



**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**IN RE: ZOLOFT LITIGATION**

**Civil Action No. 14-C-7000**  
**Honorable James P. Mazzone**  
**Lead Presiding Judge**

**THIS DOCUMENT RELATES TO:**

*J.C., a minor by and through his mother and next friend Michelle C*

Civil Action No. 12-C-146 WNE

*M.M., a minor by and through her mother and next friend Jeanette M*

Civil Action No. 12-C-149 WNE

**JOINT MOTION FOR LEAVE TO DEPOSE CERTAIN OF PLAINTIFFS' MEDICAL PROVIDERS AFTER THE GENERAL CLOSE OF FACT DISCOVERY**

Plaintiffs in the above-captioned cases and Defendants Pfizer Inc., including its former division Roerig (together, "Pfizer"), and Greenstone LLC, formerly Greenstone LTD ("Greenstone") (together, "Defendants"), jointly move for leave to take the depositions of two of Plaintiffs' medical providers in *C* and three of Plaintiffs' medical providers in *M* after the general close of fact discovery on February 29, 2016, due to the inability of the witnesses to be available for depositions before that time, despite the mutual best efforts of the parties. The parties do not otherwise seek to adjust the discovery schedule set by this Court. Permitting this slight adjustment to the fact discovery schedule is consistent with the "broad discretion in the control and management of discovery" afforded to the Court and "inherent power to manage their judicial affairs that arise during proceedings in their courts, which includes the right to manage their trial docket." Syl. Pts. 5, 9, *State ex. rel. Atkins v. Burnside*, 212 W. Va. 74, 569 S.E.2d 150 (2002) (internal quotations omitted).

Non-party physicians and physician's assistants can have high demands on their time due to their care of patients in medical practice or other duties at hospitals and clinics, often making it cumbersome to schedule time for a deposition. The parties thus worked quickly to schedule the depositions of Plaintiffs' healthcare professionals in all of the cases and have worked together cooperatively and diligently to schedule and take 16 of those depositions in this litigation. However, despite the parties' mutual best efforts, five non-party witnesses have not been made

**Granted** Judge Mazzone, James P Mar 08, 2016

available for deposition before February 29, 2016. As explained below, all of these medical professionals cared for the Mother Plaintiffs, and several of them prescribed Zoloft to the Mother Plaintiffs. Deposing medical professionals who prescribed Zoloft and otherwise cared for the Mother Plaintiffs may well lead to testimony about the information known to them about the benefits and risks of Zoloft at the time it was prescribed, the Mother Plaintiffs' medical conditions that led to the prescription of Zoloft, and other pertinent issues in these cases.

***J.C. ex rel. C v. Pfizer Inc.: Dr. Juddson Lindley and Physician's Assistant Toni Graham.*** In *C* the parties seek to depose Dr. Juddson Lindley and Physician's Assistant Toni Graham. Dr. Lindley and P.A. Graham are employed at a U.S. government facility and are represented by Assistant United States Attorneys per the Federal Tort Claims Act. As indicated in the parties' written requests, the parties have repeatedly attempted to schedule these depositions with the government since early November, but the government has not made the witnesses available in time, despite the parties' mutual efforts. (*See Ex. A.*) After nearly three months, on February 22, 2016, the government responded to the parties' requests and has authorized the parties to depose these witnesses. (*See Ex. B.*) The parties are now coordinating their efforts to depose the witnesses as soon as practicable, consistent with the witnesses' schedule of medical duties.

The testimony of these healthcare providers is expected to shed light on the claims and defenses in this case. Dr. Lindley prescribed the Mother Plaintiff Zoloft during her pregnancy with the Minor Plaintiff. P.A. Graham, an employee of the same practice as Dr. Lindley, was also involved with the Mother Plaintiff's care during this time. The Court should therefore permit the parties to take these two depositions after February 29, 2016.

***M.M. ex rel. M v. Pfizer Inc.: Physician's Assistant Patricia Hagerman, Dr. Dennis Konzen, and Dr. Tempest Allen.*** In *M*, the parties have scheduled the depositions of three remaining healthcare providers on March 2 and 3, just a few days after February 29, 2016. (*See Pls.' Notice of Oral Videotaped Dep. of Patricia Hagerman, FNP (Transaction ID 58622495), Pls.' Notice of Oral Videotaped Dep. of Dr. Dennis Konzen (Transaction ID*

58622411), Pls.' Second Am. Notice of Oral Videotaped Dep. of Dr. Tempest Allen (Transaction ID 58618616).) The parties attempted to but were unable to schedule depositions with these providers before February 29, 2016, in part due to the time needed to obtain the witnesses' cooperation and to work with their medical practice schedules.

The testimony of these healthcare providers is expected to shed light on the claims and defenses in this case. The Mother Plaintiff was prescribed Zoloft by P.A. Hagerman prior to her pregnancy with the Minor Plaintiff, and P.A. Hagerman was supervised by Dr. Konzen, who is also listed as a prescriber of Zoloft for the Mother Plaintiff. In addition, the Mother Plaintiff was also prescribed Zoloft from the office of Dr. Allen.

Accordingly, the parties request the Court's leave to depose these five witnesses after the fact discovery deadline.

Dated: March 1, 2016

Respectfully submitted,

/s/ Bert Ketchum

Bert Ketchum, Esq. (WVSB 6618)  
Paul T. Farrell, Jr., Esq. (WVSB 7443)  
Larry A. Bailey, Esq. (WVSB 7443)  
Clayton Maddox, Esq. (WVSB 12352)  
**GREENE, KETCHUM, FARRELL, BAILEY &  
TWEEL**  
419 Eleventh Street  
P.O. Box 2389  
Huntington, WV 25701  
Tel: (304) 525-9115  
Fax: (304) 529-3284

Robert P. Fitzsimmons, Esq. (WVSB 1212)  
Clayton J. Fitzsimmons, Esq. (WVSB 10823)  
**FITZSIMMONS LAW FIRM, LLC**  
1609 Warwood Avenue  
Wheeling, WV 26003  
Tel: (304) 277-1700  
Fax: (304) 277-1705

Kurt B. Arnold, Esq. (*pro hac vice*)  
Jason A. Itkin, Esq. (*pro hac vice*)  
Cory D. Itkin, Esq. (*pro hac vice*)  
Noah M. Wexler, Esq. (*pro hac vice*)  
Micajah "Caj" D. Boatright, Esq. (*pro hac vice*)  
Santana McMurrey, Esq. (*pro hac vice*)  
Kelly Woods, Esq. (*pro hac vice*)  
Cesar Tavares, Esq. (*pro hac vice*)  
Kala Sellers, Esq. (*pro hac vice*)  
Kyle Findley, Esq. (*pro hac vice*)  
**ARNOLD & ITKIN LLP**  
6009 Memorial Drive  
Houston, TX 77007  
Tel: (713) 222-3800  
Fax: (713) 222-3850

*Attorneys for Plaintiffs*

/s/ Erik W. Legg

Michael J. Farrell, Esq. (WVSB 1168)  
Erik W. Legg, Esq. (WVSB 7738)  
Megan Farrell Woodyard, Esq. (WVSB 11163)  
**FARRELL, WHITE & LEGG PLLC**  
P.O. Box 6457  
Huntington, WV 25772-6457  
Tel: (304) 522-9100  
Fax: (304) 522-9162  
mjf@farrell3.com  
ewl@farrell3.com  
mef@farrell3.com

Mark S. Cheffo, Esq.  
(admitted *pro hac vice*)  
Katherine Armstrong, Esq.  
(admitted *pro hac vice*)  
**QUINN EMANUEL URQUHART  
& SULLIVAN, LLP**  
51 Madison Avenue, 22<sup>nd</sup> Floor  
New York, NY 10010  
Tel: (212) 849-7000  
Fax: (212) 849-7100  
MarkCheffo@quinnemanuel.com  
KatherineArmstrong@quinnemanuel.com

*Attorneys for Defendants Pfizer Inc., including its  
former division J.B. Roerig & Co., and  
Greenstone LLC*

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**CERTIFICATE OF SERVICE**

I, the undersigned counsel, do hereby certify that a true and correct copy of the foregoing “*Joint Motion for Leave to Depose Certain of Plaintiffs’ Medical Providers After the General Close of Fact Discovery*” was served upon the following counsel of record by LexisNexis File & ServeXpress on this 1<sup>st</sup> day of March, 2016.

Bert Ketchum, Esquire  
Paul T. Farrell, Jr., Esquire  
Larry A. Bailey, Esquire  
Clayton Maddox, Esquire  
**GREENE, KETCHUM, BAILEY, FARRELL  
BAILEY & TWEEL**  
419 Eleventh Street  
Huntington, WV 25701  
*Attorneys for Plaintiffs*

Robert P. Fitzsimmons, Esquire  
Clayton J. Fitzsimmons, Esquire  
**FITZSIMMONS LAW FIRM, PLLC**  
1609 Warwood Avenue  
Wheeling, WV 26003  
*Attorneys for Plaintiffs*

Kurt B. Arnold, Esquire  
Jason A. Itkin, Esquire  
Cory D. Itkin, Esquire  
Noah M. Wexler, Esquire  
Micajah “Caj” D. Boatright, Esquire  
Santana McMurrey, Esquire  
Kelly Woods, Esquire  
Cesar Tavares, Esquire  
Kala Sellers, Esquire  
Kyle Findley, Esquire  
**ARNOLD & ITKIN LLP**  
6009 Memorial Drive  
Houston, TX 77007  
*Attorneys for Plaintiffs*

*/s/ Erik W. Legg*  
Michael J. Farrell, Esquire (WVSB 1168)  
Erik W. Legg, Esquire (WVSB 7738)  
Megan Farrell Woodyard, Esquire (WVSB  
11163)  
**FARRELL, WHITE & LEGG PLLC**

P.O. Box 6457  
Huntington, West Virginia 25772-6457  
Tel: (304) 522-9100; Fax: (304) 522-9162  
mjf@farrell3.com  
ewl@farrell3.com  
mef@farrell3.com

*Counsel for Defendants Pfizer Inc., including  
its former division J.B. Roerig & Co., and  
Greenstone LLC*