

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

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IN RE: NEW YORK BEXTRA AND CELEBREX :
PRODUCT LIABILITY LITIGATION :
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CASE MANAGEMENT
ORDER NO. 3

Additional 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 this Court ("Coordinated Proceeding").¹

II. Filing Cases Into MDL 1699

1. Based upon the parties' agreement set forth in Case Management Order No. 2, and as so-ordered by this Court, certain cases that were filed in the Unified Court System of the State of New York and that are otherwise subject to this Coordinated Proceeding will be discontinued without prejudice and re-filed, if at all, directly in the related multidistrict litigation ("MDL 1699" or "MDL"), or in a U.S. District Court from the jurisdiction in which the Plaintiff alleges residence. In MDL Pretrial Order No. 1, Section 9, the MDL Plaintiffs' Steering Committee ("PSC") outlined the established procedure for direct filing of cases into the MDL. Incorporated in the procedures, all attorneys of record are instructed to register for the Electronic

¹ At the time of the parties' submission of this Case Management Order, only the Bextra-only cases pending in New York state court have been ordered coordinated by the New York Litigation Coordinating Panel. Based upon instructions from this Court, however, the parties are treating this Coordinated Proceeding as to include also all product liability cases involving the prescription medication Celebrex as well as any cases involving both Bextra and Celebrex together. The parties agree and consent that this and all prior or future Case Management Orders reflect the parties' agreements with respect to coordinated treatment of Bextra-only cases, Celebrex-only cases, and Bextra-and-Celebrex cases (the "cases" herein) whether or not such cases are assigned to the Hon. Shirley W. Kornreich.

Case Filing System (ECF) for the United States District Court for the Northern District of California. The ECF registration procedure can be found on the MDL Court's website. *See* www.ecf.cand.uscourts.gov. Additional information pertaining to the filing of cases in the MDL can also be found on the MDL Court's website.

2. The filing by a New York lawyer of a Bextra case in the MDL as a result of an order of the court or compromise agreement between counsel, and because the Plaintiff resides "west of the Mississippi," does not thereby cause any other state court case which the New York lawyer is counsel in to be subject to an MDL assessment. Further, the service by a New York lawyer on committees established in the MDL, including the discovery committee, pursuant to the arrangement worked out between the plaintiffs' steering committees of the MDL and this Coordinated Proceeding, shall not cause any of the non-federal cases which the New York lawyer has to be subject to an MDL assessment.

III. Position Statements

New York Plaintiffs and Defendants shall submit to the Court by May 25, 2006 a brief written statement indicating their preliminary understanding of the facts and issues involved in the litigation and the critical legal issues. These statements will not be binding, will not waive claims or defenses, and may not be offered in evidence against a party in later proceedings. The parties' statements shall identify all cases that have been transferred to or are related to cases before this Court, and shall identify all pending motions on those cases. The statement shall also list all related cases pending in this Court or federal court (that have not already been transferred to the MDL), together with their current status, including any discovery taken to date, to the extent known. The parties shall be limited to one such submission for all New York Plaintiffs and one such submission for all Defendants.

IV. Plaintiffs' Steering Committee

In addition to the duties that are encompassed in CMO 1 Section (V)(B)(2), the Plaintiffs' Steering Committee will also have additional responsibilities involving pretrial discovery, scheduling with the New York Court, calling meetings of Plaintiffs' counsel for coordinating purposes, and preparing periodic status reports to distribute to the Court.

V. Status Conferences And Agendas

This Court will convene periodic Status Conferences at the request of Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel or on its own motion, with Plaintiffs' Liaison Counsel to give notice of such scheduled Status Conferences to the Master Service List. In order to aid the Court and the parties in preparing for future conferences, Plaintiffs' Liaison Counsel and Defendants' Liaison Counsel shall confer at least one week prior to each future status conference to attempt to agree upon a proposed agenda for the conference. The parties shall submit a joint agenda to the extent they agree, and separate agendas for items on which they do not agree, not less than three court days prior to the conference. The agendas are intended to aid the Court in informing itself of the issues which the parties desire to raise at the Status Conference, and the Court may amend the agendas as it deems appropriate.

VI. Organization Of Plaintiffs' Counsel

1. To act on behalf of Plaintiffs with the responsibilities described below, the Court designated the New York Plaintiffs' Steering Committee ("PSC") in CMO 1. These New York PSC members reflect the array of actions that the Panel has filed to this New York Court, and include representatives of Plaintiffs with products liability claims. This Court may amend or expand the PSC upon request from the PSC, or on its own motion, if and as circumstances warrant.

2. Plaintiffs' Steering Committee Chair and Plaintiffs' Liaison Counsel:

a. The Court designates Perry Weitz as Plaintiffs' Steering Committee chair and Mitchell Breit as Plaintiffs' Liaison Counsel.

b. The New York PSC chair is vested by the Court with the authority and duty to coordinate and oversee the responsibilities of the PSC set forth below; to schedule PSC meetings and keep minutes or transcripts of these meetings; to appear at periodic Court-noticed status conferences and hearings; to sign and file pleadings relating to all actions; and to bind the New York PSC in scheduling depositions, setting agendas, entering into stipulations, and in other necessary interactions with defense counsel. The New York PSC chair shall perform other necessary administrative and logistic functions of the PSC and carry out any other duty as the Court may order.

c. The New York PSC chair and Plaintiffs' Liaison Counsel designations are of a personal nature. Accordingly, this Court looks to these counsel to undertake personal responsibility to perform the designated functions and reserves the discretion to replace them, on their own request or by this Court's own motion, should they become unable to do so.

d. In addition to the duties described elsewhere in this Order and in CMO No. 1, New York PSC chair and Plaintiffs' Liaison Counsel shall have the following duties and responsibilities:

(1) Establish and maintain a depository for orders, pleadings, hearing transcripts, and all documents served upon Plaintiffs' counsel, and make such papers available to Plaintiffs' counsel upon reasonable request.

(2) Oversee and maintain the creation and operation of an Internet website for the benefit of Plaintiffs' counsel who are not members of the Plaintiffs' Steering

Committee or Plaintiffs' Liaison Counsel, which contains information regarding this litigation, such as court conference dates, proposed agendas for court conferences, and other information to be set forth in a subsequent Case Management Order.

(3) Maintain in conjunction with their accountant records of receipts and disbursements advanced by members of the PSC and received by the PSC and report in writing to the PSC concerning disbursements and receipts.

(4) Designate counsel to schedule depositions, set agendas and otherwise interact with defense counsel.

(5) Coordinate discovery in this Coordinated Proceeding with related litigation proceeding in MDL No. 1699, and as required by CMOs Nos. 1 and 2, and as may be required by future Case Management Orders.

(6) Coordinate and consult with the MDL PSC, to ensure that Plaintiffs in the New York litigation have access to a common document depository.

(7) Coordinate with the MDL PSC regarding notices of depositions, deposition scheduling and assignment of counsel.

(8) Provide periodic reports to this Court regarding the status of related litigation proceedings in the MDL court.

(9) The New York PSC chair shall organize and coordinate the work of the attorneys on the trial team.

VII. PSC Committees

The New York PSC is given the responsibility to create such committees and subcommittees of the New York PSC as are necessary to efficiently carry out its responsibilities, to designate members thereof, and to delegate common benefit work responsibilities to selected

counsel (including non-members of the New York PSC), as may be required for the common benefit of Plaintiffs. All attorneys carrying out such common benefit work who may look to any common fund or agreement for reimbursement or compensation shall maintain and submit time and expense records, as this Court shall specify in a subsequent Order. All such reimbursement and compensation shall be subject to this Court's approval. Membership on the PSC is not a prerequisite to membership on a committee or subcommittee created by the New York PSC, and the Court does not need to approve the members of the various New York PSC committees and subcommittees.

VIII. Organization Of Defense Counsel

1. To act on behalf of all Defendants with the responsibilities described below, the Court appoints Loren H. Brown and Raymond M. Williams to Serve as Defendants' Liaison Counsel. The Court may amend or expand the Defendants' Liaison Counsel upon request from Defendants, or on its own motion, if and as circumstances warrant.

2. Defendants' Liaison Counsel is vested by the Court with the authority and duty to schedule meetings of Defendants and keep minutes or transcripts of these meetings; to appear at periodic Court-noticed status conferences and hearings; to sign and file pleadings relating to all actions; and to bind Defendants in scheduling depositions, setting agendas, entering into stipulations, and in other necessary interactions with Plaintiffs' counsel. Defendants' Liaison Counsel shall perform other necessary administrative and logistic functions and carry out any other duty as the Court may order.

3. Defendants' Liaison Counsel is given the responsibility to create such committees and subcommittees of Defendants as are necessary to efficiently carry out their responsibilities and to designate members thereof.

4. This designation is of a personal nature. Accordingly, this Court looks to counsel to undertake personal responsibility to perform the designated functions and reserves the discretion to replace counsel, on their own request or this Court's own motion, should they become unable to do so.

5. Defendants' Liaison Counsel will have the following responsibilities:

a. Discovery

(1) Initiate, coordinate, and conduct all pretrial discovery on behalf of Defendants in this Coordinated Proceeding, in coordination with any other consolidated or coordinated state court actions.

(2) Develop and propose to the Court schedules for the commencement, execution, and completion of all discovery on behalf of all Defendants.

(3) Cause to be issued in the name of all Defendants the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial of relevant issues found in the pleadings of this litigation. Requests, notices, and subpoenas may be caused to be issued by Defendants' Liaison Counsel upon written request by an individual Defendant in order to assist him or her in the preparation of the pretrial stages of his or her client's particular claims.

(4) Coordinate discovery with MDL No. 1699.

(5) Coordinate discovery to the fullest extent possible with related state court actions.

b. Hearings and Meetings

(1) Call meetings of counsel for Defendants for any appropriate purpose, including coordinating responses to questions or other parties or of the Court. Initiate

proposals, suggestions, schedules, or joint briefs, and any other appropriate matters, pertaining to pretrial proceedings.

(2) Examine witnesses and introduce evidence at hearings on behalf of Defendants.

(3) Act as spokespersons for all Defendants at pretrial proceedings and in response to any inquiries by the Court, subject to the right of any Defendant's counsel to present non-repetitive individual or different positions.

c. Miscellaneous

(1) Submit and argue any verbal or written motions presented to the Court on behalf of Defendants as well as oppose when necessary any motions submitted by Plaintiffs or other parties which involve matters within the sphere of the responsibilities of Defendants' Liaison Counsel.

(2) Negotiate and enter into stipulations with Plaintiffs regarding this litigation.

(3) Explore, develop, and pursue all settlement options pertaining to any claim or portion thereof in any case filed in this litigation.

(4) Perform such other functions as may be expressly authorized by further orders of the Court.

SO ORDERED.

Dated: April 24, 2006
New York, New York



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

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