

**RACHEL BROWN,**  
**Plaintiff,**

**SUPERIOR COURT OF NEW JERSEY**  
**LAW DIVISION, BERGEN COUNTY**  
**DOCKET NO. BER-L-9969-10**

**v.**

**IN RE YAZ®, YASMIN®, OCELLA**

**LITIGATION**  
**BAYER CORP., ET AL.,**  
**Defendants.**

**CASE CODE 287**  
**SPECIAL MASTER'S REPORT AND**  
**RECOMMENDATION**

Bayer has moved to dismiss this action with prejudice for failure to comply with Case Management Order No. 40 ("CMO 40").

Plaintiff Rachel Brown filed her complaint on September 27, 2010, alleging that she had the surgical removal of her gallbladder on or about September 30, 2004 as a result of her ingestion of Yaz and Yasmin.

Plaintiff enrolled in the Gallbladder Resolution Program on May 21, 2013, as evidenced by Exhibit B to Bayer's Motion to Dismiss. Plaintiffs enrolled in the Program were required to submit to the Claims Administrator all the Claim Package Materials identified in Section 3.03 (A) of the Settlement Agreement. These materials include a Claim Form, Claimant Authorization, Release, Stipulation of Dismissal, W-9 Wiring Instructions and various medical and prescription records. Section 3.01 of the Settlement Agreement required that all materials be submitted by a Claim Package Deadline, which Plaintiffs' counsel and Bayer fixed as November 18, 2013. See CMO 40 at 3.

Plaintiff failed to submit some of her Claim Package Materials by the deadline and was notified on February 21, 2014 by the Claims Administrator that her materials were not complete. The Administrator identified all of the missing material and provided instructions as to how to cure the failure to file the materials. The Notice of Partial Incompleteness (Exhibit C to Bayer's Motion to Dismiss) was sent to then counsel of record for Plaintiff and informed Plaintiff that

she was required to submit the Claim Package Materials or request relief from the deadline no later than March 23, 2014. The Notice of Partial Incompleteness indicated that if a request for relief from the deadline were granted, Plaintiff would have until April 22, 2014 to submit the required materials and that this would be “the outer limit of the extension.” The Notice used the name Rachel Stoczynski instead of Rachel Brown. As the Amended Certification (paragraph 3) of Julie L. Tersigni indicates, Plaintiff uses the name Rachel Stoczynski as well as Rachel Brown.

The Claims Administrator sent a Second Incompleteness Notice (Exhibit D to Bayer’s Motion to Dismiss) on May 3, 2014 to Plaintiff’s then counsel of record. This Notice informed Plaintiff that she would lose all rights under the Program unless she requested reconsideration by May 13, 2014. No request for reconsideration was made, and the Claims Administrator sent an e-mail (Exhibit E to Bayer’s Motion to Dismiss) to Plaintiff’s then counsel of record on May 15, 2014 notifying Plaintiff’s counsel that Plaintiff’s claims were rejected and therefore subject to dismissal with prejudice.

Section 3.05 (C) and (D) of the Settlement Agreement entitle Bayer to submit a motion to dismiss with prejudice when participants in the Gallbladder Resolution Program fail to correct their deficiencies by the Cure Deadline, which in this case was March 23, 2014. Because Plaintiff has failed to meet her obligations under the Settlement Agreement, and pursuant to CMO 40 Section III, I recommend that the Court grant Bayer’s Motion to Dismiss Plaintiff’s Complaint with Prejudice Pursuant to CMO No. 40.

DATE: November 5, 2014

/s Stephen A. Saltzburg  
Special Master