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FILED
FEB 03 2009
Judge Jamie D. Happs

**IN RE: RISPERDAL/SEROQUEL/
ZYPREXA LITIGATION**

**APPLICABLE TO ALL
CASES**

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION: MIDDLESEX COUNTY
: Case No. 274
: CIVIL ACTION
: **CASE MANAGEMENT ORDER NO. 11**
: **Amendment to Case Management Order No. 4**
: **Regarding Case-Specific Discovery and Selection**
: **of Bellwether Cases**

This matter having come before the Court at case management conferences on July 15, 2008, August 12, 2008, and November 19, 2008, and counsel for the plaintiffs and for defendants AstraZeneca Pharmaceuticals LP, AstraZeneca LP, and Zeneca Inc. (collectively “the AstraZeneca defendants”) having conferred with the Court regarding a method and procedure for selecting a group of bellwether cases and preparing cases for trials, and all parties having proposed to the Court the form and substance of the within Order, and for good cause shown;

IT IS ON THIS 3rd DAY OF FEBRUARY, 2009 *effective from November 19, 2008;*

ORDERED that the Initial Case-Specific Discovery directed in Section IV. of CMO4 (as well as all subsequent amendments thereto) previously suspended with respect to cases against the AstraZeneca

defendants shall continue with an amended schedule to be proposed to the court and to be discussed at the February 26, 2009 Case Management Conference; and it is further

ORDERED that pre-trial discovery in cases against the AstraZeneca Defendants will proceed as follows:

I. CASE POOL FOR SELECTION OF ASTRAZENECA BELLWETHER CASES

- A. The case pool for the selection of AstraZeneca bellwether cases shall be all of the remaining Group 1 and Group 2 cases selected pursuant to the provisions of CMO 4 (“CMO4 cases”), as well as all of the cases in which the plaintiff is a resident of New Jersey and the only defendants at the time of case selection are AstraZeneca defendants.
- B. On November 21, 2008, the plaintiffs identified their selection of 5 bellwether cases from among the remaining CMO4 cases and on or before January 15, 2009, may identify up to 3 additional bellwether cases from among the remaining cases in which the plaintiff is a resident of New Jersey and the only defendants are AstraZeneca defendants.
- C. On December 1, 2008, the AstraZeneca defendants identified their selection of 10 bellwether cases from among the remaining CMO4 cases and on December 10, 2008, the AstraZeneca defendants identified 2 additional bellwether cases from among the remaining cases in which the plaintiff is a resident of New Jersey and the only defendants are AstraZeneca defendants.
- D. The resulting selected cases shall be the “bellwether” cases referred to herein.
- E. In the event that any bellwether case selected by the AstraZeneca defendants is voluntarily dismissed for any reason prior to February 1, 2009 the AstraZeneca

defendants shall have the option to substitute that dismissed case with another case pursuant to sub-section D. herein as applicable.

II. BELLWETHER CASE DISCOVERY

A. On or before January 15, 2009, plaintiffs shall serve on defendants Completed Long Form PFSs for each bellwether case in which the plaintiff is a resident of New Jersey and the only defendants are AstraZeneca defendants. All of the provisions set forth in CMO 4 (including all amendments thereto) regarding Long Form PFS's shall apply to the bellwether cases in which the plaintiff is a resident of New Jersey and the only defendants are AstraZeneca defendants.

B. Commencing December 1, 2008, each of the of the bellwether cases are subject to complete fact deposition discovery to the extent permitted by the New Jersey Rules of Court except as limited by this Order.

C. The defendants will be permitted to notice and take up to six fact depositions in each of the bellwether cases, which shall include at least the first prescriber of Seroquel for that plaintiff and the primary treating physician of that plaintiff's alleged injuries. To the extent that any fact depositions have been taken in a bellwether case prior to this Order, those depositions shall be included among the six permitted depositions. Nothing in this Order shall preclude the plaintiffs from noticing fact depositions different from and in addition to those noticed by the defendant.

D. Plaintiffs will be permitted to take the depositions of up to two AstraZeneca sales representatives per trial-set case after the close of fact discovery but before the close of expert discovery. Disclosure by the AstraZeneca defendants relevant to the sales representatives shall be pursuant to prior rulings of the Court and/or agreements among counsel, including agreements applicable in other jurisdictions involving related litigation. In the event of any disagreement concerning this disclosure,

the parties shall seek assistance from the Special Master to resolve those disagreements before any application for relief from the Court.

E. Nothing in this Order shall prevent the parties from agreeing to the deposition of additional fact witnesses, or in the absence of agreement from seeking permission from the Court or the Special Master to take reasonably necessary additional depositions (including a continued deposition of a witness previously deposed) in any bellwether cases.

F. In any case set for trial, any party may take the deposition reasonably in advance of trial of a person identified as a fact witness for trial by the other party but not previously deposed.

G. Nothing in this Order shall prevent any party from taking depositions for the purposes of obtaining trial testimony *de bene esse*, in cases set for trial, provided that the witness has previously been deposed or if the other party is given an opportunity to take a discovery deposition of that witness at least two weeks prior to the *de bene esse* deposition. No *de bene esse* depositions shall be taken before the close of fact discovery in the bellwether cases.

H. All fact discovery in the bellwether cases is to be completed by July 13, 2009 unless otherwise Ordered by the Court; and it is further

ORDERED that on dates to be determined by future Orders of the Court the parties will submit to the Court, either in the form of agreements or when there is disagreement in the form of a joint submission specifying the opposing positions of the parties, proposals on the following pre-trial issues:

- A. The procedure that the parties propose to the Court for selecting and scheduling trials of cases from among the bellwether cases.
- B. The procedure and schedule for expert discovery to be conducted after the close of fact discovery in any bellwether case set for trial

C. The procedure and schedule for all pre-trial motions and submissions, including without limitation pre-trial orders, witness lists and exhibit lists; and it is further

ORDERED that the first trial of a bellwether case shall commence in the Fall of 2009, the specific date to be specified by the court at a future Case Management Conference; and it is further

ORDERED that the bellwether cases shall alternate between law firms representing plaintiffs so that in the event of simultaneous trials, there shall be no conflict asserted by designated trial counsel.



Jamie D. Happas, J.S.C.