

IN RE: : COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
ANTI-CONVULSANT DRUGS :
LITIGATION : *November*
: ~~DECEMBER~~ TERM, 2010

This Document Relates to All Cases : NO. 1011-04241

In Re: Anticonvulsant Drugs Litigation-ORDER



CASE MANAGEMENT ORDER NO. 1:

GOVERNING ALL ANTI-CONVULSANT DRUGS CASES

It is the goal of this Court to secure the just, speedy, and inexpensive determination of each case filed by a Plaintiff alleging injuries and/or death as a result of his/her usage of lamotrigine and/or carbamazepine (hereinafter “anti-convulsant drugs”) now pending or hereafter filed in the Court of Common Pleas, Philadelphia County, Pennsylvania, and to eliminate duplication of effort, prevent unnecessary paperwork, and promote judicial economy.

In order to achieve these objectives, the following Case Management Order No. I is entered this *2nd* day of *Feb.*, 2010 for all individual Anti-Convulsant Drugs cases that are presently pending or hereafter filed in the Philadelphia Court of Common Pleas.

I. ANTI-CONVULSANT DRUGS CASES MASTER DOCKET

On or about November 30, 2010, the Court established an Anti-Convulsant Drugs master docket at December Term, 2010, No. 1011-04241. This docket number was established as a depository for the filing of pleadings, motions, orders, and other documents common to the Anti-Convulsant Drugs cases. ~~All Liaison counsel, and other counsel who are involved in representation of parties to these cases shall file an entry of appearance at the master docket promptly upon becoming involved in any one or more of these cases.~~¹ Once a pleading, motion,

¹ Pro hac vice rules shall not apply with respect to appearances on the master docket, but shall remain in full force and effect with respect to all appearances in individual cases.

order, or other document is filed on the master docket, electronic copies will be automatically provided to all counsel who have entered their appearances on the master docket. Thereafter, the pleading, motion, order, or other document may be incorporated by reference, either orally before the Court, or within another properly filed pleading, motion, order, or other document.

Also on or about November 30, 2010, this Court consolidated these Anti-Convulsant Drugs cases for purposes of discovery only. At this time, the Court has not determined the advisability of trial of these cases in any fashion other than by means of conventional, full issues trials, as might occur in the Civil Division. Nothing in this Case Management Order is intended to suggest otherwise.

II. TEMPORARY STAY ON RESPONSIVE PLEADINGS OBLIGATIONS AND ON FILING DISPOSITIVE MOTIONS

All responsive pleading obligations are stayed until such time as responsive pleadings are due under the relevant Sections below. The parties in these cases are directed to refrain from filing any potentially dispositive motions (i.e., Motions for Summary Judgment, Motions or Judgments on the Pleadings), except as detailed in this and future Orders. However, no current or future party has waived any rights, claims, or defenses existing at the time of the execution of this Order.

III. PLEADINGS

A. MASTER LONG FORM COMPLAINT

1. Within thirty (30) days from the entry of this Order, counsel for Plaintiffs in pending Anti-Convulsant Drugs cases shall confer and shall collectively file a *Master Long Form Complaint*. The *Master Long Form Complaint* must be served on the Defendant, in

accordance with the provisions of this Order, before a response shall be required by the Defendant.

2. On or before thirty (30) days after valid service of the *Master Long Form Complaint* on Defendant, the Defendant shall file either (a) a *Master Answer* or (b) *Master Preliminary Objections to the Master Long Form Complaint*.

3. Plaintiffs shall have thirty (30) days to respond to the Master Preliminary Objections and any replies thereto shall be filed within eight (8) business days of service.

4. The Court will rule on the *Master Preliminary Objections*, and whether a hearing thereon will be held is subject to the sole discretion of the Court. The Court's ruling on the *Master Preliminary Objections* will be binding on all current Anti-Convulsant Drugs cases.

5. If *Master Preliminary Objections* are sustained to one or more counts in the *Master Long Form Complaint* for the Anti-Convulsant Drugs cases, Plaintiffs, if so ordered, shall file a conforming *Amended Master Long Form Complaint* within twenty (20) days of the Order sustaining the *Master Preliminary Objections*.

6. All *Short Form Complaints* and all *Master Answers* shall be deemed to follow the most current *Amended Master Long Form Complaint* and *Answer*, respectively.

7. If *New Matter* is pleaded in the *Master Answer*, such *New Matter* will be deemed denied by Plaintiffs, and Defendant's exceptions to the denials are preserved and Plaintiffs are not required to file any further responsive pleadings to Defendants' *New Matter* asserted in the *Master Answer*. Defendant shall not be required to verify the Master Answer and New Matter.

B. PREVIOUSLY FILED CASES

1. The *Master Long Form Complaint* for the Anti-Convulsant Drugs cases will substitute and supersede all Complaints filed in individual Anti-Convulsant Drugs cases pending

action, including any allegations and causes of action not included in the *Master Long Form Complaint*, in the *Short Form Complaint* for Anti-Convulsant Drugs cases, and an assertion of all applicable new matters and defenses.

5. Defendant will not file *Preliminary Objections* challenging claims as to which *Preliminary Objections* have previously been specifically overruled.

6. Plaintiffs shall have twenty (20) days from the date of service of *Preliminary Objections* to file a response and any replies thereto shall be filed within five (5) business days of service.

7. The Court will rule on the *Preliminary Objections*, and whether a hearing thereon is scheduled is solely within the discretion of the Court.

8. If the Court's ruling on *Preliminary Objections* to a *Short Form Complaint* does not provide for the filing of an *Amended Short Form Complaint*, the remaining allegations of the *Short Form Complaint* shall be deemed denied.

9. If any of the Court's rulings permit a Plaintiff to file an *Amended Short Form Complaint*, Defendant shall be afforded twenty (20) days after service of the *Amended Short Form Complaint* in which to file a responsive pleading.

10. If no responsive pleading is filed, allegations in an *Amended Short Form Complaint* will be deemed denied.

C. NEWLY FILED CASES

1. The Court favors that all Anti-Convulsant Drugs cases filed after the date of this Order will be instituted by the filing of a *Short Form Complaint*. But if suit is instituted by a *Writ of Summons*, it shall be self-executing and Plaintiff shall file a *Short Form Complaint* within twenty (20) days without the need of a *Rule to File a Complaint*. If Plaintiff fails to file a *Short*

Form Complaint within twenty (20) days, the action shall be subject to dismissal in accordance with the notice provision of Pennsylvania Rules of Civil of Procedure 236 if the *Short Form Complaint* is not filed in accordance with this paragraph.

2. Plaintiffs shall indicate in each *Short Form Complaint* those counts of the *Master Long Form Complaint* that are incorporated by reference.

3. If additional causes of action are alleged in a *Short Form Complaint*, the specific facts supporting these allegations shall be pleaded in accordance with the Pennsylvania Rules of Civil Procedure.

4. Defendant shall have twenty (20) days from the date of service of the *Short Form Complaint* or twenty (20) days from the date of the Court's ruling on the *Master Preliminary Objections*, whichever is later, to file *Preliminary Objections* to each *Short Form Complaint*.

5. An entry of appearance shall constitute a denial of all allegations and causes of action, including any allegations and cause of action not included in the *Master Long Form Complaint*, in a *Short Form Complaint* and an assertion of all applicable defenses.

6. Defendant shall not file *Preliminary Objections* challenging claims as to which *Master Preliminary Objections* have previously been specifically overruled.

7. Plaintiffs shall have twenty (20) days from the date of service of *Preliminary Objections* to file a response and any replies thereto shall be filed within five (5) business days of service.

8. The Court will rule on the *Preliminary Objections* and whether a hearing thereon is scheduled is solely in the discretion of the Court.

9. If the Court's ruling on *Preliminary Objections* to a *Short Form Complaint* does not provide for the filing of an *Amended Short Form Complaint*, the remaining allegations of the *Short Form Complaint* shall be deemed denied.

10. If any of the Court's rulings permit a plaintiff to file an *Amended Short Form Complaint*, Defendant shall be afforded twenty (20) days after service of an *Amended Short Form Complaint* in which to file a responsive pleading.

11. If no responsive pleading is filed, allegations in an *Amended Short Form Complaint* will be deemed denied

D. SERVICE ON LIAISON COUNSEL

1. Service of all documents under the "Anti-Convulsant Drugs" master caption shall be served on Liaison Counsel.

2. Service on Liaison Counsel shall be deemed as service on all counsel, and Liaison Counsel shall be responsible for disseminating to all co-counsel. If and to the extent that confidentiality/protective orders are later put into effect, Liaison Counsel shall be expected to comply with the terms of any and all such orders with respect to dissemination of materials to other counsel involved in the cases.

3. All documents served on Liaison Counsel shall be served on Liaison Counsel in accordance with the Pennsylvania Rules of Civil Procedure, the Philadelphia Court of Common Pleas Mass Tort Program, and Complex Litigation Center rules.

4. All case-specific documents shall be served on proper individual counsel in a manner consistent with the Pennsylvania Rules of Civil Procedure and the Philadelphia Court of Common Pleas Mass Tort Program and Complex Litigation Center rules.

IV. APPOINTMENT OF LIAISON COUNSEL

1. The following attorneys are hereby appointed as Liaison Counsel:

Plaintiffs' Liaison Counsel:

Lee Balefsky
Kline & Specter, P.C.
1525 Locust Street, 19th Floor
Philadelphia, PA 19102
Phone: (215) 772-0420
Fax: (215) 772-1359
Email: leebalefsky@klinespecter.com

James D. Barger
Aylstock, Witkin, Kreis & Overholtz, PLLC
17 E. Main Street, Suite 200
Pensacola, FL 32502
Phone: (850) 202-2211
Fax: (850) 916-7449
Email: jbarger@awkolaw.com

Defendant's Liaison Counsel:

Alice S. Johnston
Obermayer Rebmann Maxwell & Hippel LLP
One Penn Center, 19th Floor
1617 John F. Kennedy Boulevard
Philadelphia, PA 19103-1895
Email: alice.johnston@obermayer.com
Phone: (215) 667-6310
Fax: (215) 665-3165

~~Jeffrey F. Peck
Ulmer Berne LLP
600 Vine Street, Suite 2800
Cincinnati, OH 45202-2409
Phone: (513) 698-5010
Fax: (513) 698-5011
Email: jpeck@ulmer.com~~

2. No communications among Plaintiffs' Counsel or among Defendant's Counsel shall be taken as a waiver of any privilege or protection to which they would otherwise be entitled.

3. The Liaison Counsel will be responsible for all future case management orders, pleadings, responses, and any other documents that affect all actions in this litigation. In addition, if and when the Court directs the parties to begin the written discovery process, Liaison Counsel will be responsible for the drafting, coordination, propounding, and scheduling of all master discovery requests and depositions.

4. All issues of service of papers on Liaison Counsel shall be governed by the Section III.D.

V. MOTIONS

1. All motions filed in the Anti-Convulsant Drugs litigation, including *Preliminary Objections*, shall be in letter format pursuant to mass tort motion procedure.

2. Defendant anticipates the filing of Motion(s) on the basis of *Forum Non Conveniens*, which will be addressed in future Case Management Order(s) pending information received from forum discovery to be addressed to Plaintiffs.

VI. SERVICE OF PROCESS

1. To eliminate disputes over service of process and to reduce the expense of such service, Defendant has agreed to waive the normal legal requirements for service of original process in the individual cases. Instead, Defendant has agreed to accept service of original process for Anti-Convulsant Drugs products liability cases filed in the Philadelphia Court of Common Pleas through service, by certified mail, return receipt requested, upon the following:

Teva Pharmaceuticals USA, Inc.
Ms. Jennifer Fuller-Ricciardi
Teva Pharmaceuticals USA, Inc.
425 Privet Road
P.O. Box 1005
Horsham, PA 19044

Service will be effective only if addressed as above. General mailing to the Defendant will not be sufficient to effect original service of process. Service will be deemed accomplished ten (10) days after mailing in accordance with this Section.

2. A copy of each Complaint or Writ of Summons transmitted to the Defendant in the foregoing manner shall be provided to Defense Liaison Counsel, Alice S. Johnston (alice.johnston@obermayer.com) and Jeffrey F. Peck (jpeck@ulmer.com) on the same day as it is mailed to Defendant as set forth above.

3. The foregoing procedure shall apply to Anti-Convulsant Drugs products liability cases filed in the Philadelphia Court of Common Pleas and not to any other litigation. Defendant reserves all other rights and defenses available to it under federal or state law and under applicable treaties and conventions.

VII. FURTHER ORDERS

1. The Liaison Counsel shall prepare for review and approval by the Court such other Case Management Orders as are required to meet the Court's directions for the next phase of litigation, including, for example, orders governing discovery and deposition procedures and scheduling at such time that the Court directs the parties to proceed into discovery.

BY THE COURT:

J. 