

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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In re: AVANDIA MARKETING, SALES	:	AVANDIA MDL 1871
PRACTICES AND PRODUCTS LIABILITY	:	2007-MD-1871
LITIGATION	:	HON. CYNTHIA M. RUFÉ

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THIS DOCUMENT RELATES TO:  
ALL ACTIONS

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**PRE TRIAL ORDER NO. 146**

**NOTICE OF MEDIATION**

I. On November 23, 2010, the Court appointed Jerome Shestack as Settlement Master to all pending actions in the MDL, with “full authority to implement such measures and advise the court on any orders deemed necessary to facilitate the mediation process.” *See* Pretrial Order No. 122. The same day the Court ordered that all cases in the MDL were to “proceed simultaneously on a mediation track and a litigation track.” *See* Pretrial Order No. 123.

II. On October 7, 2011, the Court appointed Patrick A. Juneau as Special Master, with the authority to “administer, coordinate and preside over settlement negotiations” and conduct any proceedings “necessary for purposes of administering and managing the settlement process.” *See* Order Pursuant to Federal Rule of Civil Procedure 53 Governing the Appointment of Special Master, Patrick A. Juneau (Doc. No. 1827).

III. And now to further implement and ensure the effectiveness of the settlement and mediation tracks established by this COURT in Pre-trial Order No. 122, **IT IS ORDERED** that the following procedure is hereby established:

A. Within 21 days of the date of this Order, all counsel who wish to participate in a mediation process will provide to the Court mediator, Patrick Juneau, Esq. a final and definitive list of all clients they represent who claim an alleged Avandia-related injury as well as a list of any firm or counsel with a financial interest in any claim on the list submitted. The claimant list shall include the name, date of birth, social security number (SSN), and state of residence of the claimant, the first and last date of ingestion of Avandia, the specific alleged Avandia-related injury and the date on which it occurred.

1. Within 30 days of entry of this Order, GSK shall advise Special Master Patrick A. Juneau of those firm who have consented to participate in the mediation process, and those firms who have not provided GSK with a claimant list.

B. Claimants eligible to participate in the mediation process shall meet the following minimum requirements.

1. Avandia use for at least thirty (30) days (demonstrated by a pharmacy or a prescriber's medical record);
2. First Avandia prescription written no later than November 14, 2007.<sup>1</sup>

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<sup>1</sup> The date of November 14, 2007 selected by the Court is entered without prejudice and without finding of statute of limitations for any alleged injury. The parties are encouraged to assess their cases for mediation using this date as a guideline.

3. Through contemporaneous medical records, a physician's final diagnosis, within no more than 12 months after at least thirty (30) days of demonstrated Avandia use, of and injury in the form of
  - a. Myocardial Infarction (which is limited to Myocardial Infarction, Acute Myocardial Infarction, and if the medical records are silent as to whether or not there was a Myocardial Infarction, new pathological Q waves in two or more anatomically contiguous leads or Chest Pain with a rise in Serum Cardiac Troponin greater than two times the upper limit of normal that the testing laboratory considers diagnostic for Myocardial Infarction);
  - b. Other Myocardial Ischemic-Related Event (which is limited to initial onset or occurrence of Acute Coronary Syndrome, Coronary Artery Occlusion, Coronary Artery Reocclusion, Coronary Artery Thrombosis, Coronary Bypass (or Stenting), Myocardial Ischemia, Papillary Muscle Infarction, Subendocardial Ischemia, Electrocardiogram ST Segment Elevation, and Electrocardiogram ST-T Segment Elevation);
  - c. Initial onset or exacerbation of Congestive Heart Failure; or
  - d. Cerebrovascular Accident (a/k/a Stroke).

C. Upon receipt of a list of claimants described above, the parties with the assistance of Special Master Juneau as may be required, shall commence good faith negotiations in an effort to resolve the claims asserted.

IV. Special Master Juneau shall report to the court regularly on the progress of negotiations.

V. If within 75 days of the date of this Order, at least 85% of all the filed and tolled cases are not resolved or subject to a settlement agreement in principle, the mediation initiative set forth in this Order shall terminate and the Court shall proceed as follows:

A. Trial – The first 100 filed cases on the Court’s docket shall be assigned to a trial pool.

All discovery, case-specific and expert discovery, in those cases will be completed within 60 days of the date of assignment. A series of trial dates will be established.

B. The Court will issue its decision on Lone Pine II or schedule a further hearing should the Court deem one necessary.

C. The Court will schedule a hearing on GSK’s pending Motion for Statute of Limitations.

D. GlaxoSmithKline LLC is permitted to renew, if it chooses, its Motion to Show Cause As to Why the Court Should Not Limit Plaintiffs’ Attorneys’ Fees. If it does so, Plaintiff’s Steering Committee shall file a response and the Court shall schedule a hearing date to consider the motion.

VI. In order to facilitate the mediation process set forth in this Order, the Court is suspending the Daubert hearings presently scheduled for November 14-16, 2011 which hearing will be promptly rescheduled if the mediation effort set forth in this Order is not successful.

VII. The Court is providing a copy of this Order to those State courts where Avandia-related claims are pending to advise those Courts of this mediation effort.

VIII. The Plaintiffs' Steering Committee is directed to provide Notice of this ORDER to all counsel of record in the MDL proceeding.

Dated: Nov. 7th, 2011

  
CYNTHIA M. RUFÉ, U.S.D.J