

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

In re: AVANDIA MARKETING, SALES	:	MDL 1871
PRACTICES AND PRODUCTS LIABILITY	:	07-MD-1871
LITIGATION	:	

THIS DOCUMENT RELATES TO:	:
ALL ACTIONS	:

STIPULATION AND ORDER REGARDING PRETRIAL ORDER NO. 4

It is hereby STIPULATED and AGREED by and between the undersigned representative for the Plaintiff’s Steering Committee and counsel for Defendant SmithKline Beecham Corporation d/b/a GlaxoSmithKline (“GSK”) as follows:

I. Scope of This Stipulation and Order

This Stipulation and Order applies to any action currently pending in, subsequently filed in, or removed or transferred to, this MDL in which the complaint includes more than one individual plaintiff who alleges that he or she took Avandia and suffered personal injury as a result (“multi-party complaints”). This Stipulation and Order does not apply to complaints in which only one individual alleges taking Avandia and suffering personal injury as a result thereof, but which include additional, derivative plaintiffs, such as spouses or children.

II. Suspension of Certain Aspects of Pretrial Order No. 4

In Pretrial Order No. 4 (“PTO 4”), this Court permitted, on a provisional basis, the filing of multi-party complaints involving multiple, unrelated personal injury plaintiffs provided that the plaintiffs were all domiciled in the same federal judicial district. *See* PTO-4 at ¶ 2. Unrelated plaintiffs domiciled in different federal judicial districts were not permitted to jointly file a single complaint. *See* PTO-4 at ¶ 3. After the entry of PTO-4, the parties agreed on a form of Tolling Agreement (*see* Pretrial Order No. 7). Given this development, the parties stipulate and agree that paragraph 2 of PTO-4, which permitted the filing of multi-party complaints involving unrelated personal injury plaintiffs domiciled in the same federal judicial district, is hereby suspended. Accordingly, the filing of multi-party complaints involving unrelated personal injury plaintiffs, including such plaintiffs domiciled in the same federal judicial district, is no longer permitted in this MDL.

If, in the future, GSK were to mass-terminate the tolling agreements, paragraph 2 of PTO-4 will automatically be reinstated. GSK reserves the right, at such time, to renew its opposition to paragraph 2 of PTO-4, and seek to permanently modify PTO-4 to prohibit the ability to file multi-party complaints.

III. Revised Joint Report On Multi-Plaintiff Complaints

In paragraph 3b of PTO-4, this Court charged liaison counsel with the duty to file a report “listing those pending actions that will be required to be severed” and “listing those pending multi-party actions which will not be required to be severed immediately due to a pending motion to remand.” In light of discussions with certain plaintiff’s counsel regarding the classification of their cases, and Pretrial Order No. 11, the parties now provide the following revised report. An agreed upon proposed form of severance order, consistent with this report, is also attached as Exhibit A.

A. Pending Actions Required to be Severed

As of July 10, 2008, liaison counsel have identified a total of 32 cases in this litigation involving multiple, unrelated plaintiffs. Of those 32 cases, 21 must be severed immediately. A list of the cases which must be severed immediately is attached hereto as Exhibit B.

B. Pending Actions Not Requiring Immediate Severance Due to Motion to Remand

Liaison counsel have identified 5 pending actions in this MDL in which a Motion to Remand was filed on or before June 4, 2008. These 5 cases are listed in the spreadsheet attached hereto as Exhibit C. Pursuant to PTO 4, these actions do not need to be severed at this time.

In addition to the 5 cases identified in Exhibit C, 3 cases, which have not yet been transferred to this MDL, are pending in other federal judicial districts and are awaiting hearings, in the originating judicial districts, on Motions to Remand those cases to state court. Each of these actions is subject to a Conditional Transfer Order and is pending resolution by the Judicial Panel on Multidistrict Litigation (“JPMDL”) of plaintiffs’ Motions to Vacate Conditional Transfer Orders. To date no Court has ruled on a remand motion prior to MDL transfer, and the

JPMDL has overruled all Motions to Vacate in similar circumstances. A Motion to Remand has been recently filed in an additional action but a Motion to Vacate Conditional Transfer Order has not yet been filed. For this Court's convenience, a list of those 4 cases is attached hereto as Exhibit D. Because these cases would not be immediately severed, and have not yet been transferred to this MDL, they are not included in the attached proposed PTO.

C. Pending Action Not Yet Transferred to this MDL

One action involving multiple, unrelated plaintiffs has no Motion to Remand pending, but has not yet been transferred to this MDL. GSK has advised the JPMDL that this action is a potential Tag Along Action. The action is listed on the spreadsheet attached hereto as Exhibit E. Liaison counsel anticipate that the action will be transferred to this MDL in the near future and will be required to severed.

D. Pending Action Not to Be Severed

Liaison counsel have identified only one case involving multiple unrelated plaintiffs that will not be required to be severed. That one case is Lawrence Brown, et al. v. GSK which was originally filed in the Western District of Louisiana under docket number 08-cv-00709. The parties have agreed not to sever this one case at this time since the plaintiffs are from Louisiana and arguably not subject to a tolling agreement.

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SO ORDERED

Cynthia M. Rufe, District Judge

Dated: _____, _____, 2008