

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

IN RE: ZOLOFT (SERTRALINE HYDROCHLORIDE) PRODUCTS LIABILITY LITIGATION	:	MDL No. 2342
THIS DOCUMENT RELATES TO ALL ACTIONS	:	12-md-2342
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**PRETRIAL ORDER NO. 22
(APPOINTMENT OF SPECIAL DISCOVERY MASTER)**

AND NOW, this 28th day of February 2013, pursuant to Federal Rule of Civil Procedure 53(a)(1)(C), the Court hereby appoints Andrew Chirls, Esquire as Special Discovery Master, and enters the following Order:

MDL-2342, In re Zoloft (Sertraline Hydrochloride) Products Liability Litigation, was commenced by the docketing in this District of a transfer order under 28 U.S.C. §1407 on April 17, 2012 by the Judicial Panel on Multidistrict Litigation. Since that time, more than 75 actions have been transferred to this Court for consolidated pretrial proceedings. In addition, approximately 180 cases have been directly filed here.

The litigation involves personal injury claims related to the prescription medication Zoloft®, known by the chemical name sertraline hydrochloride, which is prescribed for the treatment of depression and other conditions.

Since the initial transfer this Court has convened status conferences, has appointed a steering committee for Plaintiffs, and has issued orders governing the administration of these cases in the transferee district. By Pretrial Order Nos. 4 and 5, dated July 12, 2012, the Court appointed Liaison Counsel for Plaintiffs and Defendants. By Pretrial Order No. 6 dated July 13,

2012, the Court appointed a sixteen member Plaintiffs' Steering Committee, a Plaintiffs' Steering Committee Executive Committee, and a Multi-District Coordinator.

It is the Court's policy in regard to both discovery and non-discovery motion practice that the parties attempt to resolve their differences amicably before seeking judicial intervention which is costly and time consuming. (*See* Local Rule 26.1(f); Fed. R. Civ. P. 37.1). The discovery process, which will be governed by the timetables set forth in Pretrial Order Nos. 20 and 21, is expected to create discovery obligations among many parties located in many places throughout the United States. It is the Court's view that there are two major areas that warrant the participation as an adjunct resource to the parties and the Court, of a Special Discovery Master. The first concerns the administration of a discovery schedule that will require the coordination of many attorneys, parties, and witnesses. The Court finds that this process can best be administered by a Special Discovery Master in cooperation with the Court, the parties, and non-parties. Second, disputes may arise from time to time concerning the content of discovery. It is the Court's view that many disputes can be promptly resolved at the time and at the place of their occurrence if there is available a capable, competent and dedicated neutral party, in the person of a Special Discovery Master, who is in a position to promptly and informally consider the views of the parties and attempt to mediate them. The Court anticipates that the introduction of a Special Discovery Master will be an invaluable aid to the overall administration of the case.

In those instances where a ruling made by the Special Discovery Master is accepted by all participating parties and non-parties, he shall confirm the same by letter to the parties (but not necessarily the Court), if a participant requests such a written confirmation. There may be instances where rulings of the Special Discovery Master are not accepted by all participants. In

such circumstances, the dispute will require a formal presentation to the Court. If the Special Discovery Master is unable to succeed in resolving a particular dispute informally, he will be authorized to render a written report and recommendation to the Court after a fair and full review of the participating parties' and non-parties' respective positions. Such reports shall be filed with sequential numbers beginning with the first such "Report and Recommendation". All reports and recommendations should be served on the Plaintiffs' Steering Committee and the Defendants' Liaison Counsel, as well as any participating non-parties, at the time they are filed with the Court. Any party or affected non-party may file an objection to any report and recommendation filed by the Special Discovery Master within fourteen (14) calendar days from the date it is filed with the Court. The objection should set forth the relief requested. If objections are filed, the Court will consider the matter *de novo* pursuant to Fed. R. Civ. P. 53. If no objections are timely filed, the Recommendation will be deemed to be accepted by all parties and affected non-parties, and the Court will enter an appropriate Order.

In performing within his authority, it will be the responsibility of the Special Discovery Master to interact and regularly communicate and confer with liaison counsel and/or the discovery committee chairs in order to monitor the progress of all discovery as required or expected by the Court's orders.

In order to execute the duties of his office, the Special Discovery Master shall be vested with the powers described and contemplated under Fed. R. Civ. P. 53(c), (d), and (e) including the right to:

1. review and analyze all papers, affidavits and legal memoranda filed with the Court bearing upon the parties' discovery disputes, including but not limited to disputes over the scope of discovery, discovery scheduling, timing and deadlines, and claims of privilege;

2. schedule, convene, preside over and otherwise conduct any meetings, hearings, conferences or proceedings deemed necessary to resolve these disputes;

3. prepare and file decisions and recommendations and other necessary reports, including reports at appropriate intervals on the progress of activities under the jurisdiction and authority conferred by this order;

4. pursuant to Federal Rule of Civil Procedure 53(b)(2)(B), the Special Discovery Master is authorized to communicate *ex parte* with the Court or the parties in accordance with his discretion. The Special Discovery Master shall inform the parties when he exercises this power. Upon objection of any party this practice shall terminate.

5. incur necessary expenses and costs at reasonable levels to permit him, or attorneys he chooses to assist him, to function fully in pursuance of the tasks covered by this reference.

The Special Discovery Master shall be compensated for his services, at the rate of \$525 per hour, and for all costs related to his duties as a Master from the parties' assets, subject to Court approval. From time to time during the course of his stewardship, the Special Discovery Master shall submit to the Court an application for counsel fees and costs associated with his service as Special Discovery Master and, in that respect, is authorized to incur only such fees and costs as may be reasonably necessary to fulfill his duties under this order, or such other orders as the Court may issue from time to time hereafter. All applications for fees and costs should be served on the Plaintiffs' and the Defendants' Liaison Counsel at the time they are filed with the

Court. Counsel will have seven (7) calendar days to file any objection to the application for fees and costs. Upon approval of the fee application, the Court will notify liaison counsel for the parties of the approved amount of fees and costs. The parties will then each be responsible for payment of an equal half share of the approved amount directly to the Special Discovery Master. The equal sharing of the fees and costs will be the standard protocol for payment to the Special Master. However, if the Special Discovery Master determines that all fees and costs, or any allocation other than equal half shares, should be assessed against one party due to the particular circumstances of a dispute, the Special Master has the discretion to make a recommendation of such an allocation to the Court along with a brief explanation of the reasons for the assessment.

The Court has considered the Affidavit of Andrew Chirls, Esquire, supplied pursuant to Federal Rule of Civil Procedure 53(b)(3) (*see* copy of Affidavit of Andrew Chirls, attached), and believes that Mr. Chirls possesses the requisite skills, experience and knowledge and other attributes which will be necessary to serve in the capacity as Special Discovery Master in this litigation.

It is so ORDERED.

BY THE COURT:


CYNTHIA M. RUFÉ, J.

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THIS DOCUMENT APPLIES TO:

ALL ACTIONS

AFFIDAVIT OF ANDREW CHIRLS, ESQUIRE

In connection with my service as court-appointed Special Discovery Master, I, Andrew Chirls, Esquire, hereby depose and state that I have reviewed 28 U.S.C. § 455, and I am unaware of any ground for disqualification under that statute.

*I declare pursuant to 28 U.S.C. § 1746
under penalty of perjury under the laws of the
United States of America that the foregoing is true and
correct. Executed on:
Dated: February 26, 2013*



Andrew Chirls, Esquire