

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

IN RE: AVANDIA MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION	:	
	:	
	:	MDL No. 1871
	:	07-md-01871-CMR
	:	

**THIS DOCUMENT APPLIES TO:
ALL ACTIONS**

**PRETRIAL ORDER NO. 53
APPOINTING JOHN L. CARROLL MASTER FOR ELECTRONIC DISCOVERY**

AND NOW, this 17th day of March 2009, pursuant to Federal Rule of Civil Procedure 53(a)(1)(C), upon the request and agreement of counsel for all parties, and upon consideration of the Affidavit Pursuant to Fed. R. Civ. P. 53(b)(3) and 28 U.S.C. § 455 of the Honorable John L. Carroll [see copy of affidavit of Mr. Carroll, attached], the Court hereby appoints John L. Carroll as an Electronic Discovery Master in the above-captioned matter (“Master”).¹ This Order shall govern the remainder of discovery in this litigation and shall take effect immediately.

The Order provides as follows:

1. The Master’s Duties and Authority:

- A. The Master shall proceed with all reasonable diligence in identifying the remaining electronic discovery issues between the parties.
- B. The Master may, in his discretion, communicate with Jerome J. Shestack (the Special Discovery Master in this litigation) (“Special Discovery Master”), the parties and their legal counsel in furtherance of an amicable

¹ Consistent with Fed. R. Civ. P. 53(b)(1), the Court provided the parties with notice of its intention to appoint an Electronic Discovery Master and gave them an opportunity to be heard on the matter in writing. The parties represented through Liaison Counsel that they had no objection to the appointment of Mr. Carroll to the position and no conflict issues with respect to him. There are no grounds for disqualifying Mr. Carroll under 28 U.S.C. § 455. See Fed. R. Civ. P. 53(b)(3).

resolution of the issues between the parties. The Master shall not communicate ex parte with the Court, or with counsel or the parties, except for logistical, scheduling or other practical purposes.

- C. The Master may request from the parties or their legal counsel further information, including but not limited to requests for production of documents, site visits, examination of equipment, photographs or videos, expert reports, or sworn testimony by affidavit, declaration, or deposition.
- D. The Master may submit to the Court any reports, recommendations or proposed orders that he believes may further amicable resolution of any discovery issues between the parties. In addition, the Master is vested with authority to make recommendations or propose orders which would have the effect of modifying previously established orders of this Court related to matters of electronic discovery. The Court will file any report, recommendation or proposed order of the Master on the case docket. At either party's request or in the discretion of the Master or the Court, any report or recommendation addressing continuing or failed efforts may be filed under seal and excluded from public access. The Master shall distribute to the parties or their legal counsel any such proposed orders or recommendations. The parties may file with the Court any response or objection thereto within ten (10) days of receipt thereof. The Court shall review all factual and legal issues, including procedural matters, de novo.
- E. Consistent with Federal Rule of Civil Procedure 53(c), the Master has authority to take all appropriate measures to perform fairly and efficiently the assigned duties, including imposing upon a party any non-contempt sanction provided by Rule 37 or 45, and may recommend a contempt sanction against a party and sanctions against a nonparty. Any Master's orders must be filed with the Court and served on each party or their legal counsel.
- F. The Master shall make all reasonable efforts to conduct his duties as efficiently as possible and to avoid unnecessary expense whenever possible.
- G. The Master may engage at standard rates to be assessed pursuant to paragraph 3 hereof, appropriate consultants or experts to assist in his duties.

2. Coordination Between Special Discovery Master and Electronic Discovery Master

- A. As Jerome J. Shestack has already been appointed general Special Discovery Master in this MDL, it is the Court's intention and expectation that the Master and Special Discovery Master shall coordinate efforts as necessary to achieve the efficient resolution of discovery disputes that arise.
- B. For the sake of uniformity, all protocols heretofore established to govern parties' engagement of the services of Special Discovery Master Shestack, see, e.g., PTO 28 [Doc. No. 222], shall apply in substance to parties' engagement of the Master.
 - i. The parties shall, in the first instance, present all discovery disputes to Special Discovery Master Shestack. The parties shall advise Special Discovery Master Shestack of their view that a dispute presents special electronic discovery issues. Special Discovery Master Shestack shall determine whether any such dispute is referred to the Electronic Discovery Master, after conference with him, as appropriate.
- C. Further development and delineation of the roles and responsibilities of the Special Discovery Master and the Master, respectively, shall be elaborated as necessary by the Court, through conference with the Masters and/or counsel, or *sua sponte*.

3. The Parties' Duties:

- A. The parties shall negotiate in good faith, cooperate with the Master, and otherwise make every effort to amicably resolve all relevant issues.
- B. The parties and their legal counsel shall comply within ten (10) days of the Master's requests for further information, including but not limited to requests for production of documents, examination of electronic files, and/or equipment, photographs or videos, expert reports, or sworn testimony by affidavit, declaration, or deposition.

4. The Master's Compensation:

- A. The Master shall be compensated for his services, at the rate of \$425.00 per hour, and for all costs related to his duties as a Master from the parties'

assets, subject to Court approval.

- B. The Master shall monthly make a written application to this Court for approval of any compensation, and shall contemporaneously provide to Liaison Counsel a true and correct copy of such application. The parties are hereby granted leave to respond to the Master's application within five (5) days of its receipt by the parties. Payments to the Master for fees, costs, and any other approved expenses shall be made equally between the parties, including the initial retainer, without prejudice to the Court's assessment of such expenses against any one or more parties if requested to do so by motion at the conclusion of all proceedings in this matter. See Fed. R. Civ. P. 53(g)(3).
5. At the request of any party or the Master or in the exercise of the Court's discretion, this Order may be amended at any time after notice to the parties and an opportunity to be heard. See Fed. R. Civ. P. 53(b)(4).

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFÉ, J.