



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 APPLIES TO ALL CASES

ORDER REGARDING AUGUST 10, 2015 STATUS CONFERENCE

On August 10, 2015, upon previous Order of this Court, the parties appeared for a Status Conference in this Mass Litigation. Appearing for Plaintiffs were Robert P. Fitzsimmons, Bert Ketchum, Larry Bailey, Caj D. Boatright (*pro hac vice*) and Santana McMurrey (*pro hac vice*). Appearing for Defendants were, Michael J. Farrell, Erik W. Legg and Mark S. Cheffo (*pro hac vice*). The Court addressed several issues and heard argument on several pending motions. The Panel's disposition of those issues and further Orders are as follows:

1. Second Case Management Order

Having read and considered the parties' competing proposed Second Case Management Orders ("CMO"), and finding the parties in disagreement on multiple items within those proposed CMOs, the Court **ORDERS** the parties to submit a joint proposed Second CMO no later than September 9, 2015. The parties' joint proposed CMO shall propose a trial in late summer to late fall of 2016, and it shall include a September 30, 2015 deadline by which Plaintiffs shall amend their Complaints as discussed herein.

2. Defendants' Motion for Separate Trials (Trans. ID # 57588394)

Defendants move the Court to conduct separate, unitary trials of each of the plaintiffs. Plaintiffs oppose the motion and favor consolidated trials of multiple or all plaintiffs. The Court notes that Plaintiffs' Complaints include causes of action which may not be applicable to the remaining plaintiffs in this Mass Litigation or which may not be available under applicable law

and, therefore, **ORDERS** Plaintiffs to amend their Complaints no later than September 30, 2015. Defendants' Motion is, accordingly, **HELD IN ABEYANCE**.

3. **Defendants' Motion for Time Limits (Trans. ID # 55982438)**

Defendants ask the Court to impose specific time limits upon certain expert and fact witness depositions. Plaintiffs oppose the imposition of time limits not prescribed by applicable rules of procedure. Having read and considered the motion and supporting materials, Plaintiffs' response in opposition and Defendants' Reply, and having heard and considered the arguments of counsel for both parties during the Status Conference, the Court declines to impose specific time limits on depositions that are specific to this Mass Litigation.

To the extent that disputes arise with respect to the length or conduct of specific depositions, which disputes the parties are unable to resolve after conferring in good faith, the parties are not foreclosed from seeking relief from the Court. Accordingly, Defendants' Motion is **DENIED**. The objections and exceptions of Defendants are preserved.

4. **Defendants' Rule 26(d) Motion (Trans. ID # 57552683)**

A number of disputes arose between the parties regarding the scheduling and coordination of fact witnesses, particularly with respect to Plaintiffs' health care providers. These issues were addressed separately, but with some degree of overlap in Defendants' Rule 26(d) Motion to Set Priority in Deposition Questioning (Trans. ID # 57552683) and Defendants' Motion to Compel Plaintiffs to Provide Dates for Depositions of Certain Material Fact Witnesses (Trans. ID # 56721983). Prior to and during the Status Conference, the parties resolved or narrowed a number of the issues in dispute.

With respect to the order of questioning witnesses, the Court **FINDS** that the parties agree to alternate noticing and taking lead questioning in the depositions of the non-prescribing

health care providers of the Mother Plaintiffs and Minor Plaintiffs. The Court further **FINDS** that the parties' remaining disagreement as to the order of deposition questioning relates to the health care providers who prescribed Zoloft or Sertraline to the Mother Plaintiffs (hereinafter, collectively, "prescribers"). Defendants move the Court for an Order that will permit them to take lead on prescriber depositions in some of the cases while permitting plaintiffs to take lead on prescriber depositions in the other cases. Plaintiffs' object and assert they should be permitted to take lead questioning in all prescriber depositions in all cases. The Court **FINDS**, and the parties do not dispute, that some of the prescribers in these cases are located within West Virginia, while others are located outside of West Virginia and are not subject to this Court's subpoena power.

The Court further **FINDS** that the interests of efficiency and fairness to both parties favor a procedure which permits each party to notice and take lead questioning in the depositions of some prescribers. Accordingly, the Court **ORDERS**:

That, with respect to the prescribers who are not amenable to service of process within West Virginia, Plaintiffs shall have the first right to notice and take lead in deposition examination;

That, with respect to prescribers who are amenable to service of process within West Virginia, Defendants shall have the first right to notice and take lead in depositions examination;

That, pursuant to the agreement of the parties, as to all other treating health care providers, the rights of the parties to notice and take lead in deposition examination shall alternate. In each case, the party not having the first right to take lead questioning during the prescribers' depositions shall have the first right to take lead questioning during the non-prescribing health care provider of its choice. The opposite party then has the right to take lead

questioning as to the next non-prescribing health care provider of its choice in that case. The right to take lead questioning in the depositions of additional non-prescribing health care providers in that case shall then continue to alternate according to this pattern.

Accordingly, Defendants' Rule 26(d) Motion is **GRANTED**, with the relief modified as described herein. The objections and exceptions of Plaintiffs are preserved.

5. Defendants' Motion to Compel (Health Care Providers) (Trans. ID # 56721983)

During the Status Conference, the parties stipulated that counsel for the Defendants may contact administrative personnel of Plaintiffs' health care providers for purposes of obtaining dates on which the provider is available to be deposed, provided that Defendants do not contact the Plaintiffs' health care providers themselves, and provided that Defendants limit the scope of their communications with the administrative personnel to logistical information necessary to schedule and facilitate the deposition. The Court adopts the parties' stipulated resolution of this issue, and **SO ORDERS**.

To the extent that Defendants find themselves unable to secure deposition dates for a provider via communications with administrative personnel within the above-described parameters, Defendants shall notify Plaintiffs and the parties shall work cooperatively to secure and coordinate the deposition in a manner consistent with this Order, after which the party entitled to notice and take lead questioning as to that provider's deposition under section 4 of this Order shall be given the opportunity to do so.

With respect to Plaintiffs' objections to the number and scope of health care provider depositions sought by Defendants, the Court **FINDS** that the parties have agreed to focus deposition discovery on an exchanged, prioritized list of providers at this time, without waiver of any party's rights with respect to depositions of additional witnesses as discovery progresses.

The Court endorses the parties' efforts to narrow the scope of their dispute in this fashion, and defers any further ruling at this time with respect to the number or scope of health care providers to be deposed in these cases.

6. **Defendants' Motion to Compel (Other) (Trans. ID # 56721983)**

The Court **FINDS** that the parties' disputes concerning the scheduling of the depositions of Jody B Michael M Gary Nathan C and Chrystal C have been resolved and/or rendered moot. With respect to those individuals, Defendants' Motion to Compel is **DENIED AS MOOT**.

The Court **FINDS** that the parties have agreed to continue to work to locate, and secure the deposition of, David Hughes. With respect to David Hughes, Defendants' Motion to Compel is **HELD IN ABEYANCE** at this time.

It is so **ORDERED**.

ENTER: August 27, 2015.

/s/ James P. Mazzone
Lead Presiding Judge
Zoloft Litigation

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