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DCORX

MASTER DOCKET NO. 2005-59499

IN RE: § IN THE DISTRICT COURT
TEXAS STATE VIOXX LITIGATION § HARRIS COUNTY, TEXAS
This Document Relates to All Cases § 157TH JUDICIAL DISTRICT

F I L E D
CHARLES BACARISSE
District Clerk
JUL 21 2006
By *[Signature]* Harris County, Texas
Deputy

CASE MANAGEMENT ORDER NO. 3

On September 6, 2005, the Multidistrict Litigation Panel (“The Panel”) transferred fifty (50) Texas Vioxx-related cases to this Court pursuant to Rule 13 of the Texas Rules of Judicial Administration (“TRJA”). Since then, a significant number of cases have been transferred under TRJA § 13.5(e) as “tag-along” cases.

On September 19, 2005, this Court issued a written case management order, CASE MANAGEMENT ORDER NO. 1, assigning a master docket number and caption to such cases.

On October 19, 2005, this Court issued a second written case management order, CASE MANAGEMENT ORDER NO. 2, in which, among other things, it set forth its intent to apply sound judicial management methods early, continuously and actively to set fair and firm time limits tailored to ensure the expeditious resolution of each case and the just and efficient conduct of the litigation as a whole.

On November 23, 2005, this Court issued a third pre-trial order, PRE-TRIAL ORDER NO. 3, which modified Paragraphs 28, 28(b)(1), 32, 33, and 33(a) of CASE MANAGEMENT ORDER NO. 2.

Having considered these prior orders, these principles and the agreements of the parties, the court enters this third case management order, CASE MANAGEMENT ORDER NO. 3 to assure the timely preparation of the transferred cases. All other Case Management Orders and PRE-TRIAL ORDER NO. 3 shall remain in full force and effect to the extent that they are consistent with this order. Therefore, IT IS HEREBY ORDERED:

1. DEFINITIONS

Terms used in this Order shall have the same meaning as such terms are defined in Case Management Order 2, which definitions are incorporated herein.

2. APPLICABILITY OF THIS ORDER

The terms of this CASE MANAGEMENT ORDER NO. 3 (“CMO No. 3”) shall not apply to the case currently set for trial in this Court in November 2006, (No. 2005-31016, *Sharon D. Rigby v. Merck & Co.*, In the District Court of Harris County, Texas, 127th Judicial District), nor shall it apply to the two cases that are set for trial in this Court on January 29, 2007

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(No. 2006-04727, *Glenna Clark v. Merck & Co., Inc.*, In the District Court of Harris County, Texas, 55th Judicial District and No. 2005-31017, *Russell Achord v. Merck & Co., Inc.*, In the District Court of Harris County, Texas, 270th Judicial District). Those cases are or will be governed by separate scheduling orders.

The deadlines set forth in Paragraph 33(a) of CASE MANAGEMENT ORDER No. 2 that relate to Fact Sheets remain in effect on all cases. However, all other deadlines set forth in Paragraph 33 (b-g) are abated in all cases.

CMO No. 3 shall apply to the fifty (50) cases set forth in Appendix A hereto (the "Trial Cases"). The Trial Cases shall consist of twenty-five (25) cases selected for preparation for trial by the PSC and twenty-five (25) cases selected for preparation for trial by the Merck defendants. The Trial Cases are further subdivided into groups of ten cases ("Phases"), also set forth on Appendix A hereto.

3. SCHEDULING ORDER APPLICABLE TO THE TRIAL CASES BY PHASE

Subject to further agreements by the parties and/or order of this Court, the following scheduling orders are hereby entered for the Trial Cases:

A. Phase 1 Trial Cases:

- i. Plaintiffs' Expert Witnesses: With respect to cases designated as Phase 1 Trial Cases, Plaintiffs shall identify all expert witnesses by November 17, 2006. All such designations shall contain all information and materials required in Rule 194.2(f) of the TEXAS RULES OF CIVIL PROCEDURE.
- ii. Depositions of Plaintiffs' Experts: Depositions of Plaintiffs' experts shall be conducted within sixty days after designation. Requests for such depositions shall be served sufficiently far in advance of such deadline that the depositions are taken on or before the deadline.
- iii. Defendants' Expert Witnesses: With respect to cases designated as Phase 1 Trial Cases, Defendants shall identify all expert witnesses by: January 19, 2007. All such designations shall contain all information and materials required in Rule 194.2(f) of the TEXAS RULES OF CIVIL PROCEDURE.
- iv. Depositions of Defendants' Experts: Depositions of Defendants' experts shall be conducted within sixty days after designation. Requests for such depositions shall be served sufficiently far in

advance of such deadline that the depositions are taken on or before the deadline.

- v. Expert Challenges: Challenges to experts shall be filed no later than 60 days after the deposition of such expert.

B. Phase 2 Trial Cases:

- i. Plaintiffs' Expert Witnesses: With respect to cases designated as Phase 2 Trial Cases, Plaintiffs shall identify all expert witnesses by December 22, 2006. All such designations shall contain all information and materials required in Rule 194.2(f) of the TEXAS RULES OF CIVIL PROCEDURE.
- ii. Depositions of Plaintiffs' Experts: Depositions of Plaintiffs' experts shall be conducted within sixty days after designation. Requests for such depositions shall be served sufficiently far in advance of such deadline that the depositions are taken on or before the deadline.
- iii. Defendants' Expert Witnesses: With respect to cases designated as Phase 2 Trial Cases, Defendants shall identify all expert witnesses by: February 23, 2007. All such designations shall contain all information and materials required in Rule 194.2(f) of the TEXAS RULES OF CIVIL PROCEDURE.
- iv. Depositions of Defendants' Experts: Depositions of Defendants' experts shall be conducted within sixty days after designation. Requests for such depositions shall be served sufficiently far in advance of such deadline that the depositions are taken on or before the deadline.
- v. Expert Challenges: Challenges to experts shall be filed no later than 60 days after the deposition of such expert.

C. Phase 3 Trial Cases:

- i. Plaintiffs' Expert Witnesses: With respect to cases designated as Phase 3 Trial Cases, Plaintiffs shall identify all expert witnesses by January 19, 2007. All such designations shall contain all information

and materials required in Rule 194.2(f) of the TEXAS RULES OF CIVIL PROCEDURE.

- ii. Depositions of Plaintiffs' Experts: Depositions of Plaintiffs' experts shall be conducted within sixty days after designation. Requests for such depositions shall be served sufficiently far in advance of such deadline that the depositions are taken on or before the deadline.
- iii. Defendants' Expert Witnesses: With respect to cases designated as Phase 3 Trial Cases, Defendants shall identify all expert witnesses by: March 16, 2007. All such designations shall contain all information and materials required in Rule 194.2(f) of the TEXAS RULES OF CIVIL PROCEDURE.
- iv. Depositions of Defendants' Experts: Depositions of Defendants' experts shall be conducted within sixty days after designation. Requests for such depositions shall be served sufficiently far in advance of such deadline that the depositions are taken on or before the deadline.
- v. Expert Challenges: Challenges to experts shall be filed no later than 60 days after the deposition of such expert.

D. Phase 4 Trial Cases:

- i. Plaintiffs' Expert Witnesses: With respect to cases designated as Phase 4 Trial Cases, Plaintiffs shall identify all expert witnesses by February 23, 2007. All such designations shall contain all information and materials required in Rule 194.2(f) of the TEXAS RULES OF CIVIL PROCEDURE.
- ii. Depositions of Plaintiffs' Experts: Depositions of Plaintiffs' experts shall be conducted within sixty days after designation. Requests for such depositions shall be served sufficiently far in advance of such deadline that the depositions are taken on or before the deadline.
- iii. Defendants' Expert Witnesses: With respect to cases designated as Phase 4 Trial Cases, Defendants shall identify all expert witnesses by: April 27, 2007. All such designations shall contain all

information and materials required in Rule 194.2(f) of the TEXAS RULES OF CIVIL PROCEDURE.

- iv. Depositions of Defendants' Experts: Depositions of Defendants' experts shall be conducted within sixty days after designation. Requests for such depositions shall be served sufficiently far in advance of such deadline that the depositions are taken on or before the deadline.
- v. Expert Challenges: Challenges to experts shall be filed no later than 60 days after the deposition of such expert.

E. Phase 5 Trial Cases:

- i. Plaintiffs' Expert Witnesses: With respect to cases designated as Phase 5 Trial Cases, Plaintiffs shall identify all expert witnesses by March 16, 2007. All such designations shall contain all information and materials required in Rule 194.2(f) of the TEXAS RULES OF CIVIL PROCEDURE.
- ii. Depositions of Plaintiffs' Experts: Depositions of Plaintiffs' experts shall be conducted within sixty days after designation. Requests for such depositions shall be served sufficiently far in advance of such deadline that the depositions are taken on or before the deadline.
- iii. Defendants' Expert Witnesses: With respect to cases designated as Phase 5 Trial Cases, Defendants shall identify all expert witnesses by: May 25, 2007. All such designations shall contain all information and materials required in Rule 194.2(f) of the TEXAS RULES OF CIVIL PROCEDURE.
- iv. Depositions of Defendants' Experts: Depositions of Defendants' experts shall be conducted within sixty days after designation. Requests for such depositions shall be served sufficiently far in advance of such deadline that the depositions are taken on or before the deadline.
- v. Expert Challenges: Challenges to experts shall be filed no later than 60 days after the deposition of such expert.

4. CASE STATUS CONFERENCES/REMANDS TO THE TRIAL COURT

To ensure that the Trial cases are trial-ready prior to remand, status conferences for each Phase will be held in the Pretrial Court("Status Conferences"). At this conference, the Court will confer with the parties to determine further MDL court action necessary with regard to the Trial cases, including: the need for and timing of: (1) additional discovery, (2) further scheduling orders concerning pretrial matters such as exchange of witness lists, exhibit lists and deposition testimony excerpt designation for trial, as well as objections thereto, (3) hearings on pretrial motions or any other pending matters and (4) remand to the trial court.

Status Conferences are hereby scheduled for the following dates:

- a. **Phase 1 Trial Cases: March 23, 2007.**
- b. **Phase 2 Trial Cases: April 27, 2007.**
- c. **Phase 3 Trial Cases: May 25, 2007.**
- d. **Phase 4 Trial Cases: June 29, 2007.**
- e. **Phase 5 Trial Cases: August 3, 2007.**

5. MANDATORY OCCURRENCES PRIOR TO REMAND

Before a case will be certified for trial and remanded to the Trial Court, the following will occur in the Pretrial Court:

- a. All discovery will be completed;
- b. All dispositive motions will be heard and ruled upon;
- c. All Daubert/Havner motions will be heard and ruled upon;
- d. All proposed deposition designations for trial will be heard and ruled upon;
- e. All challenges as to the admissibility of trial exhibits will be heard and ruled upon;
- f. All motions in limine will be heard and ruled upon

6. MOTIONS DIRECTED TO MULTIPLE PLAINTIFFS

Nothing in this Order shall prevent the parties from filing any motion directed to multiple plaintiffs and/or recurring issues.

7. **FURTHER DISCOVERY FOLLOWING STATUS CONFERENCES**

Nothing in this Order shall prohibit the parties from agreeing to pursue additional discovery not inconsistent with the terms of this Order following the expiration of any deadlines and/or the conclusion of the Status Conference.

8. **AGREEMENT OF THE PARTIES TO EXTEND DEADLINES**

Nothing in this Order shall prohibit the parties from extending any of the above deadlines by agreement; however, the parties shall not make any agreement without Court approval that would require a rescheduling of any Status Conference.

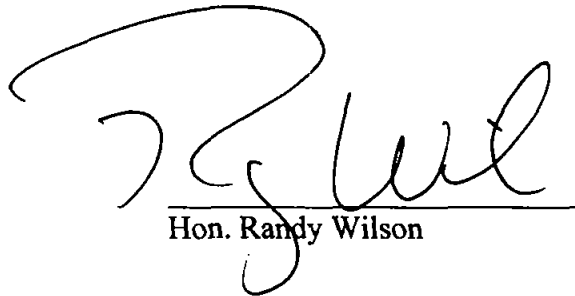
9. **PRETRIAL COURT'S RETENTION OF PARTIAL JURISDICTION AFTER REMAND**

The foregoing notwithstanding, pursuant to TRJA § 13.6(a) and (b) and to promote the fair and efficient administration of this litigation and to comply with its continuing obligations as a pretrial court, following remand of a case by this Court to the trial court, this Court shall retain jurisdiction to hear any and all matters which concern issues which have arisen and/or may arise in certain other of the transferred cases ("global issues") of first impression.

10. **OBLIGATION TO MEET AND CONFER RE: SCHEDULING OF FURTHER PHASES**

The PSC and counsel for defendants are ordered to confer to attempt to reach an agreed case management order regarding the next 5 Phases of Trial Cases no later than May 18, 2007. The parties shall submit a proposed agreed case management order similar to this Case Management Order, CMO No. 3, or to advise the court that no agreement could be reached, no later than Jun 8, 2007.

Signed July 28, 2006.



Hon. Randy Wilson

APPENDIX A

PHASE 1

Colleen Reck/Freddie Garland Reck
Jose Oller
Jacob Nettles
Estella Carmona
Jimmy Taylor
Knut Lawson on Behalf of Margaret Lawson
Daniel Sutlief
Betty Bullock
Arthur Holloway
Ophelia Rios

PHASE 4

Albert Garza
Brice Green
Hugo Garcia
Willie Blackwell
Glenda Carter-Tatum
Antonio Chacon
Robert and Marilyn Kerr
Elizabeth Stauffer
Rickey Boyd
John Arguelles

PHASE 2

Raul Sanchez / Julia Garza
Carl Manning
James Stephenson
Nancy Springfield
Barry Ponder
Betty Jo Glasson
Charlie Flynn
Francisco Cerda
Ted Pearce
Herlinda Melendez

PHASE 5

Darron Kautz
James Cunningham
John Alonzo
Betty Cate
Hobert Miller
Mary Harvey
Deanna Thompson
Patricia Riddle
James Varnon
Ruby Ledbetter

PHASE 3

Johnathan Yates
Albert Shaw
Yvonne Wasinger / Belia Trujillo
Margie Borchardt
Helen Dodd and Gene Dodd
Robert Martindale
Antonio Salazar
Gloria Gabriel
Ronald and Pam Studenny
Archie Folmar



I, Charles Bacarisse, District Clerk of Harris County, Texas, certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
Witness my official hand and seal of office
this _____

Certified Document Number: _____

CHARLES BACARISSE, DISTRICT CLERK
HARRIS COUNTY, TEXAS

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