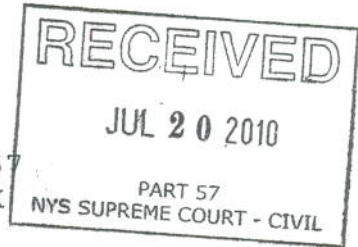


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1 sub #15



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: CIVIL TERM : PART 57

IN RE:

NEURONTIN PRODUCT LIABILITY LITIGATION

Index No.  
765000/06

New York Supreme Court  
60 Centre Street  
New York, New York 10007  
July 7, 2010

B E F O R E:

HON. MARCY S. FRIEDMAN, Justice of the  
Supreme Court

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\* \* \* \* \*

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A P P E A R A N C E S: (continued)

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## Proceedings

THE COURT: On the record.

The record will reflect that as is my usual practice, I have held a conference off the record on a number of pending discovery matters and matters relating to the preparation of cases for trial.

I understand that the defendants are seeking additional witnesses in the Ballo and Young cases, two of the cases that are being prepared for trial and that the plaintiff is concerned that this discovery will throw off his expert witness disclosure, which is due by August 9.

The August 9 deadline will remain in effect for the expert witness disclosure. In the event that any of the additional witness depositions, which I understand to be depositions of family members or possibly a store where a plaintiff purchased the weapon that he used in his suicide attempt, in the event that any of those depositions affects the expert witness disclosure that plaintiff makes, plaintiff will have leave to supplement the disclosure in a prompt fashion.

With respect to discovery against the generic defendants, ~~mm~~ and by the generic defendants of the plaintiffs, my understanding is that the parties have been working on a stipulation which was presented to the MDL court for so-ordering, but which has not yet been so-ordered. My further understanding is that Apotex has

## Proceedings


1  
2 not been a party to that stipulation. It appears that all  
3 of the parties, including Apotex, will be willing to enter  
4 into that stipulation with the proviso that there will be a  
5 90-day extension of the dates in that stipulation.

6 The parties are directed to confer promptly to  
7 determine whether they will, in fact, enter into such a  
8 stipulation and if so, to present it to this Court for  
9 so-ordering by July 19.

10 MR. FROMSON: Will the Court accept copies of  
11 signatures?

12 THE COURT: Yes.

13 MR. FROMSON: Thank you.

14 THE COURT: Turning to the next issue, as the  
15 Court was previously advised on a conference call on  
16 June 18, the plaintiff wishes to, quote, "cull" the   
17 plaintiffs' cases ~~on June 18~~. I authorized a deadline of  
18 60 days from June 18 to bring motions to withdraw in the  
19 culled cases.

20 The Court was also advised that plaintiff will  
21 seek to discontinue two of the five cases that have been  
22 selected for trial, Mermal; M-E-R-M-A-L, I believe that's a  
23 phonetic spelling, and Caporale, also phonetic,  
24 C-A-P-O-R-A-L-E. I understand from the conference with  
25 counsel today that Mermal was a selection of the defendants  
26 while Caporale was a random selection of the Court's.



## Proceedings

1  
2 That leaves three cases that are being prepared  
3 for trial, Young, Ballo, and Wargo. There will be a forum  
4 non conveniens motion by defendants with respect to the  
5 Ballo case to be brought on by order to show cause by  
6 July 19; or you can confer on mutually convenient dates and  
7 put them in the order to show cause and we will hear it on  
8 a date in the last week in July or the first week in  
9 August, if that does not interfere with counsel's vacation  
10 schedules.

11 Please check with my court attorney before  
12 selecting the return date for that motion.

13 In addition, after the plaintiffs have culled  
14 their cases, in view of the discontinuance of the Mermal and  
15 Caporale cases, the Court will provide the Pfizer  
16 defendants with an opportunity to make another selection of  
17 a case to be prepared for trial and a second case will be  
18 selected at random, and those cases will be worked up for  
19 trial while the first plaintiff's case is being tried. So  
20 that there will be another case to be selected by the  
21 defendant which will be ready for trial upon the conclusion  
22 of the first case, ~~trial of [REDACTED]~~  
23 *which will be* selected by the plaintiff.

24 I think this concludes all of the issues that we  
25 have discussed today.

26 Does anyone have anything for the record before

## Proceedings

1  
2 we conclude?

3 MR. FROMSON: Yes, your Honor.

4 Ken Fromson for plaintiffs.

5 Two very simple caveats. I would like to  
6 respectfully request the ability to supplement the 3101  
7 after plaintiffs finish the sales rep depositions. We will  
8 do so promptly, just as you allowed us to do so when the  
9 family witnesses get done. That was one issue.

10 Second, the Caporale case is a case for which we  
11 intend to move to withdraw and not to dismiss.

12 That's the only distinction I would like to make  
13 on the record. It doesn't change anything you have said  
14 substantively.

15 Thank you, Judge.

16 THE COURT: Just a moment. We will discuss the  
17 3101(d) issue off the record. Before we do, do any of the  
18 defendants have anything for the record regarding the  
19 statements I just made or the rulings I just made?

20 Off the record.

21 (Discussion is held off the record.)

22 THE COURT: The record will reflect that there  
23 are still certain sales rep depositions to be provided by  
24 the Pfizer defendants to the plaintiff.

25 The Court will authorize prompt supplementation  
26 of the plaintiff's expert disclosure, if needed, after the

## Proceedings

1 sales representative depositions are provided, but the  
2 expert disclosure deadline for the plaintiff will remain at  
3 August 9.  
4

5 Counsel are directed to obtain a copy of the  
6 transcript of today's proceedings and to file it with the  
7 clerk of Part 57 for transmission to me for so-ordering.  
8 Counsel are advised that the Court may correct errors in  
9 the transcript; therefore, if it is needed for any further  
10 purpose, you should be sure you have a copy as so-ordered  
11 by the Court and not merely as signed by the court  
12 reporter.

13 The record is closed.

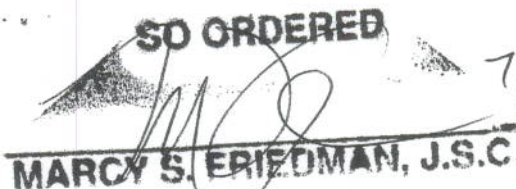
14 \* \* \* \* \*

15 Certified to be a true and accurate record of the  
16 within proceedings.

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19 Ellen Rubin, CSR, RPR  
20 Senior Court Reporter

**FILED**  
AUG 26 2010  
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21 **SO ORDERED**  
22   
23 **MARC S. FRIEDMAN, J.S.C.**  
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26

Ellen Rubin, CSR, RPR