

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

IN RE: ABILIFY (ARIPRAZOLE)
PRODUCTS LIABILITY
LITIGATION

Case No. 3:16-md-2734

Chief Judge M. Casey Rodgers
Magistrate Judge Gary Jones

This Document Relates to All Cases

DISCOVERY CONFERENCE ORDER NO. 2

The Court held a discovery conference call on December 2, 2016. Attending by phone were attorneys Kristian Rasmussen, Gary Wilson, Bryan Aylstock, Troy Rafferty, Munir Meghjee, Megan McKenzie, and Julie Reynolds for Plaintiffs, attorneys Matthew Eisenstein, Larry Hill, Anand Agneshwar, and Lauren Colton for Bristol-Myers Squibb, and attorneys Matthew Campbell and Luke Connelly for Otsuka Pharmaceutical Co. and Otsuka America Pharmaceutical, Inc. (collectively “the Otsuka Defendants”). This Order serves to memorialize the key topics of discussion during the call, including any agreements of counsel and orders of the Court.

Master and Short Form Complaints

The Master Complaint states that “Plaintiffs reserve the right to amend this Master Complaint based upon newly discovered evidence.” ECF No. 125, at 1.

Consistent with the parties' agreement, any such amendment must have either the Defendants' consent or leave of Court.

The Order on Procedures for Direct Filing and Master Pleadings required the Defendants to respond to the Master Complaint within 60 days of the Court approving and adopting it, which occurred on November 30, 2016. The parties clarified that the filing of motions to dismiss the individual Short Form Complaints (i.e., motions based on personal jurisdiction or home forum statutes) is governed by the Federal Rules of Civil Procedure. The Plaintiffs assured the Court that the 120 day deadline for filing the Short Form Complaints by existing Abilify Plaintiffs will not interfere with the timely completion of Plaintiffs' Profile Form. Additionally, now that the Master Complaint, Short Form Complaints, and Direct Filing Order are in place, the Court strongly encourages counsel to not unnecessarily delay in filing any additional Abilify actions, given the present management approach, which will have to be modified if a substantial number of new cases are not added to the MDL, either by direct filing or transfer by the JPML, by the end of January.¹

Data Management Firm and Plaintiffs' Profile Forms

Both sides have been in contact with the data management firm, BrownGreer PLC. Plaintiffs have received a written proposal, and Defendants have a meeting

¹ One of the primary purposes of the MDL procedure of pretrial consolidations is to conserve the time and resources of the parties. Retaining BrownGreer, establishing discovery pools, and conducting bellwether trials with barely more than fifty cases would run counter these purposes.

with BrownGreer scheduled for January 4, 2017.² Regardless of the data management firm ultimately retained, the parties agree that it would be helpful for the firm to present a tutorial at the February 22, 2017, Case Management Conference, even if no data has been collected at that point. The Court agrees.

The parties believe they can have Plaintiffs' Profile Form completed by December 16, 2017. After hearing from the parties, however, the Court finds value in waiting to finalize these forms until after the data management firm is retained and the firm has had an opportunity for input on the Profile Form. Therefore, the deadline to retain a data management firm is set for January 11, 2017. The deadline to finalize Plaintiffs' Profile Form and submit it to the Court for approval is January 18, 2017.³

Discovery

Plaintiffs raised a concern regarding Defendant's production of core discovery. Specifically, Plaintiffs are concerned with the piecemeal production of the New Drug Application. Counsel for the Otsuka Defendants represented that these documents are being produced in the manner they are kept in the ordinary course of business and that the delay is caused by the need to redact from the production the protected identifying information of patients, but that they are willing to work

² Defendants have not yet received a written proposal from BrownGreer. For clarity, Discovery Conference Order No. 1 was merely intended to reflect that none of the parties object to the use of BrownGreer, and was not an indication that the parties had finalized an agreement to use the firm.

³ Of course, these deadlines do not preclude the parties from moving more quickly to finalize the Plaintiffs' Profile Form.

towards a solution for a more efficient production. The parties are instructed to confer this week on a solution and notify the Court promptly if it can be of assistance in solving the issue.

Remaining Issues

The Defendants indicated that they are not considering a tolling agreement at this time given the present uncertainty regarding the number of potential claims.

The parties stated that they are working towards an agreement on the procedures that should govern the production of Electronically Stored Information (“ESI”). The Court intends to ask Magistrate Judge Jones to work with the forthcoming Joint Discovery Committee to develop an ESI Order.

Next Conference Call

The next Discovery Conference Call will be held on January 11, 2017 at 12:30pm. In the meantime, the parties are welcome to contact the undersigned to schedule an earlier conference call, should the need arise.

DONE and ORDERED on this 6th day of December, 2016.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE