

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**In re:** :  
: **MDL Docket No. 4:03CV1507 WRW**  
**PREMPRO PRODUCTS LIABILITY** :  
**LITIGATION** : **ALL CASES**  
:

**JOINT STATUS REPORT RE DISCOVERY**

Pursuant to the Court's January 27, 2009 Discovery Plan Order,<sup>1</sup> the Plaintiffs' Steering Committee ("PSC") and Wyeth have engaged in a series of discussions to determine the scope of the generic discovery that remains to be taken prior to the September 1, 2009 presumptive discovery cut-off date. As a result of these discussions, the parties have reached agreement on the vast majority of the discovery sought by plaintiffs. This discovery includes: depositions of current and former Wyeth employees on generic issues, the production of certain custodial files, the production of certain financial information, the production of certain regulatory files, the use of certain additional search terms, and the production of documents on several other issues. The parties have also agreed to a proposed modification of PPO 9 with respect to depositions of treating physicians and sales representatives and to proposed procedures regarding discovery in non-breast cancer cases.

These agreements are described below. Issues that need to be resolved during the March 20 telephone conference are set forth at the end of this report.

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<sup>1</sup> Discovery Plan Order (Jan. 27, 2009) [Doc. No. 1952].

## **AGREEMENTS**

### **Depositions on Generic Issues**

Plaintiffs and Wyeth have agreed that the following current and former Wyeth employees will be presented for deposition:

- Rick Winneker. Dr. Winneker is a former Wyeth employee. His title was Assistant Vice President, Endocrinology & Reproductive Disorders. Dr. Winneker's deposition is scheduled for March 31 and April 1.
- David Colasante. Dr. Colasante is a former employee. His title was Director, Clinical Development.
- Don Lewis. Mr. Lewis is the current Wyeth employee responsible for regulatory communications regarding the Premarin Family of Products.
- Corrado Altomare. Dr. Altomare is a current employee. His current title is Director of Clinical Affairs.
- Michael Blum. Dr. Blum is a current employee. His current title is Vice President of Medical Pharmacovigilance.
- Maureen Caulfield. Dr. Caulfield is a current employee. Her current title is Senior Vice President of Global Safety Surveillance Epidemiology & Labeling.
- Deponent(s) on Other Topics. Wyeth has agreed to look for and produce one or more deponents to testify about the following topics: (1) Wyeth's alleged project to develop a combination of human estradiol plus human progesterone at Rouses Point, and (2) Wyeth's alleged efforts to license Prometrium from Schering.

### **Custodial Files**

Wyeth has agreed to produce the up-to-date custodial files of Mr. Lewis and Drs. Altomare and Blum prior to their depositions. Wyeth will also produce certain documents in the possession of Dr. Colasante prior to his deposition. Wyeth has already produced the custodial files of Drs. Winneker and Caulfield but offered, at plaintiffs' discretion, to update those custodial files. Plaintiffs have elected to forego updating the Winneker custodial file, but have

asked for an update of the Caulfield file. Plaintiffs understand that such an update will delay the deposition of Dr. Caulfield until after the documents are produced.

### **Search Terms**

For these collections and corresponding productions, Wyeth has agreed to use, in addition to the 19 original search terms, the following additional search terms: Prometrium, micronized, Totelle, TMG, Trimegestone, Fournier, Tilley, Horwitz, Stefanick, Beral, Chlebowski, and Foidart. In return, plaintiffs have agreed not to ask at this time for additional search terms going forward, or to ask for Wyeth to “re-search” any previously-produced files with the additional terms.

### **Financial Information**

In accordance with an order in Clark County, Nevada, Wyeth will produce certain financial records. Accordingly, the PSC has withdrawn their identical requests in the MDL.

### **Document Requests**

Wyeth has agreed to conduct searches for documents corresponding to the top priority requests as identified by the PSC:

- The “Rouses Point Project.” Wyeth will conduct a targeted search for additional documents related to this alleged project.
- Payments to Organizations. Wyeth will conduct a search for payments to the Council on Hormone Education, the University of Wisconsin, Julie Fagan, M.D., NAMS, Wolf Utian, ACOG and SOGC. This includes payments made directly by Wyeth or through Ketchum, DesignWrite or any other entity.
- IMS Data. Wyeth has previously produced IMS prescription data through mid-2007, but will update this production consistent with plaintiffs’ request.

- Sales Force Records. Wyeth will update its production of detail records<sup>2</sup> contained in the Salesworks database.

### **Document Depository**

Wyeth agrees to inform the PSC of any anticipated closures of the depository. Wyeth agrees that when it sends a cover letter describing a new deposit of documents, it will specify the full name of the person from whose file the documents are produced, and, to the extent possible, identify which specific discovery request the documents are responsive to. These letters shall be sent to Zoe Littlepage, cc'd to Mike Williams and Kelly Casey.

### **PPO 9 Discovery**

The parties propose that PPO 9 be modified to allow certain depositions to occur after the August 17, 2009 date identified by the Court in its Discovery Plan Order.<sup>3</sup> A copy of the proposed order agreed to by the parties will be emailed to the Mr. Morgan per the CM/ECF Administrative Policies and Procedures Manual, Section III(E).

Wyeth has encountered difficulty in obtaining updated authorizations in a number of PPO 9 cases. Wyeth will file a motion on this issue shortly. The PSC has agreed to assist Wyeth in obtaining these authorizations.

### **Non-Breast Cancer Cases**

Both Wyeth and the PSC have served initial discovery on non-breast cancer injuries and continue to meet and confer regarding this discovery.

The parties agree that generic discovery of experts on other injuries will be scheduled after September 1, 2009.

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<sup>2</sup> Detail records contain a listing of each detail by a particular sales representative on a particular health care provider regarding a specified product. The production of detail records will not include call notes.

<sup>3</sup> Discovery Plan Order at 2-3.

## **DISAGREEMENTS**

Despite reaching agreement on the vast majority of generic discovery issues, Wyeth and the PSC have been unable to do so regarding three issues.

### **Prempro Labeling File**

Plaintiffs request an update to the present of Wyeth's production of its Prempro labeling correspondence with the FDA. Wyeth objects to this further production based on the Court's April 22, 2008 order limiting Wyeth's obligation to produce such correspondence after 2007.<sup>4</sup>

### **Sales Force Call Notes**

The PSC requests the production of sales force call notes from September 2004 forward.<sup>5</sup> Wyeth objects to this further production based on the Court's August 2, 2007 Order, which denied plaintiffs' earlier motion to produce call notes after September 2004.<sup>6</sup>

### **Generic Discovery Going Forward**

The parties also disagree on the scope of generic discovery going forward. The PSC contends that discovery should be open-ended such that they be allowed to propound further discovery after the September 1, 2009 presumptive discovery cut-off.<sup>7</sup> The PSC also contends that Wyeth should automatically continue to update previously-produced certain files and

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<sup>4</sup> Order (April 22, 2008) at 1 [Doc. No. 1752].

<sup>5</sup> Sales force call notes were phased out in late-2005 to early-2006.

<sup>6</sup> Order (Aug. 2, 2007) at 1 [Doc. No. 1594].

<sup>7</sup> Plaintiffs have agreed for now not to seek depositions of about 15 additional current or former Wyeth employees, not to seek a Rule 30(b)(6) deposition now about Wyeth's search for alternatives to MPA to extend the Premarin Family franchise, and not to seek production of several categories of documents sought in the December 2009 discovery requests. Plaintiffs are not agreeing this discovery is not warranted. They are only agreeing to seek the limited discovery Wyeth has agreed to here, in the hope that much if not most of this additional discovery of historic events will turn out not to be necessary. Plaintiffs reserve the

materials on certain topics on an ongoing basis. Wyeth's position is that the production of the discovery discussed in this report and agreed to by the parties should presumptively end generic discovery, and that any generic discovery after the September 1, 2009 cut-off date ordered by the Court,<sup>8</sup> should be allowed only by permission of the Court, and only after a showing of compelling need by plaintiffs.

**Letters Re Disagreements**

Pursuant to emails from the Court's dated March 3 & 10, 2009, Wyeth and the PSC will file simultaneous letters discussing these disagreements by March 12, 2009, with simultaneous reply letters by 4:00 pm (CDT) on March 17, 2009. These letters will not exceed three pages in length.

Respectfully submitted,

/s/ Stephen L. Urbanczyk

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right to come back, after September 1, 2009, to Wyeth or the Court seeking additional discovery of historic events, if warranted, after completing the depositions agreed to here.

<sup>8</sup> Discovery Plan Order at 1.

Lyn P. Pruitt (Bar No. 84121)

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A handwritten signature in black ink, appearing to read "M. Williams", written over a horizontal line.

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Dated: March 10, 2009

**CERTIFICATE OF SERVICE**

I hereby certify that on this 10th day of March 2009 a true and correct copy of the foregoing Joint Status Report Re Discovery was electronically filed with the Clerk of Court using the CM/ECF system, and a true and correct copy was forwarded by e-mail to the parties listed on the attached Service List.

/s/ F. Lane Heard III

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