

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

IN RE: ABILIFY (ARIPIPRAZOLE)
PRODUCTS LIABILITY LITIGATION

Case No. 3:16md2734

Chief Judge M. Casey Rodgers
Magistrate Judge Gary Jones

This Document Relates to All Cases

CASE MANAGEMENT ORDER NO. 13

The Court held the Thirteenth Case Management Conference in this matter on March 19, 2018. This Order serves as a non-exhaustive recitation of the key points of discussion during the conference.

I. Second Discovery & Trial Pool

The second discovery pool will be selected in one of two ways, depending on whether Defendants submit written *Lexecon* waivers. Defendants must notify the Court of their decision on this issue by **Friday, March 23, 2018**.

If Defendants do not waive *Lexecon*, the Court will select, from the entire MDL, all cases that are properly venued in California and Florida, in which Abilify was taken for major depressive disorder or bipolar disorder, and gambling was an alleged injury. From this pool, 40 cases will be randomly selected to proceed with the next step in the discovery process.

If Defendants waive *Lexecon*, then 100 cases will be randomly selected from the entire MDL. From these 100 cases, all cases will be pulled in which Abilify was

taken for major depressive disorder or bipolar disorder, and gambling was an alleged injury. From this pool, 40 cases will be randomly selected to proceed with the next step in the discovery process. Additionally, at this point, Plaintiffs will be required to advise the Court as to whether *Lexecon* will be waived for each of the 40 cases. Any individual case in which Plaintiffs do not waive *Lexecon* will be removed from the second discovery pool and replaced with another randomly selected case.

Regardless of whether Defendants waive *Lexecon*, once the pool has been narrowed to 40 cases, selection of the cases for discovery and trial will proceed as follows. First, each side will strike five cases, taking the total pool down to 30 cases. Then, there will be limited document discovery with respect to these 30 plaintiffs (*i.e.*, facts sheets, records authorizations, production of relevant medical and financial records), after which, if necessary, each side will strike an additional five cases, taking the total second discovery pool down to 20 cases. Next, complete discovery will proceed on these 20 cases. After discovery, each side will select five cases for trial, for a total of 10 cases in the second trial pool. Importantly, if any of these 10 cases must be removed from the second trial pool, then the Court will randomly select a replacement from the remaining cases in the second discovery pool. The Court is continuing to consider the possibility of consolidating five cases for trial and trying five cases individually, for a total of six trials.

II. Bellwether Mediation

The parties previously were directed by Judge DeLuca, in the New Jersey litigation, to advise him and Cathy Yanni, the settlement master, of their position on bellwether mediation by **Friday, March 23, 2018**. The parties also must notify the undersigned of their position on the issue by that same date.

III. Dr. Timothy W. Fong

The Court reserved ruling on the question of whether Dr. Timothy W. Fong's prior interactions with Plaintiffs' counsel created a conflict that disqualifies him from serving as an expert for Defendants in this case. Plaintiffs were directed to submit to the Court, *in camera*, all documentation supporting their representations of having entered into a confidential relationship with Dr. Fong, including affidavits from counsel as to the nature and extent of their discussions with Dr. Fong, as well as any confidential information they disclosed to him. On review of these materials, the Court will either rule on Defendants' request to retain to Dr. Fong or set an evidentiary hearing on the matter. Plaintiffs' *in camera* submission is due by **Monday, March 26, 2018**.

IV. Lyons Errata Sheet

Defendants object to seven entries in Darryl Lyons' errata sheet, on the ground that the entries propose "substantive changes" that materially alter Mr. Lyons' deposition testimony. *See* ECF No. 793 at 7-8. The parties were directed to submit

written briefs on the issue of whether Rule 30(e) allows for material, substantive changes to deposition testimony through an errata sheet. The written briefs, which must be accompanied by a copy of Mr. Lyons' deposition transcript, are due by **Monday, March 26, 2018.**

V. Defendant Otsuka Pharmaceutical Co., Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction

Defendant Otsuka Pharmaceutical Co., Ltd. indicated that it intends to reassert its previously withdrawn motion to dismiss for lack of personal jurisdiction. The Court directed that the motion be filed by **Friday, March 30, 2018.** Plaintiffs' response is due 14 days from the date Otsuka Pharmaceutical Co., Ltd.'s motion is filed.

VI. Common Benefit Fund Order

Plaintiffs submitted proposed Common Benefit Fund Order No. 4 on March 12, 2018. Defendants must notify the Court of any objections to the proposed order, and in particular, to their obligations as imposed in the order, by **Monday, March 26, 2018.**

VII. Motion for Sanctions, ECF No. 732

On oral motion by Plaintiffs, their Motion and Supporting Memorandum for an Additional Day of Deposition of Berit Carlson, for Sanctions and Other Relief Against Defendant Bristol-Myers Squibb, ECF No. 732, was withdrawn. Plaintiffs'

motion for leave to file under seal certain documents related to this motion for sanctions, ECF No. 731, is denied as moot.

VIII. Pretrial Schedule

The parties requested that the deadlines for expert-related motions be revised to allow for a staggered briefing schedule, based on the case or cases in which a particular expert's opinion is being offered. The Court is open to this approach, but has reserved ruling on the issue. The parties were directed to submit to the Court, separately and *in camera*, an outline of their respective liability experts, including those on specific causation. The outlines should state each expert's name and discipline, and also clearly identify the case or cases in which each expert's opinion is being offered. The outlines must be submitted by **close of business on Wednesday, March 21, 2018**. The parties were also directed to jointly submit a proposed expert disclosure, briefing, and hearing schedule for the second and third trial pool cases, which should allow time for the Court to resolve any related *Daubert* and dispositive motions before each individual trial.¹ The parties' joint proposed schedule is due by **Friday, March 30, 2018**.

¹ The expert disclosure, briefing, and hearing schedule for the *Lyons* trial has already been set and will not change. Any challenges to common experts must be raised in accordance with those deadlines.

IX. General Liability Discovery (including Rexulti)

With respect to the current trial pool cases, general liability discovery is essentially closed. Except as otherwise ordered by Judge Jones or the undersigned, no additional discovery will be permitted on general liability in those three cases. The Court reserves ruling on the scope of discovery for the second pool of cases. The second pool of cases will not be permitted a wholesale reopening of discovery into general liability issues, such as a general causation. However, the Court may allow limited discovery into discrete general liability issues, such as the relevance of Otsuka's recent voluntary label change for Brexpiprazole, also known as Rexulti, to general causation in this MDL. The parties were directed to submit briefing on their position as to limited discovery into Rexulti. The briefs are due within **30 days** of the date of this Order.

X. Defendants' Production of Non-ESI

Defendants were previously directed to review hard copy records stored at Iron Mountain to determine if any hard copy documents responsive to Plaintiffs' document requests are there and to amend their certification as to production for each custodian to reflect the results of this search. Defendant BMS now represents that it has performed the requisite searches with respect to all domestic custodians and/or deponents, as well as their administrative assistants, and have produced all hard copy documents for this group, including those related to Dr. Berit Carlson.

Defendant BMS is still finalizing its search with respect to international custodians and their administrative assistants. The Court directed BMS to submit a detailed outline of the steps taken in its search of the hard copy records stored at Iron Mountain, including a description of materials that have been produced and/or a statement about which records do not exist, and also to file any outstanding amended certifications, by the March 22, 2018 deadline set by Judge Jones. Defendant Otsuka represented that it too will file an outline and amended certification with respect to its searches at Iron Mountain by March 22, 2018.

XI. Redactions

Plaintiffs assert that BMS has improperly redacted numerous relevant documents during the course of discovery, the most recent instance being the improper redaction of documents produced in connection with the 30(b)(6) deposition of BMS's corporate integrity agreement witness, and has failed to timely produce redaction logs in accordance with the protective order in this case. *See* ECF No. 185 at 17. BMS agreed to timely produce all outstanding redaction logs and, going forward, to comply with its redaction log obligations in a timely manner. The Court notes that Otsuka already has been timely producing redaction logs as a matter of course.

XII. Case Management Conference No. 14

At Mr. Agneshwar's request, the Court is looking into the possibility of rescheduling the next case management conference from April 19, 2018 to April 18, 2018. The Court will advise the parties of whether the request can be accommodated as soon as possible.

DONE and ORDERED, on this 20th day of March, 2018.

M. Casey Rodgers

M. CASEY RODGERS
CHIEF UNITED STATES DISTRICT JUDGE