

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

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: Index No. 762000/06
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IN RE: NEW YORK BEXTRA AND CELEBREX : CASE MANAGEMENT
PRODUCT LIABILITY LITIGATION : ORDER NO. 13
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THIS DOCUMENT APPLIES TO ALL CASES :
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Initial Selection of Plaintiffs For Discovery and Trial Pool

I. Scope Of Order

1. **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.

2. **Intent of Order.** This Order is intended to establish procedures for selecting plaintiffs conducting discovery of a subset of product liability Plaintiffs so that the Court and the parties may prepare these cases for early resolution (via motion, settlement, trial, or other resolution tool) in these proceedings, consistent with this Court's charge to promote the just and efficient conduct of the civil actions in these proceedings, to assure uniform and expeditious treatment in pretrial procedures, and to avoid undue delay or cost. Nothing in this Order shall be construed to result in joinder of any Plaintiff's claims or to govern discovery or trial in any cases not selected for the discovery and/or trial pool under this Order. This Order shall not constitute consent by

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any party to have any case tried in this Court, except as provided herein. This Order shall not be construed to prevent later orders with respect to the selection of additional Plaintiffs for discovery and/or trial.

II. Selection of Plaintiffs For Discovery Pool

3. Methods for Selection of Discovery Pool. The initial pool of cases eligible for discovery shall consist of eighteen Plaintiffs¹ with cases pending in this Coordinated Proceeding that have been filed and served upon Pfizer Defendants and for which Plaintiff Fact Sheets are due on or before February 15, 2007, pursuant to Case Management Order No. 6. Five of the Plaintiffs shall be selected by the New York Plaintiffs' Steering Committee ("PSC") ("the PSC selections"); five of the Plaintiffs shall be selected by the Pfizer Defendants ("the Pfizer selections"); and eight of the Plaintiffs shall be selected randomly ("the random selections").² The PSC selections, the Pfizer selections, and the random selections shall constitute the cases eligible for discovery ("the Discovery Pool").

4. Random Selection of Eight Plaintiffs. The random selections shall be made as follows:

a. Preliminary List of Eligible Product Liability Plaintiffs. Liaison Counsel shall meet and confer to develop a list of eligible product liability Plaintiffs whose cases were filed and served upon Pfizer Defendants in the Coordinated Proceeding and for which Plaintiff

¹ For purposes of this Order, the term "Plaintiff" shall refer to an individual who took Bextra and/or Celebrex and allegedly suffered a personal injury (a "primary Plaintiff"). The term shall not apply to derivative Plaintiffs such as spouses asserting a loss of consortium claim or representatives of an estate. The claims of such Plaintiffs, however, shall be subject to discovery and trial pursuant to this Order if the primary Plaintiff from whom such Plaintiffs' claims derive is selected for discovery and trial. Further, Plaintiffs who filed complaints containing multiple primary Plaintiffs must be selected (if at all) individually. The claims of any primary Plaintiffs in multi-Plaintiff complaints are hereby automatically severed from the claims of other Plaintiffs in the same complaint upon inclusion of the primary Plaintiff in the Discovery Pool.

² For purposes of this Order, the terms "PSC selections," "Pfizer selections," and "random selections" shall include any replacements selected by the parties or at random, respectively, except where otherwise provided by this Order.

Fact Sheets are due on or before February 15, 2007, pursuant to Case Management Order No. 6 (“the Eligible Plaintiffs List”). The Eligible Plaintiffs List shall not include any Plaintiff who has sued an entity or individual other than Defendants Pfizer Inc., Pharmacia & Upjohn Co., Pharmacia & Upjohn LLC, Pharmacia Corporation, G.D. Searle LLC (formerly known as G.D. Searle & Co.), and/or a Pfizer-affiliated entity (“a non-Pfizer defendant”). The Eligible Plaintiffs List shall contain each individual Plaintiff’s last name, first name, and the Index Number of the case, with no other information, and shall be in alphabetical order by Plaintiffs’ last names (and then first names where Plaintiffs have identical last names). Each Plaintiff shall be assigned a unique number, starting at one and continuing up through the total number of eligible Plaintiffs (*i.e.*, 1, 2, 3, and so on). Defendants’ Liaison Counsel shall generate the Eligible Plaintiffs List by February 22, 2007. Plaintiffs’ Liaison Counsel shall meet and confer with Defendants’ Liaison Counsel to confirm the accuracy of the Eligible Plaintiffs List by March 1, 2007.

b. Random Selection by Randomizing Software. At noon on March 8, 2007, Liaison Counsel shall jointly use the Research Randomizer web site (www.randomizer.org) to randomly generate eight unique numbers between one and the total number of eligible Plaintiffs on the Eligible Plaintiffs List, sorted from least to greatest. Liaison Counsel performing the randomization shall print the results and download them into an Excel file, and shall provide both the printed and Excel results to opposing Liaison Counsel immediately. Plaintiffs whose numbers are generated shall become part of the Discovery Pool.

c. Only One Random Plaintiff Per Plaintiff’s Firm. Notwithstanding the random selection process set forth in paragraphs 4(a)-(b) above, no Plaintiff’s firm may have more than one randomly-selected Plaintiff in the initial pool of eight random selections (unless that firm is listed as co-counsel or joint counsel on the active complaint for the selected Plaintiff, as described below). If, pursuant to paragraph 4(b), a Plaintiff’s counsel-of-record represents

more than one Plaintiff in the initial eight randomly-selected Plaintiffs, only the selection with the lowest unique number shall remain in the pool. The other selection(s) shall be placed back on the Eligible Plaintiffs List, and the random selection process shall be repeated to identify new selection(s) until eight Plaintiffs have been selected that each are represented by different counsel-of-record. However, for purposes of this paragraph 4(c), counsel listed as co-counsel or joint counsel on the complaint (or summons, or summons with notice) for any randomly-selected Plaintiff(s) shall not be considered counsel-of-record, and thus Plaintiffs selected who are represented by such counsel shall remain in the pool. This paragraph shall not apply to the party-selected cases described in paragraph 5 and shall not apply to cases in which the Plaintiff has changed counsel on or before the date this Order is signed.

d. Updates of Eligible Plaintiffs List. If replacement Plaintiffs need to be randomly selected pursuant to paragraph 10 herein, and the Eligible Plaintiffs List was generated more than ninety days before the date of the replacement, Defendants' Liaison Counsel shall generate a new Eligible Plaintiffs List pursuant to the procedures established in paragraphs 4(a) and (b) herein.

5. Party Selections of Five Plaintiffs Each. The party selections shall be made as follows:

a. Limitations on Selections.

(1) PSC Selections from Plaintiffs Who Have Provided CMO No. 6 Discovery. The PSC selections shall be made only from Plaintiffs who have provided Plaintiff Fact Sheets ("PFS"), authorizations, and responsive documents pursuant to Case Management Order No. 6 (collectively, "the discovery required by Case Management Order No. 6").

(2) PSC Selections from Plaintiffs Agreeing to Try Case in New York County Before The Hon. Shirley W. Kornreich. Notwithstanding any rules or procedures of the

New York State Litigation Coordinating Panel, prior to the PSC selecting a Plaintiff who did not file his or her complaint in New York County, the PSC must confirm that the Plaintiff is willing to have his or her case tried in New York County, before the Honorable Shirley W. Kornreich.

(3) All Selections from Cases Filed and Served and for which Plaintiff Fact Sheets are due on or before February 15, 2007, pursuant to CMO No. 6. All parties' selections must be from Plaintiffs whose cases were filed and served in the Coordinated Proceeding and for which Plaintiff Fact Sheets are due on or before February 15, 2007, pursuant to Case Management Order No. 6.

(4) No Selections of Cases Involving Non-Pfizer Defendants or Vioxx Plaintiffs. Neither the PSC nor Pfizer may select any Plaintiff who has sued a non-Pfizer defendant nor any Plaintiff who is a Vioxx Plaintiff, as that term is defined in paragraph 6 below.

b. Manner of Exchange of Selections. Liaison Counsel shall then exchange their list of five selections electronically at noon on March 29, 2007. In their exchange, Liaison Counsel shall identify each Plaintiff by full name, full case caption, Index Number, and an attorney (and that attorney's firm) designated as being the contact person for case-specific discovery issues pertaining to that Plaintiff.

6. Exclusion of Vioxx Plaintiffs. Neither the PSC nor the Pfizer Defendants may select a Plaintiff who: (a) has filed a lawsuit or asserted a claim against Merck & Co. (or any of its related entities) in connection with that Plaintiff's use of Vioxx; or (b) took Vioxx at the same time as the Plaintiff took the Pfizer drug (Bextra and/or Celebrex) alleged to have caused his or her injury within a reasonable time of the injury (collectively, "a Vioxx Plaintiff"). If at any time any party learns that one of the PSC selections, the Pfizer selections, and/or the random selections is a Vioxx Plaintiff, then such Plaintiff shall be excluded from the Discovery Pool and shall be replaced by the Liaison Counsel who initially selected the Vioxx Plaintiff (for the PSC

and Pfizer selections) or at random (for the random selections). All such replacements shall be made pursuant to paragraph 10 of this Order.

7. Expedited Compliance with Obligations under Case Management Order No. 6.

Plaintiffs selected by Pfizer or at random who have not provided the discovery required by Case Management Order No. 6 shall have fourteen (14) days from the date of selection to provide such discovery. For any Plaintiff in the Discovery Pool who has not provided a materially complete PFS, authorizations, and responsive documents within 14 days of his or her selection, such Plaintiff shall be subject to the expedited compliance procedure outlined below. Similarly, where a Plaintiff has provided a substantially complete and verified PFS and substantially complete authorizations, Pfizer shall have fourteen (14) days from the date of the Plaintiff's selection (or from the date of Plaintiff's production of a substantially complete and verified PFS and substantially complete authorizations, where the Plaintiff's production occurs after his or her selection) to provide a Defendant Fact Sheet ("DFS"). If Pfizer has not produced a DFS for such Plaintiffs, Pfizer shall be subject to the expedited compliance procedure outlined below.

a. Notice of Materially Deficient Discovery. Pursuant to Case Management Order No. 6, paragraphs 9-10, and 13, Liaison Counsel may send a notice of the material deficiency ("the deficiency letter"). The deficiency letter shall state that the opposing party has seven (7) days in which to cure the deficiency or be subject to dismissal. Defendants' Liaison Counsel also shall telephone Plaintiff's counsel-of-record to meet and confer regarding any Plaintiff's deficiency. Similarly, Plaintiffs' Liaison Counsel or his designee also shall telephone Defendants' Liaison Counsel to meet and confer regarding any deficiency in Pfizer's production of a DFS.

b. Compliance Motion and Order. If a party does not cure the alleged material deficiency within the seven-day period, Liaison Counsel may file a compliance motion

with the Special Master. Such compliance motion shall be heard on an expedited basis. The motion may be noticed seven (7) calendar days before the hearing date, with any opposition to be filed three (3) calendar days before the hearing date. The party filing the compliance motion may request that the Special Master order the non-complying party to comply in less than seven days, notwithstanding paragraph 10(b) of Case Management Order No. 6. Furthermore, the party filing the compliance motion may request that the Special Master extend the 120-day discovery cut-off established in paragraph 11 herein so that it runs from the date by which the Special Master orders the non-complying party to provide the discovery.

c. Motion to Dismiss or Exclude from Discovery Pool. If a party does not comply with the Special Master's compliance order, Liaison Counsel shall telephone Plaintiff's counsel-of-record (or, in the case of Pfizer, Defendants' Liaison Counsel) to meet and confer. Any resulting motion (including a motion to dismiss) may be heard on the expedited schedule established in Case Management Order No. 6, paragraph 10(c) and may request that the Plaintiff at issue be excluded from the Discovery Pool, with a replacement to be selected pursuant to paragraph 10 of this Order.

8. Provisions of Case Management Order No. 6 Remain in Effect. Both parties, whether or not a particular Plaintiff is selected for the Discovery Pool pursuant to this Order, remain obligated to comply with Case Management Order No. 6, which remains in full force and effect. Nothing in this Order shall be deemed to amend Case Management Order No. 6, with the exception of the expedited compliance schedule provided by paragraph 7.

9. Agreement to Try Cases Before This Court. Notwithstanding any rules or procedures of the New York State Litigation Coordinating Panel, all parties hereby agree that the first five Plaintiffs in cases selected for trial shall consent to trial of those cases before this Court. All other rights and objections regarding the venue of trial for all other cases are reserved.

10. Replacement of Plaintiffs in Discovery Pool.

a. Replacement of Vioxx Plaintiffs.

(1) Randomly-Selected Vioxx Plaintiffs. As soon as any party has reason to believe that a randomly-selected Plaintiff is a Vioxx Plaintiff, that party shall notify opposing Liaison Counsel. Liaison Counsel shall meet and confer within seven days of such notice. If Liaison Counsel agree that the Plaintiff is a Vioxx Plaintiff, they shall replace the Plaintiff using the random selection procedure established in paragraph 4 herein as soon as practicable. Where Liaison Counsel do not agree that the randomly-selected Plaintiff is a Vioxx Plaintiff, their dispute shall be resolved pursuant to the procedure established in paragraph II.10.a(3) herein.

(2) Party-Selected Vioxx Plaintiffs. As soon as any party has reason to believe that a party-selected Plaintiff is a Vioxx Plaintiff, that party shall notify opposing Liaison Counsel. Liaison Counsel shall meet and confer within seven days of such notice. If Liaison Counsel agree that the Plaintiff is a Vioxx Plaintiff, then Liaison Counsel who selected the Vioxx Plaintiff must identify a replacement Plaintiff within seven days, absent agreement of the parties to a longer period, and in accordance with paragraph 4 of this Order. Where Liaison Counsel do not agree that the party-selected Plaintiff is a Vioxx Plaintiff, their dispute shall be resolved pursuant to the procedure established in paragraph II.10.a(3) herein.

(3) Procedure for Resolving Disputes regarding Vioxx Plaintiffs. If Liaison Counsel do not agree that a randomly or party-selected Plaintiff is a Vioxx Plaintiff, they shall submit letter briefs to the Special Master seeking a determination with respect to whether a replacement is warranted. Liaison Counsel shall meet and confer with respect to the schedule for and length of such briefs.

b. Replacement of Party-Selected Plaintiffs. Once a Plaintiff has been selected for the Discovery Pool by any party, any dismissal of that Plaintiff shall entitle the party selecting the Plaintiff to select a replacement Plaintiff pursuant to paragraph 4 herein. Any replacements under this subparagraph must be made by providing notice to the opposing Liaison Counsel within seven days of such dismissal, absent agreement of the parties to a longer period.

c. Replacement of Randomly-Selected Plaintiffs. Once a Plaintiff has been selected randomly for the Discovery Pool, any dismissal of that Plaintiff shall result in the random selection of a replacement Plaintiff pursuant to paragraph 4 herein. Any replacements under this subparagraph must be made as soon as practicable and in all instances within seven days of such dismissal or objection, absent agreement of the parties to a longer period.

d. Size of Discovery Pool. Pursuant to this paragraph, the Discovery Pool shall always consist of eighteen cases, absent consent of Liaison Counsel. There may be instances in which there are temporarily fewer than eighteen Plaintiffs in the Discovery Pool where a replacement Plaintiff has not been identified yet, but absent such temporary exceptions there shall be eighteen Plaintiffs in the Discovery Pool.

III. DISCOVERY OF PLAINTIFFS IN DISCOVERY POOL

11. Master Written Discovery of Plaintiffs in Discovery Pool. Pfizer may propound the master discovery permitted by Case Management Order No. 8, paragraph 17 not less than three days from a Plaintiff's selection pursuant to this Order.

12. Discovery Limitations. The Pfizer Defendants may take up to five depositions of case-specific fact witnesses in connection with any individual Plaintiff's case, absent consent of Liaison Counsel or a showing of good cause for a greater number of depositions. The PSC may take up to five depositions of case-specific fact witnesses in connection with any individual Plaintiff's case, absent consent of Liaison Counsel or a showing of good cause for a greater

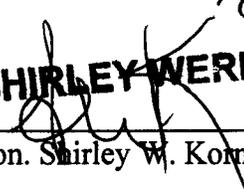
number of depositions. Any disputes with respect to the number of depositions in connection with a Plaintiff's case shall be presented to the Special Master on a schedule to be agreed upon by Liaison Counsel.

13. Discovery Start-Date and Cut-Off. Case specific discovery for Plaintiffs included in the Discovery Pool by April 25, 2007 shall commence on April 25, 2007 and shall be completed by August 25, 2007, with extensions granted only upon consent of Liaison Counsel and/or on good cause shown (e.g., if a randomly-selected Plaintiff had not provided complete authorizations prior to his or her selection, if a Plaintiff does not timely respond to Pfizer's master discovery, if the parties are unable to timely obtain essential medical records, if a Plaintiff is subject to an expedited compliance motion pursuant to paragraph 7(b) herein, or if Pfizer has not timely produced a Defendant Fact Sheet). Case-specific discovery for Plaintiffs added to the Discovery Pool after April 25, 2007 shall be completed within 120 days of the Plaintiff's selection, with extensions granted only upon consent of Liaison Counsel and/or on good cause shown.

14. Selection of Individual Plaintiffs for Trial and Further Discovery. Liaison Counsel shall meet and confer regarding a procedure for selecting Plaintiffs from the Discovery Pool for trial or other resolution procedure ("the Trial Pool"). In conjunction with such discussions, Liaison Counsel also shall meet and confer regarding the case-specific expert discovery and such additional discovery as may be required for the fair trial of the cases in the Trial Pool.

SO ORDERED.

Dated: 1/26, 2007

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SHIRLEY WERNER KORNREICH

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