

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

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In re: AVANDIA MARKETING, SALES	:	AVANDIA MDL 1871
PRACTICES AND PRODUCTS LIABILITY	:	2007-MD-1871
LITIGATION	:	
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	:	
THIS DOCUMENT RELATES TO	:	HON. CYNTHIA M. RUFÉ
ALL ACTIONS	:	
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PRETRIAL ORDER NUMBER 155

AND NOW, this 29th day of February 2012, upon review of Defendant’s Motion for a Lone Pine II Order [Doc. No. 1556], Plaintiffs’ Responses thereto [Doc. Nos. 1626 and 1636], Defendant’s Supplemental Memorandum [Doc. No. 1711],¹ and the Plaintiff’s Steering Committee’s response to the Supplemental Memorandum [Doc. No. 1764], and finding that case-specific expert reports are necessary at this stage in the litigation,² and in order that the Court may: 1) set a schedule for the filing of motions for summary judgment; 2) proceed efficiently with a series of bellwether trials; and 3) remand transferred cases to their sending courts for timely resolution, the Court **GRANTS** Defendant’s Motion for a Lone Pine II Order, as modified by its Supplemental Memorandum.³ Accordingly, the Court hereby **ORDERS** as follows:

¹ Submitted after oral argument on the Motion for Lone Pine II.

² The parties have engaged in extensive fact discovery and exchanged general expert reports and rebuttal reports on Avandia-related myocardial infarctions and heart attacks. The Court has resolved numerous Daubert motions regarding these expert reports. In addition, thousands of claimants have settled their claims. This Court is now prepared to schedule the one-hundred oldest myocardial infarction or heart attack cases in the MDL for trial, and other such cases may be the subject of motions for summary judgment.

³ “Lone Pine orders are designed to handle the complex issues and potential burdens of defendants and the courts in mass tort litigation. In the federal courts, such orders are issued under the wide discretion afforded district judges over the management of discovery under Fed. R. Civ. P. 16.” Acuna v. Brown & Root, Inc., 200 F.3d 335, 340 (5th Cir. 2000).

1. Applicability of this Order

- a. This Order is applicable to all currently filed cases alleging that the plaintiff experienced an Avandia-related injury of myocardial infarction or heart attack, whether the case was directly filed with, transferred to, or removed to this Court;
- b. This Order also applies to all cases which are filed originally in, transferred to, or removed to this Court and assigned to MDL 1871 on or after the date of this Order, that allege that the plaintiff experienced an Avandia-related injury of myocardial infarction or heart attack.

2. PTO 121 is VACATED as to plaintiffs whose alleged Avandia-related injury is myocardial infarction or heart attack.

3. Provision of Rule 26 Expert Report

In addition to the existing pre-trial disclosure obligations required by PTO 7, PTO 50, and PTO 86, each plaintiff with a filed claim, including each personal representative of an estate of any deceased or incompetent user of Avandia shall, within the time limits set forth below, serve upon counsel for Defendant case-specific expert report which complies with the requirements of Federal Rule of Civil Procedure 26(a)(2), signed and sworn by a licensed physician, and medical records in support thereof (“Rule 26 Report and Documents”).

4. Content of Case-Specific Expert Report

Each Rule 26 Report shall include:

- a. The plaintiff's name, address, and date of birth;
- b. The name, complete professional address, license number, and curriculum vitae of the expert;
- c. The name, professional address, and license number of any physician(s) who prescribed Avandia to the plaintiff or treated plaintiff for the specified, alleged Avandia-related injuries;
- d. The dates on which the plaintiff used Avandia, along with copies of records relied upon as evidence of use;
- e. A determination that the plaintiff suffered myocardial infarction or heart attack during or after cessation of Avandia usage; the expert shall support his or her determination that such an injury occurred by listing the records reviewed and providing copies of the records relied upon;
- f. The dates of onset of the Avandia-related injuries, the dates of the records that document onset of the injuries, and copies of those records;
- g. The expert's opinion that, to a reasonable degree of medical certainty, each myocardial infarction or heart attack was caused by the plaintiff's ingestion of Avandia, along with the basis and reasons for holding that opinion and copies of records relied upon;
and

- e. All grounds for opinions expressed by the expert and any supporting documents.

5. Schedule for Serving Case-Specific Rule 26 Expert Reports^{4,5}

- a. All plaintiffs subject to and filing on or after the date of this Order are required to produce the Rule 26 Report and Documents within 120 days of the filing date;
- b. For cases filed on or after January 1, 2012, each plaintiff's Rule 26 Report and Documents shall be produced no later than 60 days after the Plaintiff's Fact Sheet is due;
- c. For cases filed before January 1, 2012, plaintiffs' Rule 26 Reports and Documents shall be filed within 60 days of the date of this Order;
- d. Any attorney with more than 30 cases in his or her inventory may request an extension of time for production of Rule 26 Reports and Documents, but such extensions will not be granted unless counsel has produced, or can certify that he or she will produce, expert reports for the oldest 30 cases in their inventories within the time frames set forth in 5(a),(b) and (c) above; extensions will generally be granted on a rolling-deadlines basis, and will terminate if intermediate deadlines are not met;

⁴ The Court will schedule bellwether trials and set a schedule for pre-trial submissions by separate Order. Cases scheduled for trial may be subject to earlier deadlines for filing case-specific expert reports.

⁵ The schedule for filing Defendant's rebuttal expert reports will be set by separate order.

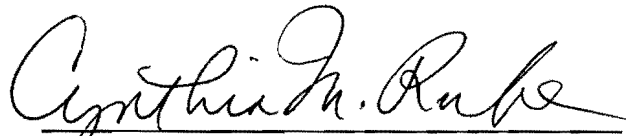
- e. Any request for an extension of time, whether pursuant to 5(d) above, or for other good cause shown, shall be made in writing and submitted to Special Master Bruce Merenstein, with copies to counsel for Defendant, at least 14 days prior to the deadline for submission of a report.

6. Dismissal of Plaintiffs Who Fail to Provide Required Rule 26 Reports

If any plaintiff fails to timely provide the required Rule 26 Report and Documents, Defendant may send a Notice of Deficiency to the plaintiff's attorney. The deficiency letter shall state that the plaintiff has 14 days to cure the deficiency, and that Defendant will move for dismissal of the plaintiff's claims if the deficiency is not cured. On Defendant's motion and after full briefing, the Court may then dismiss the plaintiff's claims.

IT IS SO ORDERED.

BY THE COURT:


Cynthia M. Rufe, J.