

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

**IN RE: AVANDIA MARKETING, SALES
PRACTICES AND PRODUCTS LIABILITY
LITIGATION**

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**MDL No. 1871
07-md-01871-CMR**

**THIS DOCUMENT APPLIES TO:
ALL ACTIONS**

CASE MANAGEMENT ORDER NO. 2

AND NOW, this 9th day of April 2008, the Court hereby enters the following Case Management Order to govern all further proceedings in this litigation.

1. COORDINATION.

It is the intent of this Court to undertake efforts to coordinate the above-captioned litigation, whenever practicable, with Avandia-related litigation proceedings in state courts. Defendant's counsel, Pepper Hamilton LLP, shall maintain a list of all Judges and Special Discovery Masters involved in Avandia-related litigation pending in state courts so that this Court may communicate with such Judges as necessary. Defendant's counsel shall submit this list to the Court as requested from time to time.

2. PLEADINGS.

A. MASTER COMPLAINT AND MASTER SHORT FORM ANSWER. The parties have met and conferred with respect to the advisability and need for a Master Complaint and concluded that a Master Complaint is neither feasible nor practical. The parties are in agreement that

a Master Short Form Answer is likely feasible and practical.

WHEREFORE, IT IS ORDERED that, pending further orders of this Court, there shall be no Master Complaint filed in these proceedings;

IT IS FURTHER ORDERED that, upon appointment of the Plaintiffs' Steering Committee, the parties shall continue negotiations regarding the remaining logistical issues related to a Master Short Form Answer, and, within 30 days of its appointment, the parties shall jointly report to this Court on the status thereof. The existing extension for defendant to answer or move in response to any complaints filed in this MDL is continued pending the report of the parties on a Master Short Form Answer.

3. DISCOVERY.

A. PRESERVATION OF EVIDENCE AND ELECTRONICALLY STORED INFORMATION (ESI). The parties have begun discussing the parties' efforts to preserve potentially discoverable documents and electronically stored information. The parties will continue these discussions as soon as possible after appointment of the PSC in order to fulfill the directive of CMO No. 1, Section H. In the interim, the Court enters by separate Order an electronic discovery default order which will remain in effect until such time, if ever, the parties conduct e-discovery on a consensual basis.

B. DOCUMENT PRODUCTION.

The parties have met and conferred on discovery-related issues. The parties have agreed that they will work to identify the proper custodians of records at GSK and prioritize the production of the files related to these custodians. In addition, the parties have agreed to work expeditiously to identify databases containing potentially discoverable information, and to facilitate the production

of IND/NDA documents. The parties will report back to this Court on the status of this production within 30 days of an appointment of a Plaintiffs' Steering Committee.

WHEREFORE, IT IS ORDERED that, upon appointment of the Plaintiffs' Steering Committee, the parties shall meet and confer about pending discovery topics and, within 30 days of its appointment the parties shall jointly report to this Court on the status thereof.

4. PRIVILEGE LOG. The plaintiffs have advised defendants of their preliminary position concerning the terms, conditions and timing of the production by the parties of privilege logs.

WHEREFORE, IT IS ORDERED that, upon appointment of the Plaintiffs' Steering Committee, the parties shall continue discussions on Privilege Log issues, and, within 30 days of its appointment, shall jointly report to this Court on the status thereof.

5. PROTECTIVE ORDER FOR CONFIDENTIAL DOCUMENTS. To expedite the exchange of discovery material, facilitate the appropriate resolution of disputes over confidentiality, adequately protect confidential material, and ensure that protection is afforded to material so entitled, the parties already have negotiated on the terms of and exchanged multiple drafts of a Protective Order pursuant to Rule 26 of the Federal Rules of Civil Procedure.

WHEREFORE IT IS ORDERED that, upon appointment of the Plaintiffs' Steering Committee, the parties shall continue negotiations and discussions regarding the Protective Order, and, within 30 days of its appointment, shall jointly report to this Court on the status thereof.

6. PLAINTIFF AND DEFENDANT FACT SHEETS. The parties have met and conferred with respect to the advisability and need for Plaintiff and Defendant Fact Sheets. The Parties have exchanged drafts of a proposed Plaintiff Fact Sheet and are continuing to discuss whether a Defendant Fact Sheet is necessary.

WHEREFORE, IT IS ORDERED that, upon appointment of the Plaintiffs' Steering Committee, the parties shall continue negotiations and discussion on this subject, and, within 30 days of its appointment, shall jointly report to this Court on the status thereof.

7. TOLLING AGREEMENTS. The Plaintiffs have suggested to GSK through its counsel, that it voluntarily enter into a Tolling Agreement in return for those Plaintiffs submitting a Claimant's Fact Sheet.

WHEREFORE, IT IS ORDERED that, upon appointment of the Plaintiffs' Steering Committee, the parties shall continue negotiations and discussions on this subject, and, within 30 days of its appointment, shall jointly report to this Court on the status thereof.

8. FILING OF NEW ACTIONS. Pursuant to Paragraph 2A of Case Management Order No. 1,

Any "tag-along" action later filed in, removed to or transferred to this Court, or related cases directly filed in the Eastern District of Pennsylvania, shall automatically be assigned to the undersigned and be consolidated with this action.

If, after review of Case Management Order No. 1, entered on February 28, 2008 [Doc. No. 45], and communication with the Office of the Clerk of the Eastern District of Pennsylvania, counsel is unclear as to how to file future actions into this MDL, counsel may address the uncertainty to the Court, along with a proposed form of order to effectuate any needed clarification.

9. CONTENTS AND SUBMISSION OF JOINT REPORT OF THE PARTIES PRIOR TO FUTURE STATUS CONFERENCES. Prior to future status conferences, the parties are prepared to confer and submit a joint report outlining possible agenda items and including a short statement of the issues involved and the positions of the parties with respect to each such agenda item.

WHEREFORE, IT IS ORDERED that, upon appointment of the Plaintiffs' Steering Committee, the parties shall continue negotiations and discussions on this subject, and, 7 days prior to the next Status Conference the parties shall submit a Joint Report outlining possible agenda items and including a short statement of the issues involved and the positions of the parties with respect to each such agenda item. The parties agree that in order to provide the Court with appropriate notice of the issues that will be addressed at each Status Conference, they will not seek Court intervention with regard to any issues not addressed in the Joint Report.

IT IS FURTHER ORDERED that, in the next Joint Report, the parties will submit to the Court a proposal regarding the question whether multiple unrelated claimants should be permitted to join in a single complaint in this matter, considering the precedent established in this District in IN RE Diet Drugs Products Liability Litigation, MDL No. 1203, Civil Action No. 06-20042 2007 US DIST LEXIS 62505 (E.D. Pa. 2007).

10. FUTURE STATUS CONFERENCES. Given the complexity of this litigation, the parties are prepared to meet and confer, if the Court deems it appropriate, and make themselves available as the Court deems necessary for either regularly scheduled or individually ordered status conferences.

WHEREFORE, IT IS ORDERED that, the next status conference in this matter shall be held in this Court on the 9th day of May, 2008, at 10 A.M., Courtroom 12A, U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

HON. CYNTHIA M. RUFÉ