

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

IN RE: ABILIFY (ARIPIPRAZOLE)
PRODUCTS LIABILITY
LITIGATION

Case No. 3:16-md-2734

Chief Judge M. Casey Rodgers
Magistrate Judge Gary Jones

This Document Relates to All Cases

CASE MANAGEMENT ORDER NO. 6

The Court held the Sixth Case Management Conference in this matter on May 25, 2017. This Order serves as a non-exhaustive recitation of the key points of discussion between the Court and counsel at the conference.

I. GENERAL CAUSATION

The general causation hearing remains scheduled for July 31, August 1, and August 2, 2017. The parties will present opening statements and closing arguments. The parties continue to confer regarding a structure for the hearing, including time limits, and will submit a proposed schedule by July 19, 2017.

The scope of general causation and the data relevant to that determination remain in dispute. The Court will consider any challenge to Dr. Etminan's study in the context of a *Daubert* challenge. Additionally, the parties continue to disagree on the relevant scope of general causation, more specifically the extent to which the Defendants' internal documents and communications are relevant to the Court's

consideration of general causation. The parties are directed to file simultaneous briefs on this issue by June 19, 2017.

The parties also disagree as to expert challenges at the general causation stage. Plaintiffs argue that all of the identified experts, both Plaintiffs' and Defendants', should be subject to challenge. Defendants argue that their experts will only respond to Plaintiffs' experts and thus should not be the subject of challenge. While Defendants' experts may have only been retained to respond to Plaintiffs' experts, to the extent their opinions are presented to the Court for consideration, Plaintiffs will be entitled to challenge them.

The parties should file individual *Daubert* motions for each expert, with the caveat that the basic recitation of *Daubert* law should not be repeated in each motion. The parties should submit a separate brief addressing the general law applicable to all experts.

II. Trial Pool Cases

Plaintiffs dismissed with prejudice two cases that were previously part of the trial pool: *Eckert v. Bristol-Myers Squibb Company, et al.*, 3:16cv536, and *Locklear v. Bristol-Myers Squibb Company, et al.*, 3:16cv341. The Court substituted into the trial pool *Marshal v. Bristol-Myers Squibb Company, et al.*, 3:17cv172, and *Lilly v. Bristol-Myers Squibb*, 3:17cv186. Defendants Fact Sheets are due on June 23, 2017

in the *Lilly* case and within forty-five (45) of the receipt of the Plaintiffs' Fact Sheet in the *Marshal* case.

Because there has already been turnover in the trial pool, the parties should begin vetting additional cases for the trial pool in the event that any of the current cases are dismissed. This includes discussing the possibility of *Lexicon* waivers for cases where venue would not otherwise be proper in the Northern District of Florida.

There was some confusion over the scheduling of the trials for these pool cases. The Court's intention is to try the cases back to back, including possibly selecting multiple juries at the outset.

III. Remaining Issues

Jake Woody from BrownGreer presented on the census of the currently filed Plaintiffs' Profile Forms.¹ This presentation was informative and the Court appreciates Mr. Woody's effort. By June 19, 2017, the parties should jointly inform the Court how frequently they believe Mr. Woody should make presentations on this data (e.g., every Case Management Conference, every other Case Management Conference, only on specific request, etc.).

¹ In connection with this presentation, counsel for Bristol-Myers Squibb raised a question about the number of Plaintiffs who have not alleged gambling as an injury. Looking only at filed cases, as of the date of the case management conference, 40 cases do not allege any specific compulsive behavior. Of the 166 cases for which the data is available, only two Plaintiffs alleged compulsive behaviors other than gambling. See *Kathy L. Burton, as power of attorney for Keith A. Foster v. Bristol-Myers Squibb Co., et al.*, 3:17cv238-MCR/GRJ, ECF No. 1 (hypersexuality and compulsive eating); *D'Angelo Loyd, et al. v. Bristol-Myers Squibb Co., et al.*, 3:17cv317-MCR/GRJ, ECF No. 1 (compulsive spending).

The next Case Management Conference is scheduled for June 30, 2017. For this and all future conferences, the pre-conference meeting will remain scheduled for 8:30 a.m. (CT), but the conference will now begin at 9:30 a.m. (CT). In the Joint Agenda, Plaintiffs should inform the Court whether they intend for attorney Tara Sutton to become a regular participant in the pre-conference meetings. The undersigned has no objection to Ms. Sutton attending.

DONE and **ORDERED** on this 6th day of June, 2017.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE