

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

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

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

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**THIS DOCUMENT RELATES TO  
ALL ACTIONS**

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**PRETRIAL ORDER NO. 8  
( APPOINTMENT OF SPECIAL DISCOVERY MASTER)**

**AND NOW**, this 10th day of June 2008, pursuant to Federal Rule of Civil Procedure 53(a)(1)(C), the Court hereby appoints Jerome J. Shestack, Esquire as Special Discovery Master, and hereby enters the following Order:

MDL-1871 In re Avandia Marketing, Sales Practices and Products Liability Litigation was commenced by the docketing in this district of a transfer order under 28 U.S.C. §1407 on October 16, 2007 by the Judicial Panel on Multidistrict Litigation. Since that time, more than 100 actions have been transferred to this Court for consolidated pretrial proceedings.

The litigation involves claims related to the prescription medication Avandia®, known by the chemical name rosiglitazone maleate, which is prescribed for the treatment of type 2 diabetes.

Since the initial transfer this Court has convened status conferences, has appointed a steering committee for Plaintiffs and has issued several orders governing the administration of these cases in the transferee district. By Pretrial Order No. 1 dated April 9, 2008, the Court appointed a fourteen member Plaintiffs' Steering Committee and also appointed Plaintiffs' Liaison Counsel.

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 Fed. R. Civ. P. 37.1). The discovery process is just beginning and is expected to create discovery obligations in many places simultaneously throughout the United States. This circumstance is obviously the consequence of having consolidated in this district, cases that come from districts located in multiple states in the United States for not only persons to be deposed and interviewed, but for the furnishing of documents and other items of evidence as well.

With these thoughts in mind 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 is in respect to the administration of a discovery schedule that will require the coordination of many attorneys and witnesses participating in the taking of depositions as well as responding to document requests and other discovery at many locations. While many of these depositions will be straightforward and should not be lengthy, and though some will be taken by telephone with the consent of the parties, the day to day administration of such efforts could be complex even if it functions smoothly. The Court finds that this deposition-discovery schedule can best be administered by a Special Discovery Master in cooperation with the Court and the parties. Secondly, it is likely that matters will develop from time to time concerning the content of discovery that will require the resolution of disputes. Much of this can be promptly resolved at the time and at the place of its occurrence if there is available a capable, competent and dedicated neutral party in the person of a Special Discovery Master.

While it is true that the parties can be expected to do their best to resolve these

differences without judicial intervention, there will nevertheless be those instances when a more formal presentation to the Court will appear to be the only avenue to resolve differences. It is the Court's belief that the introduction of a General Discovery Special Master, who will be in a position to promptly and informally consider the views of the parties and attempt to mediate them, will be an invaluable aid to the overall administration of the case. If he is unable to succeed informally, he will be authorized to render a written decision and recommendation to the Court forthwith. This more formal second step will allow the parties to secure a written decision from the master after a fair and full review of the parties' respective positions, with either party thereafter having the right within ten (10) calendar days to appeal such ruling to the Court which will promptly consider the matter *de novo*.

The responsibility of the Special Discovery Master subsidiary to these areas of his authority shall be 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;

(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 a report every thirty (30) days on the progress of the 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 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 \$450 per hour, and for all costs related to his duties as a Master from the parties' assets, subject to Court approval. The parties understand and agree that the Special Discovery Master may, at his discretion, involve the services of Andrew A. Chirls, Esquire to assist him in his role as Special Discovery Master. Mr. Chirls would also be compensated at the rate of \$450 per hour.

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. Upon receipt and approval of such 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.

All decisions and recommendations, reports and applications for fees and costs should be served on the PSC and the defendants' liaison counsel at the time they are filed with the Court.

In those instances where a ruling made by the Special Discovery Master is accepted by the parties, he shall confirm the same by letter to the PSC and affected liaison counsel (but not to the Court) if a party requests such a written confirmation. All rulings made by the Special Discovery Master on disputes that are not accepted by any affected party shall be prepared by the Special Discovery Master as a "Decision and Recommendation" sequentially numbered beginning with the first such determination and recommendation. It shall be served upon the PSC, the defendants' liaison counsel affected by the order, and the Court.

The parties seeking to prevent the decision and recommendation from taking effect shall have ten (10) calendar days from the date it is filed with the Court to appeal in the form of a motion with the Court, accompanied by a copy of the decision and recommendation attached thereto. The motion should set forth the relief requested. If no appeal is filed with the Clerk within the ten (10) day period, the decision and recommendation will be deemed to be accepted

by all parties, and the Court will enter an order accordingly.

The Court has considered the Affidavit of Jerome J. Shestack, Esquire, supplied pursuant to Federal Rule of Civil Procedure 53(b)(3) (*see* copy of Affidavit of Mr. Shestack, attached), and believes that Mr. Shestack 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:

/s/ Cynthia M. Rufe

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**CYNTHIA M. RUFÉ, J.**