FILED

OCT 07 2013

Carol E. Higbee, P.J.Cv.

IN RE: ACCUTANE LITIGATION	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: ATLANTIC COUNTY CIVIL ACTION NO.: 271 (MCL) ACCUTANE® MULTICOUNTY LITIGATION **ORDER REGARDING TREATING PHYSICIANS SERVING AS DEFENSE EXPERTS**

This matter having come before the Court by both parties and the defendants having requested the right to contact plaintiffs' treating physicians and hire the doctors as defense experts and the plaintiff objecting to the request, and both sides agreeing that in some cases plaintiffs' physicians may need to testify at plaintiff's trials even though they may have been retained by defendant, and for good cause shown including the need to efficiently and fairly proceed with the large number of cases awaiting trial;

It is on this 7 day of October, 2013,

ORDERED that:

1. The September 25, 2012 Order shall remain in effect, but is supplemented by this Order except for paragraphs 5 and 8 which are modified by this Order.

2. With regard to any of a plaintiff's treating dermatologists, or any other medical providers who discussed or prescribed Accutane or another Isotretinoin product to a plaintiff, before Roche contacts the provider, the case-specific discovery and *de bene esse* depositions of any such dermatologist, or other medical provider, shall be completed in the cases of all patient-plaintiffs. This requirement can only be waived by each plaintiff's/patient's counsel in writing without conditions.

3. With regard to treating gastroenterologists, or other medical providers who treated a plaintiff for conditions other than acne and who did not discuss prescribing or prescribe Accutane or another Isotretinoin for a plaintiff, Roche will not be required to conduct case specific discovery or *de bene esse* depositions prior to contacting the physician or other medical provider if both parties agree in writing that they will not call the treater/expert at the trial of a plaintiff/patient. If either party reserves the right to call the treater at the plaintiff/patient's trial, then both parties must agree in writing not to ask the witness at trial for an opinion on causation between Accutane and IBD generally or Accutane's relationship/causation to the condition treated by the treater/expert in his/her patient/plaintiff's case. If either side reserves the right to call the treater and to ask the treater about causation or the relationship to Accutane, either generally or in a case specific scenario in a patient/plaintiff's case, then the treater/doctor must

submit to a discovery deposition prior to being consulted by the defendants as an expert, but a *de bene esse* deposition need not be completed before Roche consults with the treater, if plaintiff consents to Roche contacting the witness without one, otherwise the *de bene esse* deposition should be completed.

4. As to an expert/treater who is called to testify at trial (live or by deposition), if the parties have agreed not to ask the doctor questions about causation at the plaintiff/patient's trial, the medical records can be still admitted into evidence even if there is a written entry relating to a causation opinion if it is otherwise admissible under the Rules of Evidence despite the fact the doctor/expert will not be questioned by either party about the causation opinion.

5. Roche shall not contact treaters or prescribers before required depositions under this Order are completed.

6. The notice to take depositions shall include a request for the doctor to provide a written translation of any words, abbreviations or sentences in the medical record which are illegible or where there is a question as to the meaning of an abbreviation or other clarification is needed, and doctors shall be advised by letter that this will allow for a shorter deposition.

7. Roche shall advise plaintiffs of the name of the first ten (10) doctors they want to consult from their initial list as soon as they want to start the process set forth in this Order.

8. Within fourteen (14) days after the first ten doctors are identified from the present list of potential defense experts the plaintiffs must meet and confer with the defendants to determine what the parties' position is on requiring or waiving depositions . Within ten (10) days after the parties have determined whether depositions are required under the terms of this Order, plaintiffs must provide Roche with dates for the depositions. The depositions shall be scheduled as soon as reasonably possible.

9. Plaintiffs shall advise Roche if they encounter any problems in scheduling a particular physician, at which point Roche can immediately proceed to obtain a commission and/or subpoena for the physician's deposition on short notice application to the court. Roche may then also contact a physician who is not cooperative about scheduling the depositions, but Roche shall not engage in any discussions with the provider or his/her staff if such contact is made, except for a discussion on scheduling. Roche may also seek the court's assistance by conference call, if there is too much delay in scheduling physicians.

10. Twenty-one (21) days after the first ten doctors from the list are chosen by Roche, they can advise plaintiffs of the next ten and all the above deadlines shall apply. Twenty-one (21) days later, Roche can identify any other physicians on the initial list that Roche has sent to the court and counsel who they wish to contact.

11. After the discovery deposition, and where required, the *de bene esse* deposition is completed then the defendant can contact the prescribers and/or treaters and discuss hiring them as consultants and/or experts following the requirements set forth in the Order of September 25, 2012.

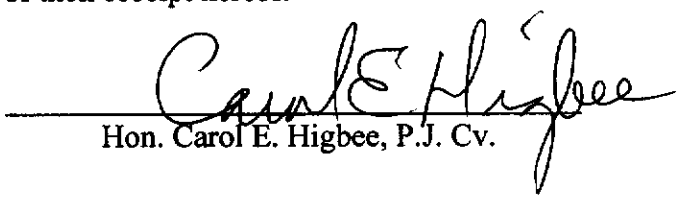
12. In the event an expert was actually retained by Roche as an expert or a consultant, and a plaintiff treated by such physician is selected for trial, Roche shall disclose to plaintiffs that it did actually retain such expert or consultant within fifteen (15) days after the case is selected for trial.

13. The fact that a physician treated a plaintiff in the multi-county litigation shall not preclude a physician from testifying as an expert as to general medical causation issues or case specific causation in cases brought by plaintiffs not treated by that expert but any party may object to the admissibility of the physician's expert testimony for any other reasons.

14. Roche shall advise the court and plaintiffs by April 1, 2014, the number of the initial thirty-two physicians who were contacted by Roche and how many were actually retained without providing names.

15. After that time, the court will consider a request by Roche to identify other physicians they may wish to retain who treated a plaintiff in this multi-county litigation.

IT IS FURTHER ORDERED that a copy of this Order shall be served on all parties by counsel for Defendant within seven (7) days of their receipt hereof.



Hon. Carol E. Higbee, P.J. Cv.