

**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

CASE MANAGEMENT ORDER NO. 5

The Court held Fifth Case Management Conference in this matter on March 5, 2017. This Order serves as a non-exhaustive recitation of the key points of discussion between the Court and counsel at the conference.

I. DOCUMENT PRODUCTION

The parties are continuing to work to resolve outstanding document production issues. Defendants have produced to Plaintiffs, in some format, 80% of all clinical safety and efficacy trials. The parties are working toward an agreement to lock the universe of data that both sides may rely on for general causation.

All of the XML format adverse event database files produced to Plaintiffs were corrupted or otherwise unusable. In the event these issues cannot be resolved, a discovery conference call is scheduled for May 10, 2017 at 3:00 p.m. (CDT). The Agenda for this call should be submitted to the Court by close of business on May 9, 2017.

II. DEPOSITIONS

The depositions of two former Bristol-Myers Squibb (“BMS”) employees, Remy Cahn and Rachpal Malhotra, remain to be scheduled. Mr. Cahn currently resides in France, and BMS has agreed to bring him to the United States for the purpose of this deposition. Mr. Malhotra is currently employed elsewhere and has requested compensation for his preparation and sitting for the deposition. Plaintiffs do not object to Mr. Malhotra being compensated. Mr. Malhotra may be compensated by Defendants for his deposition in the MDL.

Multiple disputes have arisen regarding the deposition of Dr. Mahyar Etminan, author of a study that addresses Abilify and compulsive gambling behaviors. Defendants would like to question Dr. Etminan regarding communications with Plaintiffs’ counsel prior to the time his study was published on December 8, 2016. Plaintiffs claim that these communications are privileged under the work product doctrine as mental impressions of Plaintiffs’ counsel. Plaintiffs’ retained Dr. Etminan as a consulting expert in February of 2017 and concede no attorney-client relationship has been established. In order to dispel any sense of impropriety, Co-Lead Counsel for Plaintiffs Gary Wilson requested the Court review in camera emails between himself and Dr. Etminan, which the Court agreed to do.

Plaintiffs counsel also indicated that they intend to reach out to Dr. Etminan and offer to represent him at the deposition. The parties must brief both the scope of questioning, in light of potential work product, and attorney-client privilege issues by close of business on May 9, 2017.

III. Trial Pool Cases

The parties intend to dismiss with prejudice two cases currently 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. In light of this, the Court will substitute into the trial pool two cases filed after the trial pool was defined that list the Northern District of Florida as the appropriate home venue: *Marshal v. Bristol-Myers Squibb Company, et al.*, 3:17cv172, and *Lilly v. Bristol-Myers Squibb*, 3:17cv186. Both the Plaintiffs' Profile Form and the Plaintiffs' Fact Sheet with authorizations have been submitted for Lilly. Marshal has submitted the Plaintiffs' Profile Form and the Plaintiffs' Fact Sheets with authorizations are due by May 25, 2017.

DONE and **ORDERED** on this 9th day of May, 2017.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE