

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE PLAVIX® PRODUCT LIABILITY
AND MARKETING LITIGATION**

**Docket No. 13-CV-02418-FLW-TJB
ALL CASES**

~~PROPOSED~~ SECOND AMENDED MDL CASE MANAGEMENT ORDER No. 4

This Order shall apply to the MDL Plaintiffs listed on Exhibit A hereto, who were previously selected to be part of the Discovery Pool in these proceedings and who have complied with their initial discovery obligations. Except as further ordered by the Court, no further “replacement” Plaintiffs shall be selected in the event that Discovery Pool cases are dismissed.

1. FACT DISCOVERY. Depositions of Plaintiffs and non-prescribing treating doctors shall be completed by **September 15, 2016**. Depositions of prescribing doctors shall commence no earlier than **August 15, 2016**, and shall be completed by **December 29, 2016**. Plaintiffs shall use the period prior to the start of prescribing doctor depositions to review Defendants’ production so as to prepare for prescribing doctor depositions and company witness depositions. Depositions of all fact witnesses, including case-specific and company witnesses, shall be completed by **March 31, 2017**.¹

2. EXPERT DISCOVERY. Expert discovery in Trial Pool cases (as defined below) shall be completed as follows:

¹ Depositions of certain family members may only be necessary if Plaintiffs intend to call those witnesses at trial. Plaintiffs must disclose the names of any family members they intend to call at trial no later than 90 days before the trial date in any trial-set case and make such witnesses available for deposition no later than 30 days before trial.

- a. **August 15, 2016:** Deadline for Plaintiffs to serve expert reports for purposes of opposing learned intermediary summary judgment motions. Defendants reserve the right to argue that such expert testimony is not necessary to resolve the motions.
- b. **April 21, 2017:** Deadline for service of Plaintiffs' expert reports.
- c. **June 12, 2017:** Deadline for service of Defendants' expert reports.
- d. **August 17, 2017:** Deadline for completing depositions of expert witnesses. Depositions of any Plaintiffs' experts will not take place before service of all Defendants' expert reports.

3. **EARLY SUMMARY JUDGMENT.** Defendants have indicated that they may move for summary judgment in some or all Discovery Pool cases following depositions of prescribing doctors. To avoid unnecessary resources of the parties and the Court, this Order contemplates that disposition of early summary judgment motions will precede selection of cases for trial. The following processes shall facilitate disposition of those motions so as to determine which cases may be appropriate candidates for trial:

- a. The parties shall meet and confer at the completion of prescriber depositions on each individual case to assess whether that particular case is one that Plaintiffs will dismiss voluntarily based on such testimony or whether Defendants may concede the case is not suitable for early summary judgment.
- b. Defendants will move for summary judgment on a rolling basis following completion of prescriber depositions in those cases where prompt agreement cannot be reached and in which Defendants believe such a motion is warranted.

- c. The Parties have consented to a summary adjudication process, whereby, subject to Court approval, the Court can issue expedited rulings on summary judgment motions without opinion. Any party may request or the Court may choose to write a written opinion, but any case in which summary judgment is granted shall not be eligible for the Trial Pool irrespective of whether such an opinion is requested or written.

4. TRIAL SELECTION. Those Discovery Pool cases not disposed of on early dispositive motions pursuant to the procedure outlined above or dismissed on other grounds by **April 3, 2017** shall comprise the Trial Pool. The priority of trials among the Trial Pool cases shall be determined as follows:

- a. Each party will select the case it wishes to try earliest, with Defendants picking first and the selection then alternating between Plaintiffs and Defendants, until the order of trial priority for every Trial Pool case has been determined.
- b. Plaintiffs and Defendants shall then each be allotted one peremptory strike. The two sides shall simultaneously exchange the name of the case they wish to strike. Cases that are struck will be moved to the bottom of that side's priority list, and will be replaced in trial priority with the next highest priority case picked by the same side so that the alternating order of trial priority is maintained.
- c. Plaintiffs agree to waive the right to trial in the transferor district under *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998) so that all Trial Pool cases will be tried in the MDL.

- d. The first trial case will be Defendants' highest priority case after the strike process has occurred.
- e. If a Trial Pool Plaintiff's case is dismissed for any reason following completion of the selection process, then the next selected case will take its place in the order of cases to be tried, except that if a case selected by Defendants is voluntarily dismissed by Plaintiffs (or if Plaintiffs withdraw as counsel for such Plaintiff) then such case shall be replaced by the next case selected by Defendants rather than the next case selected by Plaintiffs.

5. **PRETRIAL AND TRIAL DATES.** The case selected as first pursuant to the process set forth above will be tried on **January 16th, 2018**. The parties will meet and confer concerning a schedule for further pretrial dates and shall present to the Court an agreed-upon schedule or any disagreements pertaining thereto no later than **April 21, 2017**.

It is so **ORDERED**.

BY THE COURT:

3/15/16



HON. FREDA L. WOLFSON

EXHIBIT A

**PLAVIX MKTG., SALES PRACTICES & PRODS. LIAB. LITIG., MDL No. 2418
SECOND AMENDED CMO 4 - EXHIBIT A**

No.	Plaintiff Name	Case No.	Firm
1	Asa Holcomb	3:14-cv-04637	Salim Beasley
2	Suzanne Wilson	3:14-cv-04637	Salim Beasley
3	Allen Cerritelli	3:14-cv-04637	Salim Beasley
4	James Burrow	3:13-cv-00991	Parker Waichman
5	William Hiltner	3:13-cv-04516	Napoli Shkolnik
6	James Montgomery	3:13-cv-04521	Napoli Shkolnik
7	Hattie Adams	3:14-cv-04637	Salim Beasley
8	Allan Stephenson	3:13-cv-04521	Napoli Shkolnik
9	Roger Hopkins	3:13-cv-04521	Bern Ripka
10	Candido Perez	3:13-cv-04516	Napoli Shkolnik
11	Jackie Gedeon	3:13-cv-04518	Bern Ripka
12	Karla Hawley	3:13-cv-02083	Salim Beasley/ Bisnar Chase
13	Robert Patt	3:13-cv-04518	Bern Ripka
14	Barbara Thorpe	3:13-cv-04518	Napoli Shkolnik
15	Thomas Beecher	3:13-cv-04519	Napoli Shkolnik
16	Bernard E. Milowitz	3:13-cv-4521	Bern Ripka
17	Wesley N. Byrd, Jr.	3:15-cv-00553	Salim Beasley
18	Maria Samudio	3:15-cv-01028	Salim Beasley
19	Houston E. Jackson, III	3:14-cv-04637	Salim Beasley
20	Consolation Shaffer	3:14-cv-04637	Salim Beasley (former counsel)
21	Anna Anderson	3:14-cv-04637	Salim Beasley (former counsel)
22	Kenneth Grove	3:14-cv-04637	Salim Beasley (former counsel)
23	Lynette Hawkins	3:14-cv-04637	Salim Beasley (former counsel)
24	Phyllis Oswiecinski	3:14-cv-04637	Salim Beasley (former counsel)