

**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

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**CASE MANAGEMENT ORDER NO. 7**

The Court held the Sixth Case Management Conference in this matter on June 30, 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 deadline to file *Daubert* motions was extended until July 3, 2017. The parties requested leave to file their motions and certain supporting exhibits under seal. Going forward, the Court will grant leave to file such documents under seal provisionally. The Court will then set a briefing schedule for the party with the interest in sealing the documents to file a detailed motion to seal with adequate support particularized to each document for which sealing is requested. The parties were granted until July 7, 2017 to file redacted versions of their motions. Additionally, the parties were ordered to provide the Court with courtesy copies of

their unredated motions and supporting documents.<sup>1</sup> 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 parties argued their briefs regarding the proper scope of general causation. Defendants assert that Plaintiffs' experts relied on evidence that is not appropriately considered at the *Daubert* phase. At the outset Defendants were challenging, as they defined it, two categories of documents: "(1) statements purporting to show Defendants' knowledge, conduct, or admissions; and (2) actions of Government regulators." ECF No. 403, at 2. Defendants have agreed to drop their challenge to the second category. Within the first category, there are essentially three subcategories: final versions of Defendants' internal reports, statements by Plaintiffs' experts as to Defendants' knowledge, motive, or intent, and statements of Defendants' personnel contained in emails and draft reports.

Defendants also agreed to forgo their challenge to the first subcategory, final versions of internal reports, such as Signal reports. With respect to the second subcategory, at this stage, statements regarding Defendants' knowledge, motive, and intent are irrelevant. Plaintiffs' did not object to this finding at the hearing.

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<sup>1</sup> Such courtesy copies should be provided in the future for any filing exceeding 50 pages, including exhibits.

Finally, this leaves the statements in emails and draft reports. Plaintiffs' experts have already relied on statements in these documents to prepare their expert reports—not alone—but as part of the constellation of materials they relied on including published materials, adverse event reports, and other such data. At the *Daubert* stage, the question is whether the methodology relied on by these experts is reliable and consistent with the scientific standards recognized in the field. *See McClain v. Metabolife Intern. Inc.*, 401 F.3d 1233, 1237 (11th Cir. 2005). Without hearing the expert testimony, the Court does not know how these documents factored into the expert's opinions, why the expert decided that these materials were reliable, and with what sort of rigor the expert evaluated the documents. The Court also has heard no testimony regarding the standards in the relevant scientific community with respect to considering statements in emails and draft reports. At this stage the Court only has the arguments of the attorneys along with the exhibits they provided, which lack a certain amount of context, and the case law in order to make a determination. Defendants have not cited any case for the proposition that there is no circumstance in which an expert can rely on emails or draft reports for his opinion. Although some courts have limited the weight of this evidence, it was only after having the benefit of a *Daubert* challenge. *See, e.g., In re Mirena IUD Products Liab. Litig.*, 202 F.Supp.3d 304 (S.D.N.Y. 2016) (addressing the utility of purported "admissions" in determining general causation in the context of a summary judgment motion after

the Court had excluded Plaintiff's experts under *Daubert*); *In re Lipitor Mktg., Sales Practices & Prod. Liab. Litig.*, No. 2:14mn-2502, 2017 WL 87067 (D.S.C. Jan. 3, 2017) (same).

Therefore, Plaintiffs' experts will be permitted to testify regarding the emails and draft reports, with the following caveat. Any statements that a causal association between aripiprazole and impulse control disorders is "possible" or that the data "suggest" a causal association are so attenuated as to be irrelevant to the consideration here. On the other hand, statements that causation is "probable" or cannot be "ruled out" or that data is "highly suggestive" of causation are relevant. Plaintiffs' experts will be allowed to testify regarding statements of this nature, including the "white washing" comment by Dr. Stein.

This does not constitute a finding about the weight that will be given to these documents with the benefit of a *Daubert* hearing. Defendants, of course, are entitled to challenge the experts' use of this material.

Finally, should any party decide it does not need to present a given expert witness at this stage that will not constitute a waiver of the witness for purposes of trial.

## **II. Employment Records**

Defendants raised an issue regarding Plaintiff Lyons's failure to provide an authorization for the release of her employment records. Plaintiffs argue that the

employment records need not be produced in this case due to privacy concerns. Defendants should file a motion to compel these records by July 14, 2017. In return, Plaintiffs' would like to discover the employment records of Defendants' sales representatives, but have yet to propound a formal discovery request. This matter may be raised again at the appropriate time, if necessary after the formal discovery request process is completed.

### **III. Discovery from Dr. Blier**

Plaintiffs have requested information from Defendants' expert witness, Dr. Pierre Blier, regarding contracts or agreements with Defendants, if any. Defendants must provide this information to Plaintiffs by July 7, 2017. If, for any reason, Defendants cannot provide the information by that time, they should inform the Court promptly. Additionally, if Plaintiffs' have any objections with regards to Defendants' production, they should inform the Court by July 10, 2017.

### **IV. Future Conferences**

The next Case Management Conference is scheduled for July 31, 2017 in conjunction with the *Daubert* hearing. The Court proposes to hold future case management conferences on September 29, 2017 and October 27, 2017.<sup>2</sup> If there are scheduling conflicts with these dates, the parties should inform the Court by July

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<sup>2</sup> Due to scheduling conflicts, the August case management conference will be scheduled by separate order.

10, 2017. Both Tara Sutton and Matthew Eisenstein are authorized to attend the pre-conference meetings in the future. Additionally, the Court adopts the parties' proposal that Jake Woody from BrownGreer present at the September Case Management Conference and then every three months thereafter.

A settlement conference is currently scheduled for August 3, 2017. Both Settlement Master Cathy Yanni and the undersigned believe that it would be helpful to have settlement conferences after the monthly case management conferences going forward.

**DONE** and **ORDERED** on this 30th day of June, 2017.

*M. Casey Rodgers*

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**M. CASEY RODGERS**

**CHIEF UNITED STATES DISTRICT JUDGE**