

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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: Index No. 560001/2005
: IN RE: NEW YORK BEXTRA AND CELEBREX : CASE MANAGEMENT
: PRODUCT LIABILITY LITIGATION : ORDER NO. 10
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THIS DOCUMENT APPLIES TO ALL CASES :
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Appointment Of The Honorable Fern M. Smith As Special Master

I. Scope Of Order

Order Applicable To All Product Liability Plaintiffs In The New York Coordinated Bextra And Celebrex Proceeding. This Order shall apply to all plaintiffs who allegedly suffered personal injury from taking Bextra and/or Celebrex in cases currently pending in the Supreme Court of the State of New York, County of New York, and to all related product liability actions that have been or will be originally filed in, or transferred to, this Court and assigned thereto (collectively, the “Coordinated Proceeding”). This Order is binding on all parties and their counsel in all product liability cases currently pending or subsequently made part of these proceedings.

1. Appointment Of Special Master. Pursuant to N.Y. Comp. Codes R. & Regs. tit. 22, § 202.14 (2006) and Case Management Order No. 5, issued on April 21, 2006, and with the consent of the parties, the Court hereby appoints the Honorable Fern M. Smith, United States District Court Judge (Retired), as Special Master to assist the Court in this litigation (hereinafter “Judge Smith” or “Special Master”).

II. Basis For Appointment

2. Basis For Appointment. The Special Master is hereby appointed pursuant to N.Y. Comp. Codes R. & Regs. tit. 22, § 202.14 (2006) to perform duties consented to by the parties, to make findings of fact on issues to be decided by the Court because appointment is warranted by

an exceptional condition (namely, the volume of cases pending in these proceedings), and to address pretrial and post-trial matters that cannot be addressed effectively and timely by an available judge of the State.

3. No Grounds For Disqualification. The Special Master has filed an affidavit with this Court that states that she has no relationship to the parties, counsel, action, or Court that would require disqualification of a judge under 28 U.S.C. § 455 (2006). During the course of these proceedings, the Special Master and the parties shall notify this Court immediately if they become aware of any potential grounds that would require disqualification.

4. Fairness Considerations. The Court has considered the fairness of imposing the likely expenses of the Special Master on the parties. The Court believes that the appointment and use of the Special Master will materially advance the litigation, thereby achieving considerable cost-savings to all parties. Moreover, the Court notes that the parties have consented to the Special Master's appointment. The Court will protect against unreasonable expenses and delay through regular communication with the Special Master and Liaison Counsel.

5. Proper Notice Given To All Parties. Pursuant to Case Management Order No. 5, the Court gave all parties to the Coordinated Proceeding notice of its intent to appoint the Special Master and an opportunity to be heard with respect to such appointment before issuing this Order.

III. Special Master's Duties, Authority, And Reimbursement Of Expenses

6. Diligence. The Court hereby directs the Special Master to proceed with all reasonable diligence in performing her duties in the Coordinated Proceeding.

7. Scope Of Special Master's Duties. Pursuant to N.Y. Comp. Codes R. & Regs. tit. 22, § 202.14 (2006), the Special Master shall assist the Court with matters such as discovery, case management, and case resolution procedures, and shall also consult with the parties and the

IV. Action On Special Master's Orders, Reports, Or Recommendations

14. Scope Of Section. The procedures described in paragraphs 15 through 18 herein shall govern any action on the Special Master's orders, reports, and/or recommendations.

15. Time Limits For Review. Any party wishing to file objections to or a motion to adopt or modify the Special Master's orders, reports, and/or recommendations must file such objections or motion with the Court within fourteen (14) days from the day the Special Master filed the order, report, and/or recommendation. Any order issued by the Special Master shall remain in effect pending any such objection or motion.

16. Filing The Record For Review. The party filing the objection or motion shall submit with such objection or motion any record necessary for the Court to review the Special Master's order, report, and/or recommendation, including any transcripts of proceedings before the Special Master and any documents submitted by the parties in connection with the Special Master's order, report, and/or recommendation. Failure to provide the record shall constitute grounds for the Court to overrule the objection or deny the motion.

17. Standard For Court's Review. Pursuant to the parties' stipulation, the Court shall review findings of fact made or recommended by the Special Master for clear error. The Court shall review *de novo* any conclusions of law made or recommended by the Special Master. The Court will set aside the Special Master's ruling on a procedural matter only for an abuse of discretion.

Court on trial selection issues. The Special Master shall also consult with the parties and the Court on other issues in which the parties and the Court wish to utilize her services.

8. Scope Of Special Master's Authority. The Special Master shall have the authority provided in N.Y. Comp. Codes R. & Regs. tit. 22, § 202.14 (2006), and as stated by the Court herein.

9. Procedure For Motions Submitted To Special Master. The procedural requirements contained in this Court's Case Management Orders shall govern any motion practice before the Special Master.

10. Ex Parte Communications. The Special Master may communicate *ex parte* with the Court at any time. The Special Master shall not communicate *ex parte* with any party absent consent of Liaison Counsel without first providing notice and an opportunity to be heard to the opposing Liaison Counsel.

11. Preservation Of Materials And Preparation Of Record. The Special Master shall maintain orderly files consisting of all documents submitted to her by the parties and any of her written orders, findings, and/or recommendations. The Special Master shall file any written orders, findings, and/or recommendations with the Court. Any records of the Special Master's activities other than her written orders, findings, and/or recommendations shall be filed in accordance with paragraph 15 herein.

12. Compensation. Pursuant to N.Y. Comp. Codes R. & Regs. tit. 22, § 202.14 (2006), the Special Master shall serve without compensation. The Special Master shall not charge for travel time. Judge Smith shall prepare a monthly invoice for her expenses however, which she shall provide to Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel. Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel shall each be responsible for paying half of the Special Master's invoice; such invoices shall be paid promptly.

13. Special Master's Reports To The Court. The Special Master shall report to the Court as directed by the Court.

18. Court's Actions On Master's Orders. In acting on an order, report, or recommendations of the Special Master, the Court shall afford each party an opportunity to be heard and, in its discretion, may receive evidence, and may adopt or affirm; modify; wholly or partly reject or reverse; resubmit to the Special Master with instructions; or make any further orders it deems appropriate.

SO ORDERED.

Dated: June 15, 2006



SHIRLEY WERNER KORNREICH

Hon. Shirley W. Kornreich, J.S.C.

FILED

JUN 21 2006

COUNTY CLERK'S OFFICE
NEW YORK