

BAYCOL

MASTER FILE NO. 0247408

§§§§§ IN THE DISTRICT COURT OF

IN RE: TEXAS SECOND REGION
BAYCOL LITIGATION

HARRIS COUNTY, TEXAS

295TH JUDICIAL DISTRICT

MASTER PRE-TRIAL DISCOVERY ORDER

The purpose of this Order is to supplement the Master Pre-Trial Management Scheduling Order for the Second Judicial Administrative Region of Texas, which was entered by this Court on October 14, 2002. With due and proper notice to all counsel of record in the Baycol Litigation now pending in Master File No. 0247408 in the Second Judicial Administrative Region of Texas, the Court conducted a hearing on the 14th day of January, 2003, and, after considering all the arguments and comments of counsel, the Court orders as follows:

1. IT IS THEREFORE ORDERED that all written discovery served in any case subject to the Master Pre-Trial Management Scheduling Order referenced above that has yet to be responded to is hereby stayed and vacated, except to the extent the parties agree, or this Court rules, otherwise.
2. IT IS FURTHER ORDERED that the Plaintiff's Fact Sheet (attached hereto as Exhibit A) is hereby approved and shall be answered ninety (90) days after the date of this Order, or ninety (90) days after Plaintiff commences his or her lawsuit, whichever is later.
3. IT IS FURTHER ORDERED that the Manufacturing/Marketing, HMO and Pharmacy Defendants' Master Request for Disclosure to Plaintiff (attached hereto as Exhibit B) is hereby approved and shall be responded to ninety (90) days after the date of this Order, or ninety (90) days after Plaintiff commences his or her lawsuit, whichever is later.
4. IT IS FURTHER ORDERED that the Manufacturing/Marketing and HMO Defendants' Master Interrogatories to Plaintiff (attached hereto as Exhibit C) are hereby approved and shall be responded to ninety (90) days after the date of this Order, or ninety (90) days after Plaintiff commences his or her lawsuit, whichever is later.
5. IT IS FURTHER ORDERED that Manufacturing/Marketing and HMO Defendants' Master Request for Production to Plaintiff (attached hereto as Exhibit D) is

hereby approved and shall be responded to ninety (90) days after the date of this Order, or ninety (90) days after Plaintiff commences his or her lawsuit, whichever is later.

6. IT IS FURTHER ORDERED that Plaintiffs' Master Request for Disclosure to Bayer Corporation and Bayer AG (attached hereto as Exhibit E) is hereby approved and shall be responded to within ninety (90) days of this Order.

7. IT IS FURTHER ORDERED that Plaintiffs' Master Set of Interrogatories to Bayer Corporation and Bayer AG (attached hereto as Exhibit F) is hereby approved and shall be answered ninety (90) days after the date of this Order.

8. IT IS FURTHER ORDERED that the set of Plaintiff Specific Discovery Requests (attached hereto as Exhibit G) is hereby approved and shall be responded to sixty (60) days after Bayer Corporation receives Plaintiff's Fact Sheet identified in paragraph 2 above. With Plaintiff's Fact Sheet, Plaintiff's counsel shall provide the specific name(s) of the Plaintiff(s) and the full name(s) of the prescribing physician which correspond(s) to the specific Plaintiff(s).

9. Plaintiffs reserve the right to propose requests for production of documents to Bayer Corporation and Bayer AG within ninety (90) days of this Order. If proposed, Plaintiffs, Bayer Corporation and Bayer AG will attempt to agree on all requests for production and any disputes will be resolved by this Court at a later date.

10. IT IS FURTHER ORDERED that no other written discovery may be served on Plaintiffs by Bayer Corporation or Bayer AG, and no other written discovery may be served on Bayer Corporation or Bayer AG by Plaintiffs (except for certain supplemental financial interrogatories related to Baycol which the parties will attempt to agree upon), other than the written discovery described above, without further order of this Court or agreement of the parties. This paragraph is not intended to foreclose duces tecum requests attached to notices of deposition, consistent with Texas Rule of Civil Procedure 199.2(5), which are narrowly tailored and do not request documents previously produced by Bayer Corporation and/or Bayer AG.

11. IT IS FURTHER ORDERED that with respect to defendants who are pharmacies ("Pharmacy Defendants"):

(a) Absent agreement of the parties, which shall not be unreasonably withheld, or order of the Court, no deposition of a Pharmacy Defendant shall be set before the particular Pharmacy Defendant's specific case has been set for trial.

(b) At this time, no master written discovery or other written discovery shall be served on Pharmacy Defendants, unless and until the specific case has been set for trial, subject to further orders of this Court and/or agreements of the parties. No party has waived any right to serve written discovery on a Pharmacy Defendant.

(c) Upon written request to the Pharmacy Defendant's counsel, specifying a particular plaintiff (the "specific plaintiff"), the Pharmacy Defendant shall provide a list of prescriptions filled (hereinafter "patient profile") for that specific plaintiff, if the specific plaintiff filled prescriptions at such pharmacy. Such patient profile shall be provided in admissible form within sixty (60) days of the written request. If the Pharmacy Defendant is unable to provide such information within sixty (60) days, they must respond within such time advising specifically why the information is unavailable. Further, within sixty (60) days of the written request for the pharmacy profile, the pharmacy must also provide the name of the company or companies, if any, that supplied that pharmacy with the computer software that would have printed or prepared the printed warnings, information sheets, or advisors, etc. (the "monograph company") during the time the pharmacy filled Baycol prescriptions for the specific plaintiff. If the monograph company obtained its information from another company (such as Medispan, First Data Bank, TechRx, etc.), such information must also be disclosed, if known. If the pharmacy did not use such a monograph company, the pharmacy must designate which written warnings, if any, were given to the specific plaintiff. If the pharmacy address has not been provided to the Pharmacy Defendant at the time the written request is made, the Pharmacy Defendant shall provide the above-mentioned records and information within sixty (60) days of the receipt of the pharmacy address information (if a written request has also been made).

12. IT IS FURTHER ORDERED that with respect to defendants who are physicians ("Physician Defendants") and defendants who are managed care defendants ("HMO Defendants"):

(a) Absent agreement of the parties, which shall not be unreasonably withheld, or order of the Court, no oral deposition of a Physician Defendant or HMO Defendant shall be set before the particular Physician Defendant's or HMO Defendant's specific case has been set for trial.

(b) At this time, no master written discovery or other written discovery shall be served on a Physician Defendant or a HMO Defendant, unless and until the specific case has been set for trial, subject to further orders of this Court and/or agreements of the parties. No party has waived any right to serve written discovery on a Physician Defendant or a HMO Defendant.

(c) Within sixty (60) days of a written request, a Physician Defendant shall provide to Plaintiff(s) and Defendant(s), in admissible form, a complete copy of all Plaintiff's medical records, including correspondence, patient registration forms, etc.

(d) Within sixty (60) days of a written request, a HMO Defendant shall provide to Plaintiff(s) and Defendant(s), in admissible form, a complete copy of any documents evidencing or relating to Plaintiff's membership or enrollment, if any, as well as any other Plaintiff specific documents in the HMO Defendant's possession.

13. IT IS FURTHER ORDERED that without leave of Court or agreement of the parties, the Pharmacy Defendants and Physician Defendants have reserved the right to serve written discovery on other parties in this litigation.

14. IT IS FURTHER ORDERED that all parties have reserved the right to serve written discovery on other pharmaceutical defendants, if any, and that other pharmaceutical defendants, if any, have reserved the right to serve non-duplicative written discovery on other parties.

15. IT IS FURTHER ORDERED that, with respect to Article 4590i reports and bond requirements, by agreement of the parties, and in consideration of other accommodations in the discovery process as set forth herein, requirements for bonds and expert reports pursuant to Article 4590i are hereby modified. Counsel for Physician Defendants who are subject to the requirements of Article 4590i have the absolute right to demand an expert report setting forth the allegations with regard to the Physician Defendant(s) by letter to counsel for the Plaintiff not sooner than 180 days after the initiation of the underlying action. Within sixty (60) days of receipt of such demand, Plaintiff will respond by filing an appropriate expert report setting forth the allegations with regard to the conduct of the Physician Defendant. Counsel for the Pharmacy Defendants have this same right if the plaintiff(s) in such case assert(s) a negligence-type claim against the Pharmacy Defendant. If only strict liability claims are asserted against the Pharmacy Defendant, the plaintiff(s) will not be obligated to comply with these provisions.

16. IT IS FURTHER ORDERED that, with respect to subpoenas and depositions on written questions, all health care providers, including but not limited to doctors, hospitals, insurance companies, clinics and pharmacies, as well as other record custodians shall honor subpoenas issued in compliance with TEX. R. CIV. P. 201 and 208, specifically including subpoenas issued by notaries public. Subpoenas for patients' records and pharmacy records (records pertaining to the particular Plaintiff) shall not be served on health care providers who are named defendants in the Texas Second Region Baycol Litigation. However, those parties shall, upon written request from any party to the health care provider's attorney, provide copies of certain records with a signed business records affidavit (as set forth in the paragraphs above). These business records affidavits do NOT need to be filed with the Court fourteen (14) days before trial in order to be used at trial, but may be filed at the commencement of trial for their use therein. All records produced pursuant to this paragraph shall be forwarded directly to Plaintiff's counsel by the records service and, at the same time, the records service shall forward a notice to all counsel of record the date such records were delivered to Plaintiff's counsel. Within fifteen (15) days of receipt of the records, Plaintiff's counsel shall forward all non-privileged records to all counsel of record; at the same time, Plaintiff's counsel shall provide a log of all documents withheld from production on the basis of privilege, if any.

If Plaintiff's counsel fails to produce the records and any applicable privilege log within the time period set forth above, upon five (5) days written notice to Plaintiff's counsel, any counsel of record may request a complete copy of such records from the records service.

17. IT IS FURTHER ORDERED that, with respect to master deposition discovery of corporation representatives and witnesses (other than case-specific witnesses), scheduling of depositions shall be facilitated through the Plaintiffs' Liaison Counsel and the particular Defendant's Liaison Counsel. Both Plaintiffs' Liaison Counsel and Defendant's Liaison Counsel will attempt to coordinate the depositions. Plaintiffs' Liaison Counsel shall use their best efforts to schedule depositions of corporate representatives and corporate witnesses by agreement of the parties. Notices shall be filed in the master file. The master depositions should not be cross-noticed in individual cases pending in the Second Judicial Administrative Region, but may be used in all cases filed in the Second Judicial Administrative Region. Liaison Counsel will coordinate the scheduling of corporate representatives' and employees' depositions with the schedule for Texas cases pending outside the Second Region and with other coordinated state court proceedings. Such depositions noticed in other state court proceedings may be cross-noticed in this Region, with agreement of Plaintiffs' Liaison Counsel, which shall not be unreasonably withheld.

18. IT IS FURTHER ORDERED that, in the interests of judicial economy, the depositions previously taken and completed in connection with the Eighth and/or First Region Baycol Litigation (other than case-specific depositions) may be used by any party at trial, or otherwise, subject only to substantive admissibility objections asserted by any party. No MDL work product or deposition shall be used without consent of all parties. Further, no deposition previously taken in connection with the Eighth and/or First Region Baycol Litigation may be noticed by any party, except upon good cause shown and proper limits imposed as to time and subject matter. It is the intent of this Court that no witness be subjected to deposition on multiple occasions regarding topics already adequately covered by other counsel.

SIGNED this the 14th day of January, 2003.

PRESIDING JUDGE CHRISTOPHER