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FILED

FEB 24 2012

Carol E. Higbee, P.J.Cv.

IN RE: BRISTOL-MYERS SQUIBB ENVIRONMENTAL CONTAMINATION LITIGATION	**SUPERIOR COURT OF NEW JERSEY** LAW DIVISION: ATLANTIC COUNTY MASTER DOCKET NO. ATL-l-3517-08 MT CASE NO. 281 **CASE MANAGEMENT ORDER NO. 13**

THIS MATTER having come before the Court for a Case Management Conference on Tuesday, December 20, 2011, and counsel for Plaintiffs and counsel for Defendant, Bristol-Myers Squibb Company ("BMS" or "Defendant"), having participated, and for good cause shown,

IT IS on this 24 day of Feb, 2012, ORDERED that, except to the extent inconsistent with the terms of the within Case Management Order ("CMO"), all prior CMOs remain in full force and effect, and it is further ORDERED as follows:

1. With respect to Plaintiffs' pending motion to compel the production of documents identified on Defendant's Subset Privilege Log of Consultant-Related Documents ("Defendant's Subset Log"):

   a. By December 23, 2011, Plaintiffs shall identify twenty-five (25) documents from Defendant's Subset Log to be submitted to the Court for *in camera* review.

   b. By January 6, 2012, Defendant shall submit the documents identified by Plaintiffs, pursuant to the above paragraph, in unredacted form to the Court for *in camera* review.

   c. By January 31, 2012, the Court will endeavor to provide a decision regarding the documents submitted for *in camera* review.

   d. By March __, 2012, Defendant will provide an updated Master Privilege Log, containing comparable detail as Defendant's Subset Log, for the documents contained in the Master Privilege Log.

2. "By February 1st [2012] . . . defense counsel [shall] respond to the requests by the Plaintiffs . . . [t]he October 21st letter. And the response shall be as follows: [BMS has] searched, and there are no records that fit this request with an affidavit signed by somebody in the company who supervised the search. Two, [BMS has] searched, and we have no records because they were destroyed or lost or we have looked and there are none. Or [three], [BMS has] looked, [BMS has] conducted the following searches, and [BMS hasn't] been able to locate them. [BMS] can't swear they don't exist, but [BMS is] willing to agree that they can't be produced. But [BMS has] to first in good faith have looked for them . . .

PLAINTIFFS' PROPOSED SENTENCE: {And at that point [BMS will] be barred from producing them, obviously, at later date.}; OR

BMS's PROPOSED SENTENCE: {And [in accordance with governing case law and the New Jersey Court Rules, after the close of discovery, absent exceptional circumstances, then] at that point [BMS will] be barred from producing them, obviously, at later date.}

But [the Court is] requiring first that there be a good faith effort to find them. And the second or the third alternative, which is for the following questions [BMS has] found . . . records that apply, and these are those records or [BMS is] in the process of reviewing them identifying [BMS has] found 500 boxes of documents which [BMS is] in the process of reviewing. So [BMS] may not have all of them reviewed, but at least [BMS has] an identification of what they are. So [BMS] basically ha[s] from now until February 1st to do [its] search.

Now, if [BMS] locate[s] documents but [BMS hasn't] had a chance to read every document and go through it then we'll talk about your March deadline or March 1st or March 31st or whatever. But if there's not going to be any documents there's no point in [Plaintiffs] waiting until March 31st. If there's a limited range of documents [BMS] should be producing them by February 1st. . . [L]et's look at how many documents [BMS has] actually located and how many [BMS hasn't]. So [BMS is] going to spend the month of January deciding what can and can't be located." (12/20/11 Case Management Conf. Tr. at 67:24-69:12).

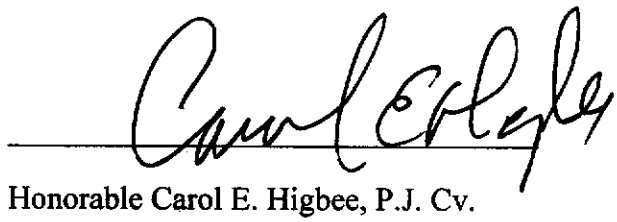
3. At the next Case Management Conference, the Court shall confer with the parties about a timetable for Defendant's ongoing, rolling production of the documents identified in its February 1, 2012 response.

4. By February 6, 2012, Defendant has agreed to produce all documents on the Subset Log that are no longer being withheld as privileged.

5. After a reasonable period of time and a meet-and-confer between the parties on the issue, Defendant may file a motion to dismiss those complaints by any plaintiff who has failed to provide any medical records or authorizations, medical bills, interrogatory or other discovery responses, and/or any plaintiff who has failed to appear for a noticed deposition without providing a good faith basis for such failure. "Plaintiffs [shall] produce either a facts sheet or Answers to Interrogatories, it doesn't matter which, and medical authorizations...in every single case." (12/20/11 Case Management Conf. Tr. at 71:1-4). "[A]s far as the medical bills and the medical records, [they] should be provided for every client...and as soon as [Plaintiffs' counsel] can get that information." (*Id.* at 89:1-6). "If [Plaintiffs] can't get them then [they must] give [Defendant] authorizations and let [Defendant] get them, and [Defendant shall] send [Plaintiffs] copies." (*Id.* at 76:24-77:2).

6. The return date on Plaintiffs' motion for a protective order shall be heard by the Court at the next Case Management Conference, which is scheduled for February 14, 2012. Plaintiffs may submit a reply brief in further support of their motion by February 9, 2012.

7. The next Case Management Conference will be held on Tuesday, February 14, 2012, from 2:00 to 4:30 p.m., at the Atlantic County Courthouse, Courtroom 3-B, 1201 Bacharach Blvd., Atlantic City, New Jersey.



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