

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

JAMES L. VOGELSANG,

Plaintiff

-against-

Index No. 2:13-cv-00198-IPJ

Pfizer, Inc.

Defendant

*InRe: Chantix (Varenicline) Products
Liability Litigation*

Index No. MDL-2092

THIS DOCUMENT RELATES TO ALL CASES.

**OPPOSITION OF JAMES L. VOGELSANG TO DEFENDANT'S MOTION
TO AMEND PRETRIAL ORDER NO. 4, DKT. NO 713**

1. Plaintiff, James L. Vogelsang, opposes the Defendant's proposed amendment to Pretrial Order No. 4 to compel the production of "a Rule 26(a)(2) case-specific expert report containing proof of Chantix use, proof of injury, and an opinion as to specific causation" (the "Expert Report") within thirty (30) days of filing the complaint. Expert reports, particularly those related to causation in personal injury cases, are typically disclosed towards the end of the discovery period and after the parties have had a full and fair opportunity to adduce the relevant facts by deposition, interrogatories and document production. Defendant offers no compelling reason to alter this ordinary discovery process other than its own convenience and thinly disguised interest in discouraging further claims.

2. Plaintiff filed its case on January 29, 2013 and would have filed its action in federal district court in Texas in the absence of Pretrial Order No. 2. Docket No. 12. Future

Plaintiffs will likewise file any Chantix claims in this court so long as Pretrial Order No. 2 remains in effect.

3. Pretrial Order No. 2 states in paragraph 12 that “[p]ending further order of this Court, all deadlines, including those relating to pleading, discovery, initial disclosures, or trial, are stayed, and no discovery shall be initiated.” In lieu of discovery on a case by case basis, the court has authorized Plaintiff’s Lead Counsel to conduct discovery and obtain expert witness reports that are common to all the Chantix cases (the “Common Benefit Work Product”) and to be compensated for that work by the Common Benefit Fund. See Pretrial Order No. 7.

4. Any competent expert asked to prepare the Expert Report will want to review (and is entitled to review) the Common Benefit Work Product as well as any of Defendant’s documents or expert reports that may be case specific. It is simply absurd to require Plaintiff to deliver the Expert Report within thirty (30) days of filing of the complaint without having reviewed any Common Benefit Work Product and without discovery on Defendant or any third party.¹

5. Plaintiff therefore respectfully requests the motion be denied.

March 9, 2013

/s/ W. James Mac Naughton
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¹ Plaintiff has asked Plaintiff’s Lead Counsel for a description of the specific items of Common Benefit Work Product and the process of obtaining them. So far, there has been no response.