

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

-----X
:
:
IN RE: NEW YORK BEXTRA AND CELEBREX :
PRODUCT LIABILITY LITIGATION :
:
:
-----X

CASE MANAGEMENT
ORDER NO. 1

General Procedures And Appointments Of Counsel

I. Applicability Of This Order

This Order applies to pretrial procedures for cases involving the prescription medications Bextra and Celebrex which are presently or hereafter assigned to the undersigned. Representatives of the Plaintiffs and Defendants have now met and conferred, and have jointly presented this Order setting forth the Master File for New York Bextra and Celebrex Litigation, general procedures to be followed in these cases, and to appoint committees of Plaintiffs' and Defendants' counsel to assist the Court in bringing about the fair and economical resolution of these cases.

II. Objectives

It is the objective of the Court to bring about the fair and economical resolution of the Bextra and Celebrex cases. This Case Management Order No. 1 ("CMO No. 1") is the first of what are contemplated to be a series of Case Management Orders and other Orders intended to achieve that objective.

A. Filing Procedures

1. Pursuant to the Decisions and Orders of the New York State Litigation Coordinating Panel dated November 30, 2005 and April 14, 2006, filed with the New York County Clerk of the Court on December 1, 2005, and April 19, 2006, respectively, the cases herein

have been coordinated for pretrial proceedings, not consolidated. The Court hereby directs that a master file, known as New York Bextra and Celebrex Product Liability Litigation Master file (the "Bextra and Celebrex Master File"), Index No. ^{560001/2005} ✓ shall be established (without fee) in the Office of the Clerk of New York County for all Bextra and Celebrex cases assigned to the undersigned. The original of this Order shall be filed by the County Clerk in the Bextra and Celebrex Master File, and a copy shall be deemed to be part of the record of each coordinated action. All subsequent entries on the Bextra and Celebrex Master File shall also be applicable to all of the Bextra and Celebrex cases.

2. A separate file shall also be maintained in the Office of the Clerk of New York County under a separate Index Number for each individual Bextra or Celebrex case assigned to this Court, and entries shall be made therein in accordance with this Order. Within thirty days after the entry date of this CMO No. 1, Plaintiffs' Liaison Counsel, Mitchell Breit of Milberg Weiss Bershad & Schulman, in cooperation with each Plaintiff's attorney of record, shall provide to the Court and to Defendants' Liaison Counsel, Loren H. Brown and Raymond M. Williams of DLA Piper Rudnick Gray Cary US LLP, a list of all Plaintiffs and the index number assigned to each individual action. This list of index numbers and Plaintiffs shall be amended (from time to time) by Plaintiffs' Liaison Counsel to reflect the final resolution of a case, the commencement of a new case or the transfer of an existing case to or from this Court.

B. Captions of Cases

1. Every document filed in these coordinated actions shall bear a caption as follows:

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

-----X
IN RE: NEW YORK BEXTRA AND CELEBREX :
PRODUCT LIABILITY LITIGATION :
-----X

Index No. 560001/2005

If a document relates to all the Bextra and Celebrex cases, the following will be added to the caption:

-----X
THIS DOCUMENT APPLIES TO ALL CASES :
-----X

2. If, instead, a document relates to one or more specific cases but not to all cases, the specific caption(s) for the cases to which the paper is applicable will be added as follows:

-----X
Plaintiff(s) name, :
 :
 - against - : Index No. [individual case number]
 :
 Defendant(s) name :
-----X
AND RELATED CASES (SEE APPENDIX) :
-----X

In all such documents, one case shall be specifically captioned (the primary or first case, if applicable), and all other cases to which the document applies shall be listed as "Related Cases" in an appendix to the document, separately tabbed and made easily identifiable to the Clerk of the Court.

C. Filing Of Cases

1. Each action filed in this coordinated proceeding shall relate to a single person allegedly injured through his or her treatment with Bextra or Celebrex.

2. Any case filed and transferred to this Court for inclusion in this Coordinated Proceeding relating to more than a single person allegedly injured through his or her treatment with Bextra or Celebrex (other than that person's spouse) shall be severed by counsel for Plaintiff in that action into individual actions.

3. Nothing in this section shall be construed to deny the Court of jurisdiction where jurisdiction otherwise existed. For purposes of application of statutes of limitations to cases that are severed and then refiled as individual actions pursuant to this section, the statute of limitations shall relate back to the filing of the original action that was being severed.

D. Filing Of Papers

1. When a paper has general application to all the Bextra and Celebrex cases, the caption (as set forth in paragraph II.B.1 above) shall so indicate and shall bear index number 560001/05, and the Clerk of New York County shall file such a paper in the Master File. No further copies of the papers need to be filed. Any document so filed shall be deemed to have been filed in each case to which this Order applies and shall constitute part of the record of each such case.

2. When a paper is applicable only to an individual case, the attorney submitting such paper for filing shall caption the paper (as set forth in paragraph II.B.2 above) to indicate the case(s) to which it is applicable. The Clerk of New York County shall not file such a paper in the Bextra and Celebrex Master File. Rather, after receipt by the Clerk, the Clerk shall file the original in the first captioned individual case file under the appropriate index number and shall file copies of the paper in any other cases to which it applies. It shall be the responsibility

of the attorney submitting the paper for filing to supply the County Clerk with sufficient copies of any such paper to facilitate compliance with the directions of this paragraph.

3. The filing of a motion or other paper in the Bextra and Celebrex Master File or individual case file shall not confer standing on a party where it does not otherwise exist.

III. Rules Of Procedure

The Civil Practice Law and Rules ("CPLR"), the Uniform Rules for Trial Courts, and the express provisions of this and any future Case Management Orders shall govern all proceedings herein.

IV. Plaintiffs' Steering Committee

Appointment of a Plaintiffs' Steering Committee to act as set forth below will facilitate communications among the Court and counsel, minimize duplication of effort, foster the coordination of joint positions, and provide for the efficient progress and control of this litigation.

A. Steering Committee Chair for the Plaintiffs shall be:

Perry Weitz
Weitz & Luxenberg, PC
180 Maiden Lane, 17th Floor
New York, New York 10038

B. Steering Committee:

1. Plaintiffs' Steering Committee shall, subject to further order of the Court effecting such changes as circumstances may require, be compromised of the following:

a. Roberta Ashkin
400 East 70th Street
Suite 2205
New York, New York 10021

- b. Mitchell Breit
Milberg Weiss Bershad & Schulman
One Pennsylvania Plaza, 49th Floor
New York, New York 10119
- c. Paul Hanly
Hanly Conroy Bierstein Sheridan Fisher & Hayes, LLP
112 Madison Avenue
New York, New York 10016-7416
- d. Steven Knowlton
Locks Law Firm, PLLC
110 East 55th Street, 12th Floor
New York, New York 10022
- e. Michael London
Douglas & London, PC
111 John Street, 14th Floor
New York, New York 10038
- f. Richard Meadow
The Lanier Law Firm
Tower 56
126 East 56th Street, 6th Floor
New York, New York 10022
- g. Paul Napoli
Napoli Bern & Ripka LLP
115 Broadway, 12th Floor
New York, New York 10006
- h. David Ratner
Morelli Ratner PC
950 3rd Avenue
New York, New York 10022
- i. Paul Rheingold
Rheingold, Valet, Rheingold, Shkolnik, & McCartney, LLP
113 East 37th Street
New York, New York 10016

2. The Plaintiffs' Steering Committee shall have the following responsibilities and duties for their respective constituencies:

- a. to consider and propose future case management orders or other case management issues;
- b. to call meetings of counsel for Plaintiffs and Defendants, for the purpose of proposing joint actions, including but not limited to responses to questions and suggestions of the Court or of adversaries with regard to orders, schedules, briefs, and other matters;
- c. to coordinate, to the extent practicable, the briefing of motions;
- d. to coordinate the conduct of discovery procedures including, where practicable, coordination with other proceedings;
- e. to coordinate the examination of witnesses at examinations before trial;
- f. to coordinate the selection of counsel to act as spokesperson at pretrial conferences; and
- g. to perform such other duties as may be set forth in future CMOs agreed upon by the respective parties, or ordered by the Court.

3. The Steering Committee shall not have the right to bind any party as to any matter without consent of counsel for that party. If, on any issue, a party has a position different from that set forth by the Steering Committee or any members thereof, that party shall be entitled to present that position to the Court separately. Further, the members of the Plaintiffs' Steering Committee shall remain free to represent the interests and positions of their respective clients free of any claim (including without limitation any claim of conflict) arising from service on such Steering Committee.

V. Liaison Counsel

Appointment of Liaison Counsel to act as set forth below will facilitate communications among the Court and counsel, minimize duplication of effort, foster the coordination of joint positions, and provide for the efficient progress and control of this litigation.

A. Liaison Counsel

1. Liaison Counsel for the Plaintiffs ("Plaintiffs' Liaison Counsel") shall be:

Mitchell Breit
Milberg Weiss Bershad & Schulman
One Pennsylvania Plaza, 49th Floor
New York, New York 10119
Telephone: (212) 631-8640
Facsimile: (212) 273-4437

2. Liaison Counsel for the Defendants ("Defendants' Liaison Counsel") shall

be:

Loren H. Brown
Raymond M. Williams
DLA Piper Rudnick Gray Cary US LLP
1251 Avenue of Americas
New York, New York 10020
Telephone: (212) 835-6000
Facsimile: (212) 835-6001

3. Liaison Counsel are vested by the Court with the following responsibilities

and duties:

- a. to prepare and maintain an official service list of Plaintiffs' and Defendants' counsel in the Bextra and Celebrex cases including the persons or companies they represent, upon whom papers shall be served in this litigation;
- b. to receive orders, notices, correspondence and telephone calls from the Court and the Clerk of the Court on matters of general applicability on behalf of all Plaintiffs or Defendants, as the case may be, and to notify such other Plaintiffs' or Defendants' counsel of communications received from the Court; and
- c. to perform such other administrative tasks as may be necessitated by this or future CMO's, by the agreement of the parties, or by order of the Court.

Except as may be expressly otherwise provided in this or future CMOs, all pleadings, motions and other papers served in these cases (excluding discovery) shall be served on

Plaintiffs' and Defendants' counsel for all of the parties in the case(s) to which such papers apply.

Notwithstanding the appointment of Liaison Counsel, each counsel shall have the right to participate in all proceedings before the Court as fully as such counsel deems necessary. Liaison Counsel shall not have the right to bind any party as to any matter without the consent of counsel for that party, except Liaison Counsel's own clients. Further, Liaison Counsel shall remain free to represent the interests and positions of their clients free of any claim (including without limitation any claim of conflict) arising from service as Liaison Counsel.

4. The Plaintiffs' and Defendants' Liaison Counsel shall also have, with the participation of other members of their respective constituencies, including the Plaintiffs' Steering Committee, the following additional responsibilities and duties:

- a. to consider and propose future CMOs or other case management issues;
- b. to call meetings of counsel for Plaintiffs and Defendants, respectively, for the purpose of proposing joint actions, including but not limited to responses to questions and suggestions of the Court or of adversaries with regard to orders, schedules, briefs and other matters;
- c. to coordinate, to the extent practicable, the briefing of motions;
- d. to coordinate, to the extent practicable, the argument of motions;
- e. to coordinate the conduct of discovery procedures including coordination with federal multidistrict litigation proceedings (described below), and any other federal or state court proceedings;
- f. to coordinate the examination of witnesses at examinations before trial;
- g. to coordinate the selection of counsel to act as spokesperson at pretrial conferences; and

- h. to perform such other duties as may be set forth in future CMOs, agreed upon by the respective parties, or ordered by the Court.

B. Multidistrict Litigation Liaison Counsel

1. The Bextra and Celebrex cases commenced or pending in federal court have been transferred by Order of the Judicial Panel for Multidistrict Litigation to the United States District Court for the Northern District of California for coordinated and consolidated pretrial proceedings. The coordinated cases, entitled In re Bextra and Celebrex Marketing Sales Practices and Product Liability Litigation (MDL No. 1699), are assigned to the Honorable Charles R. Breyer, United States District Judge for the Northern District of California. Appointment of MDL Liaison Counsel will facilitate communications with the parties and committees appointed in MDL-1699. MDL Liaison Counsel shall, subject to further order of the Court effecting such changes as circumstances may require, be comprised of the following:

2. MDL Liaison Counsel for the Plaintiffs ("Plaintiffs' MDL Liaison Counsel") shall be:

Paul Hanly
Hanly Conroy Bierstein Sheridan Fisher & Hayes, LLP
112 Madison Avenue
New York, New York 10016-7416

3. MDL Liaison Counsel for the Defendants ("Defendants' MDL Liaison Counsel") shall be:

Amy W. Schulman
DLA Piper Rudnick Gray Cary US LLP
1251 Avenue of Americas
New York, New York 10020
Telephone: (212) 835-6000
Facsimile: (212) 835-6001

VI. Privileges

The Court recognizes that cooperation among counsel and parties is essential for the orderly and expeditious resolution of this litigation. The communication, transmission or dissemination of information in connection with the Bextra and Celebrex cases among the Plaintiffs' counsel, or among the Defendants' counsel, shall not be deemed a waiver of the attorney-client privilege, the protection afforded by the work product doctrine, the protection afforded to material prepared for litigation, the joint prosecution or joint defense privilege, or any other privilege to which a party may be entitled. Cooperative efforts, as described above, shall not in any way be used against any of the parties, be cited as purported evidence of a conspiracy, wrongful action or wrongful conduct, and shall not be communicated to the jury at the trial of any action. Nothing in this paragraph shall in any way affect the applicability of any privileges or protection against disclosure otherwise available under law.

VII. Pleadings

A. Defendants' Responses To Complaints

Pfizer Defendants are required to respond to the complaints in cases subject to this Coordinated Proceeding as set forth below.

B. Master Complaint

1. Within ten (10) days of the date of entry of this Order, Plaintiffs' Liaison Counsel shall serve upon Pfizer Defendants a master complaint to be used by each Bextra or Celebrex Plaintiff.

2. Within thirty (30) days of service, Pfizer Defendants will respond to the Master Complaint by either serving upon Plaintiffs a motion to dismiss or an answer to the Master Complaint.

C. Liaison Counsel Service Of Papers Pursuant To CPLR Rule 2103(b)

1. Within ten (10) days of the date of entry of this Order, Plaintiffs' and Defendants' Liaison Counsel shall jointly prepare and shall serve and file in the Bextra and Celebrex Master File a master service list (the "Master Service List"). The Master Service List shall contain the name, address and telephone number of the attorney(s) (or in the case of a party appearing *pro se*, the person) who will be deemed to be the person upon whom valid service of papers (other than process) is to be made by any other party in accordance with Rule 2103(b) of the CPLR. Any party desiring to make a change to the Master Service List shall notify the Plaintiffs' and Defendants' Liaison Counsel in writing of such change.

2. Liaison Counsel shall publish an updated Master Service List or supplement thereto on or before the first of each month, which shall thereafter apply. If a change to the Master Service List is necessary, Liaison Counsel shall file a notice so stating. The Master Service List shall bear a heading showing the date of the service list and indicating that it may be used until superseded by another list.

3. When service of a document is made, it shall be sufficient to attach an affidavit of service to any such document indicating that the document has been served on the persons entitled to be served as shown on the Master Service List in effect on the date that service of that document was made.

4. Regardless of any other provision governing service, all documents of general applicability to be filed in the Master File in the New York Bextra and Celebrex Litigation shall be served on Plaintiffs' and Defendants' Liaison Counsel. In any filing relating to an individual action or group of individual actions, service shall be made on each party of record in each such action. Regardless of the number of cases in which a law firm has appeared,

service of one copy upon that firm shall be sufficient for each case subject to this Order in which that law firm has appeared on behalf of a party.

D. Request for Judicial Intervention

Plaintiffs shall be required to file a Request for Judicial Intervention and pay the appropriate fees therewith designating the case as a matter which should be assigned to the New York Bextra and Celebrex Litigation calendar of this Court, no later than 60 days after service of the Defendants' answer to the complaint. Discovery in the action shall proceed in accordance with any future Case Management Orders entered by the Court.

E. Notice of Medical Malpractice Action

Plaintiffs shall not be required to file a Notice of Medical Malpractice Action in any of the Bextra or Celebrex cases involving a physician or other health care provider.

VIII. Motions In General

A. As noted above, it shall be the responsibility of the Plaintiffs' and Defendants' Liaison Counsel to coordinate, to the extent practicable, motion practice in these cases. However, subject to any future orders of the Court concerning motion practice, including without limitation the grouping or sequencing of certain types of motions, motions may be made by a party at any time.

B. The parties shall make a good faith effort to resolve all disputes before resorting to motion practice. Any motion relating to discovery or any other subject on which accord of the affected parties might reasonably be expected shall contain counsel's statement (made by affidavit or affirmation) that, prior to moving, the movant has conferred with the affected adversary parties and made a good faith effort to resolve the dispute without need of court intervention.

C. Notwithstanding the above, any party may contact the Court with respect to any disputed matter and/or potential motion, to determine the manner in which the Court chooses to proceed with respect to hearing and resolving such dispute and/or potential motion.

IX. Pending Disclosure/Standard Consolidated Disclosure

A. Pending Disclosure

All pending discovery requests served by any party against any other party or nonparty are deemed withdrawn.

B. Standard Consolidated Disclosure

Standard consolidated disclosure, including the use of Plaintiffs' fact sheets, is to be determined at a later time, subject to further negotiation among the parties and subject to any orders from this Court.

C. Coordination Of Discovery With The MDL

The Court is aware that product liability cases involving Bextra and Celebrex are pending in a number of state and federal courts throughout the nation, including MDL-1699. It is the intent and objective of this Court to allow discovery to proceed in the Bextra and Celebrex cases in coordination with MDL-1699, or other state or federal cases, where possible and appropriate. A joint subcommittee of Plaintiffs' and Defendants' counsel, which shall include the MDL Liaison Counsel described above, shall meet to discuss uniform document requests, interrogatories and/or questionnaires, and other disclosure matters, including the extent to which disclosure in the Bextra and Celebrex cases elsewhere may be coordinated with these proceedings.

X. Attorney Admissions

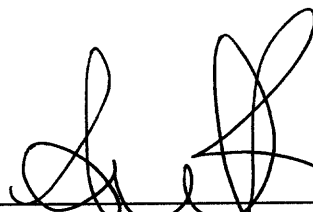
An attorney seeking to be admitted *pro hac vice* for the purposes of this litigation shall provide written notice to all parties identifying the attorney seeking *pro hac vice* admission, the party he or she is seeking to represent, the law firm, if any, he or she is associated with, and the state(s) and bars where such attorney is admitted to practice. If no party objects in writing to the admission of the attorney *pro hac vice* within five (5) days of receipt of such notice, the attorney shall be deemed admitted *pro hac vice* for purposes of this litigation. If a party does object in writing, the attorney seeking admission *pro hac vice* shall submit the letter providing notice as well as the letter objecting to the admission to the Court for a ruling on the application.

XI. Other Matters

Plaintiffs' and Defendants' Liaison Counsel are hereby directed to mail a copy of this Order to all counsel who have appeared in these actions for Plaintiffs and Defendants, respectively.

SO ORDERED.

Dated: April 21, 2006
New York, New York



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

FILED
APR 27 2006
NEW YORK
COUNTY CLERK'S OFFICE