

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

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IN RE: NEW YORK CHANTIX PRODUCT LIABILITY : Index No. 774000/2011
LITIGATION

: CASE MANAGEMENT
ORDER NO. 1

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THIS DOCUMENT APPLIES TO ALL CASES

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General Procedures

I. Applicability of This Order

This Order applies to pretrial procedures for cases involving the prescription medication Chantix 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 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 this Court to bring about the fair and economical resolution of the Chantix 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.

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 Plaintiff's Steering Committee to act as set forth below will facilitate communication 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 Co-Chairs for the Plaintiffs shall be:

1. Name: David Ratner
Firm: Morelli Ratner, PC
Address: 950 Third Avenue, New York, NY 10022
2. Name: Meryl Sanders Viener
Firm: Sanders Viener Grossman, LLP
Address: 100 Herricks Road, Mineola, NY 11501

B. Steering Committee:

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

- a. Name: David Ratner
Firm: Morelli Ratner, PC
Address: 950 Third Avenue, New York, NY 10022
- b. Name: Meryl Sanders Viener
Firm: Sanders Viener Grossman, LLP
Address: 100 Herricks Road, Mineola, NY 11501
- c. Name: Clinton Fisher
Firm: Hanly Conroy Bierstein Sheridan Fisher & Hayes LLP
Address: 112 Madison Avenue, New York, NY 10016
- d. Name: Catherine Heacox
Firm: Lanier Law Firm, PLLC
Address: 126 East 56th Street, 6th Floor, New York, NY 10022
- e. Name: Mary Ellen Wright
Firm: Finkelstein & Partners LLP

Address: 1279 Route 300, Newburgh, NY 12550

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; provided, however, that any Plaintiff's counsel wishing to object to any portion of a Case Management Order must do so within fourteen days of

the filing of such order. 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 of 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:

Name: Clinton Fisher

Firm: Hanly Conroy Bierstein Sheridan Fisher & Hayes LLP

Address: 112 Madison Avenue, New York, NY 10016

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

be:

Name: Loren H. Brown

Firm: DLA Piper LLP (US)

Address: 1251 Avenue of the Americas, New York, NY 10020

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

and duties:

- a. To prepare and maintain an official list of Plaintiffs' and Defendants' counsel in the Chantix cases including the persons or companies they represent, upon whom papers shall be served in this litigation, until such time as the Court establishes a docket;

- 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 CMOs by the agreement of the parties, or by order of the Court.

4. 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 of Liaison Counsel.

5. 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 the 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 examination 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 Chantix 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 Alabama, Southern Division, for coordinated and consolidated pretrial proceedings. The coordinated cases, entitled *In re Chantix (Varenicline) Products Liability Litigation* (MDL No. 2092) (“the MDL”), are assigned to the

Honorable Inge Prytz Johnson, United States District court Judge for the Northern District of Alabama. Appointment of MDL Liaison Counsel will facilitate communications with the parties and committees appointed in the MDL. 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:

Name: David Ratner
Firm: Morelli Ratner, PC
Address: 950 Third Avenue, New York, NY 10022

Name: Jayne Conroy
Firm: Hanly Conroy Bierstein Sheridan Fisher & Hayes LLP
Address: 112 Madison Avenue, New York, NY 10016

3. MDL Liaison counsel for the Defendants (“Defendants’ MDL Liaison Counsel”) shall be:

Name: Joseph G. Petrosinelli
Firm: Williams & Connolly LLP
Address: 725 12th Street, NW, Washington, DC 20005

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 Chantix cases among the Plaintiffs’ counsel, or among the Defendants’ counsel, shall not be deemed a waiver of 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 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. Other Matters

A. Master Index Number

The Clerk of the Court is directed to create a master file for these litigations under the caption: In re: New York Chantix Product Liability Litigation, using Index Number 774000/2011.

B. Notice of Medical Malpractice Action

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

C. Mail Copy of this Order

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.

DONE and ORDERED this 15 day of

April, 2011.



HONORABLE CAROL E. HUFF
Justice of the Supreme Court