liability*, a Plaintiff who is subject to this Order shall serve the named Defendants with a completed PFS:

(i) Plaintiff shall sign Declaration found at Section XIII of the PFS;

(ii) A completed PFS shall be considered to be interrogatory answers and responses to requests for production under the Pennsylvania Rules of Civil Procedure, and will be governed by the standards applicable to written discovery under the Pennsylvania Rules of Civil Procedure. The interrogatories and requests for production in the PFS shall be answered without objection;

(iii) The method of service of the PFS upon Defendants shall be set forth in a subsequent *Case Management Order*.

(iv) Nothing in this section prohibits a Plaintiff from withholding or redacting information based upon a recognized privilege. If information is withheld or redacted on the basis of privilege, Plaintiff shall provide Defendants with a privilege log. In the event that a dispute arises concerning the completeness or adequacy of a Plaintiff's response to any request contained in the PFS, this section shall not prohibit the Plaintiff from asserting that his or her response is adequate;

(2) **AUTHORIZATIONS FOR THE RELEASE OF RECORDS**

(a) As set forth in this paragraph, *Authorizations for the Release of Records* together with copies of such records, to the extent that those records or copies thereof are in the Plaintiff's possession at the time that the Plaintiff is required to serve a PFS pursuant to this Order, shall be provided along with the PFS;

(b) Plaintiffs shall provide the following Authorizations for the Release of Records to Defendants consistent with Section XII of the PFS:

1. **Healthcare Authorizations-** For each medical provider identified in the PFS that Plaintiff has identified in Sections III; IV; V; VI; VIII; IX and X, Plaintiff shall provide a completed and signed (but undated) *Healthcare Authorization* in the form attached to the PFS as Exhibit "A."

2. **Tax Return 4506 and 4506-T IRS Forms-** If the Plaintiff answered "Yes" to question X.4 in the PFS and is asserting a claim for lost wages or a reduction in lost earning capacity, the Plaintiff shall provide to Defendants a completed and signed IRS Form 4506 and 4506-T attached to the PFS as Exhibit "B" for each year identified in Plaintiffs' answer to question X.4 of the PFS. If the Plaintiff answered "No" to question X.4 and is not asserting a wage loss claim or a reduction in lost earning capacity, then the Plaintiff is not required to provide

Defendants with IRS Form 4506/4506-T.

3. **Authorizations for the Release of Employment Records**- If the Plaintiff answered "Yes" to question X.4 in the PFS and is asserting a claim for lost wages or a reduction in lost earning capacity, then the Plaintiff shall provide Defendants with a completed and signed an *Employment Authorization* attached to the PFS as Exhibit "C" for each employer identified in your answer to question X.5. If the Plaintiffs answered "No" to question X.4 and is not making a claim for lost wages or lost earning capacity then the Plaintiff is not required to provide Defendants with *Employment Authorizations*.

4. **Authorization for Release of Workers' Compensation Records**- If the Plaintiff answered "Yes" to question II.16 in the PFS, stating that she applied for workers' compensation within the past ten (10) years, then the Plaintiff must provide a completed and signed (but undated) *Authorization for Release of Workers' Compensation Records* for each agency or company that Plaintiff submitted an application in the last 10 years in the form attached to the PFS as Exhibit "D". If the Plaintiff answered "No" to question II.16 of the PFS, then she is not required to provide Defendants with a *Release of Workers' Compensation Records*.

5. **Authorization for Release of Disability Records**- If the Plaintiff answered "Yes" to question II.16 in the PFS (stating that she applied for disability within the past ten (10) years), then the Plaintiff shall provide a completed and signed (but undated) *Authorization for Release* for each agency or company you submitted your application to in the last 10 years in the form attached to the PFS as Exhibit "E."

6. **Authorization for Release of Educational Records** -For each educational institution that Plaintiff listed in response to question II.12 in the PFS, Plaintiff shall provide a completed and signed (but undated) *Authorization for Release of Educational*

Records in the form attached to the PFS as Exhibit “F.”

7. **Insurance Records Authorizations**- For each company listed in the Plaintiffs answer to question II.15 in the PFS, the Plaintiff shall provide a completed and signed (but undated) *Authorization for Release of Insurance Records* in the form attached to the PFS as **Exhibit “G.”**

(c) Providing those addressed, executed authorizations pursuant to this section shall constitute a waiver of any *Notice of Subpoenas* required under the Pennsylvania Rules of Civil Procedure or other applicable rule or law as to those Providers.

(d) In addition to the addressed Authorizations described above, Plaintiffs’ counsel shall also maintain in their file unaddressed, executed authorizations. Plaintiff’s counsel shall provide executed Authorizations to Defendants’ counsel within **seven (7) days** of a request for Authorizations. Providing those Authorizations to defense counsel shall constitute a waiver of any *Notice of Subpoenas* required under the Pennsylvania Rules of Civil Procedure or other applicable rule or law only as to the providers identified in the PFS.

(e) Copies of Authorizations shall be forwarded to Plaintiff’s counsel for the individual Plaintiff at the time they are sent to the record copy service; and,

(f) Undated Authorizations constitute permission for Defendants to date (and where applicable, re-date) Authorizations before sending to records custodians.

(g) Defendants and Defendants’ Record Copy Service Vendor shall not disclose to any employment, education, disability, worker’s compensation, or insurance record-provider anything about the nature of any claim in this litigation, the nature of the Plaintiffs’ claim or that the records being sought are for the purpose of litigation.

B. COLLECTION, COPYING AND ORGANIZATION OF DOCUMENTS

The Parties shall agree on a method to collect, copy and control (*e.g.*, by bates-numbering) documents produced by Plaintiffs or third-parties through the use of a record copy service or otherwise.

C. PROCEDURE TO OBTAIN RECORDS FROM THIRD-PARTIES

Defendants may request Plaintiffs' records as provided in the PFS and paragraph II(2)(b) above through a record copy service ("*Record Copy Service Vendor*"). The service shall notify all Parties (Defendants and the individual Plaintiff counsel [not Plaintiffs Liaison counsel]) *via* E-mail upon receipt of the records but shall not release the records retrieved to Defendants for **seven (7) business days** so that Plaintiffs have an opportunity to review the records and to make an application to the Court for a *Protective Order* if necessary (hereinafter "7-Day Review Period"). In the event that the *Record Copy Service Vendor* delays production of the records to Plaintiffs, the 7 day period shall be extended by an equal number of days attributable to the delay. If Plaintiffs fail to make an application for a *Protective Order* on or before the end of the 7-Day Review Period, the *Record Copy Service Vendor* is authorized to release the retrieved records to Defendants. If, prior to the end of the 7-Day Period, after reviewing the records retrieved by the Record Copy Service Vendor, Plaintiffs decide that they will not seek a *Protective Order* for the retrieved records, Plaintiffs shall notify the *Record Copy Service Vendor* via E-mail that the records may be released to Defendants. Plaintiffs shall make their best effort to review said retrieved records and notify if there is no objection to release before the end of the 7- Day Review Period. Nothing in this paragraph is meant to prohibit Plaintiffs from making an application for a *Protective Order* at any other time.

Defendants may not use Authorizations except in accordance with this Order. The Parties may subpoena records from any third-party pursuant to the Pennsylvania Rules of Civil

Procedure or, in the case of out-of-state records, pursuant to other applicable law or rules. Any Party may waive the Notice of Subpoena provisions of the Pennsylvania Rules, either in the Fact Sheet or otherwise in writing. If there is such a waiver, the subpoena may be served without the period allowed for objections under the Pennsylvania Rules of Civil Procedure. Any Party serving a Subpoena on a third-party shall provide the opposing Party a copy of the Subpoena when it is issued.

D. FACT SHEETS MUST BE SUBSTANTIALLY COMPLETE IN ALL RESPECTS

The “Fact Sheets” (“PFS”) which Plaintiffs are required to answer are a convenient form of propounding interrogatories under Pa.R.Civ.P. 4005, and the completed PFS shall be considered as interrogatory answers under that rule. The questions contained in the PFS are non-objectionable and shall be answered without objection.

(1) Every Plaintiff is required to provide Defendants with a PFS that is substantially complete in all respects. Substantially complete in all respects requires that a Plaintiff:

(a) Answer every question in the PFS and leave no blanks, even if a Plaintiff may only answer the question in good-faith by indicating "not applicable" or "I don't know" or “Unknown;”

(b) Provide the requested records authorizations; and,

(c) Produce the documents requested in the PFS, to the extent such documents are in Plaintiff's possession.

(2) Any Plaintiff who fails to comply with the PFS obligations under this Order may be subject to having his or her claims, as well as any derivative claim(s) dismissed, for good-cause upon motion. Any dismissal may be with or without prejudice, as the Court, on a case-by-case basis, deems appropriate. Good cause may be evidenced by, *inter alia*:

(i) the Plaintiff's failure to submit a PFS; or,

(ii) the Plaintiff's failure to substantially complete the PFS in material respects, and the PFS thus contains a material deficiency (i.e., a deficiency that prejudices Defendants through a failure to provide necessary information, thereby impeding Defendants' access to material and relevant evidence); and,

(b) Defendants establishing to the Court that they have exhausted all efforts described in paragraph D.3. below.

(3) If a Plaintiff fails to timely submit a PFS, or if Defendants receive a PFS in the allotted time but the PFS is not substantially complete in all respects, Defendants' Liaison Counsel shall send a deficiency letter via E-mail to Plaintiff's counsel with a copy to Plaintiffs' Liaison Counsel at:

Michael M. Weinkowitz
Daniel N. Gallucci
Rosemary Pinto
c/o Levin, Fishbein, Sedran & Berman
510 Walnut Street, Suite 500
Philadelphia, PA 19106
YazLit@lfsblaw.com

which will allow Plaintiff an additional **thirty (30) days** to serve a PFS that is substantially complete in all respects. The deficiency letter shall include a warning that the case is subject to dismissal under this Order if a PFS substantially complete in all respects is not received within **forty-five (45)** of service of the deficiency letter if good cause is not shown by the Plaintiff. The deficiency letter shall include sufficient detail for the parties to meet and confer regarding the alleged deficiencies. Should a Plaintiff fail to cure the deficiencies identified and fail to provide responses that are

substantially complete in all respects (including the requested documents and signatures on all applicable authorizations) within **forty-five (45)** days of service of the deficiency letter, Defendants may seek an *Order to Show Cause* why the case should not be dismissed. Any such filing shall be served on Plaintiffs' Liaison Counsel at the address listed above, and on Plaintiffs' individual representative counsel, with any response to such filing to be submitted in accordance with the Mass Tort Motion Procedures. Any such filing must include a description of the efforts the Defendants made to meet and confer regarding the alleged deficiencies in the PFS and failure to cure.

(4) In the event that an institution or medical provider to whom any Authorization is presented refuses to provide records in response to that Authorization, Defendants shall notify Plaintiffs' individual representative counsel. The individual Plaintiff shall execute and return within **twenty (20) days** whatever form is required by that institution or provider. Should a particular form be required, Defendants will provide it to Plaintiffs' individual representative counsel.

F. CASE-SPECIFIC DISCOVERY FROM DEFENDANTS

(1) DEFENDANTS' FACT SHEETS ("DFS")

(a) In every case currently part of the *In re Yaz*®, *Yasmin*®, *Ocella*® *Product Liability* litigation, Defendants shall complete and submit a Defendant Fact Sheet ("DFS") to Plaintiff's individual representative counsel. The Parties will meet and confer concerning the form of the DFS and shall submit the form of DFS no later than **December 21, 2009**.

(b) Within **seventy-five (75) days** of the date of receiving a PFS, Defendants shall serve Plaintiff's individual representative counsel with a DFS and all documents that are responsive to the DFS in an electronic format.

(c) Each Defendant shall have a representative that shall sign the completed DFS and provide an executed Affidavit attesting that the information contained therein is

true and correct to the best of the Defendant's knowledge, information and belief, formed after due diligence and reasonable inquiry.

(d) A completed DFS shall be considered to be interrogatory answers and responses to requests for production under the Pennsylvania Rules of Civil Procedure, and will be governed by the standards applicable to written discovery under the Pennsylvania Rules of Civil Procedure. The interrogatories and requests for production in the DFS shall be answered without objection.

(e) Defendants shall serve a copy of each DFS to Plaintiffs' individual representative counsel and via E-mail (without attached documents produced) to Plaintiffs' Liaison Counsel at:

Michael M. Weinkowitz
Daniel N. Gallucci
Rosemary Pinto
c/o Levin, Fishbein, Sedran &
Berman
510 Walnut Street, Suite 500
Philadelphia, PA 19106
YazLit@lfsblaw.com

G. ADDITIONAL WRITTEN DISCOVERY

The Parties shall have the right to serve additional written case-specific discovery limited to information not previously disclosed in discovery. The Parties shall also have the right to serve Requests for Admission at any time before the discovery deadline.

III. PROVISIONS APPLICABLE TO ALL DISCOVERY

A. SUPPLEMENTATION OF RESPONSES

The Parties shall have a duty to supplement any prior response to written discovery requests or any information set forth in a PFS or DFS in accordance with the requirements of Pa. R. Civ. P. 4007.4.

B. PRIVILEGED DOCUMENTS

Every responsive document withheld from production based on a claim of privilege of any kind shall be reflected on a privilege log complying with Pa. R. Civ. P. 4009.12. All persons named in the privilege log shall be identified as to their business position either in the log or in a separate list. Privilege logs shall be produced on schedule. The Parties will produce privilege logs in Excel format or a similar electronic format that allows text searching and organization of data. A Party will produce a privilege log **within 45 days** after its first production of documents for which privilege is asserted to apply, and within the same time period following any subsequent or rolling productions. The Parties will, however, agree to reasonable extensions of **that forty-five (45) day** deadline if the circumstances of a particular production (*e.g.*, the size of the production or the amount of legal materials reviewed in connection with the particular production) make the **forty-five (45) day deadline** impracticable.

Privilege logs shall promptly be supplemented under Pa.R.Civ.P. 4007.4 as to any document which becomes producible thereafter.

BY THE COURT:


The Honorable Sandra Mazer Moss