

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

IN RE: ABILIFY (ARIPIRAZOLE)
PRODUCTS LIABILITY
LITIGATION

Case No. 3:16-md-2734

Chief Judge M. Casey Rodgers
Magistrate Judge Gary Jones

This Document Relates to All Cases

CASE MANAGEMENT ORDER NO. 1¹

The court held an Initial Case Management Conference on November 7, 2016. The official transcript of this proceeding is in the process of being prepared and will be posted on the Abilify MDL website in the near future. In the meantime, this Order serves as a non-exhaustive recitation of the key points of discussion between the court and counsel at the conference.

I. LEADERSHIP STRUCTURE

The court anticipates entering an order in the next week outlining a leadership structure for the MDL, including the duties and obligations of each position. The court noted that Plaintiffs' offered to provide a slate of attorneys to fill leadership positions; however, in an effort to be more fair and transparent in this process, the

¹ This Order applies automatically to all actions listed in the JPML's Transfer Order, ECF No. 1, the first Conditional Transfer Order, ECF No. 7, and the second Conditional Transfer Order, ECF No. 11, as well as any other actions subsequently transferred to, removed to, or initiated in this MDL court, without the necessity of future motions or orders.

court will solicit applications from any attorney wanting to apply for a leadership position. The court will provide an application form that attorneys must submit in order to be considered for a leadership role. Attorneys are welcome to attach a CV to the application. Once the order is entered, all interested attorneys will have fourteen days to return their applications to the court for an *in camera* review.

In evaluating the applications, the court will be looking for attorneys who have the legal and technical abilities, as well as the financial resources, to oversee and manage the MDL litigation to its conclusion for the benefit of all Plaintiffs. Just as importantly, the court is seeking to achieve diversity in the leadership structure in terms of experience, meaning superior litigators with excellent oral advocacy and writing skills in addition to skilled negotiators who can also work well with opposing counsel and pro se plaintiffs. The court is also interested in unique skill sets that would be of benefit to the litigation, such as a science or medical background or strong data management skills.

II. PLEADING AND DISCOVERY

The parties indicated that they were already working to develop a master complaint and short form complaints. The deadline to file the master complaint and submit the short form complaints to the court for posting on the Abilify MDL website is November 28, 2016. The parties agreed to confer over the next few days

regarding a proposed direct filing order. This proposed order should also be submitted to the court by November 28, 2016.

Defendant Otsuka Pharmaceutical Company (“OPC”) indicated its intention to file an omnibus motion to dismiss based on personal jurisdiction grounds. The deadline for jurisdictional discovery in the New Jersey cases is January 21, 2017. Defendant OPC has agreed to expand this jurisdictional discovery to encompass evidence relevant to all states in which an individual case, now a part of this MDL action, was filed. The court adopts the January 21, 2017 deadline for OPC to complete all jurisdictional discovery in this MDL action. The deadline for OPC to file its motion to dismiss is January 23, 2017. The deadline for Plaintiffs’ to respond is February 6, 2017 with a reply deadline for Defendants’ of February 13, 2017.

The court intends to follow a bellwether process for the remaining discovery and the future of the litigation, with the understanding that more individual cases will be filed.² The key to a useful bellwether process is to have a truly representative sample of cases for discovery. Getting a census of the litigation is likely to be a herculean task requiring the assistance of a third party data analytics firm. The court suggested BrownGreer and its MDL Centrality tool for this purpose. If the parties wish to use a different firm, that firm should have the ability to create detailed, up-to-date statistical reports based on Plaintiffs’ profile forms and/or fact sheets and

² Plaintiffs’ counsel anticipates “an ultimate caseload in excess of 1,000.” ECF No. 23, at 24.

discovery documents in order to provide the court and the parties the information they need to select representative cases based on the major variables identified.

The parties discussed the possibility of using a Plaintiffs' profile form for the early bellwether process with the complete fact sheet to follow later in the litigation. The former would be approximately two pages and would seek only the basic information necessary to identify the variables that will be used to create the representative sample of cases for the discovery pool. The latter would be a more expansive document. The parties agreed to continue conferring, even before the leadership structure is established, to create the profile form. In order to ensure that discovery proceeds in a timely manner, the profile forms should be completed and submitted to the chosen data analytics firm in time for the firm to present the results at the case management conference scheduled for February 22, 2017.³

Going forward, the undersigned will hold conference calls once every two weeks in order to resolve discovery disputes. The first call will occur on November 22, 2016 at 12:30 p.m. central time. The second will occur on December 2, 2016 at 12:00 p.m. central time. Future calls will be scheduled once the leadership positions are filled. The parties will be required to submit by email to both flnd_rodgers@flnd.uscourts.gov and gwendelynn_bills@flnd.uscourts.gov any

³ To the extent that the anticipated additional cases are not filed in the MDL by the end of December, the court may revisit this issue.

discovery issues two days in advance of these conference calls. To the extent the parties do not feel a conference call is necessary, they should also notify the court at least two days in advance. If disputes occur during depositions, the parties should first attempt to call the undersigned. If the undersigned is unavailable, the parties should contact Magistrate Judge Gary Jones, at (352) 380-2746.

The court intends to hold a Science Day, but held in abeyance the scheduling and scope of it. The parties were ordered to meet and confer regarding the amount of discovery necessary to hold a meaningful Science Day and to evaluate issues of general causation under *Daubert* (i.e. whether the scientific evidence can show a relationship between Abilify and compulsive disorders). By November 28, 2016, the parties should inform the court whether they were able to reach an agreement on discovery. If not, by the same date, the parties are directed to submit briefs addressing the appropriate scope of discovery in relation to a determination on general causation.

Defendants agreed to produce the discovery currently under way in the New Jersey litigation to the Plaintiffs in the MDL action as well. The parties disagreed about the description of the marketing materials ordered to be produced in the New Jersey litigation. They are directed to submit a joint understanding of the scope of that discovery by November 11, 2016.

III. PROPOSED CASE MANAGEMENT REQUIREMENTS

The deadline to submit a proposed case management order is fourteen (14) days after the entry of an order appointing attorneys to the leadership positions. This order must include, along with any other information the parties deem necessary and appropriate, the following information:

- A proposed settlement master
- A proposed data analytics firm
- A proposed preliminary discovery plan for general causation
- The date(s) scheduled for the Rule 30(b)(6) deposition
- Proposed deadlines for the completion of Plaintiffs' profile form
and/or fact sheets

To the extent that the parties agree on a settlement master or data analytics firm prior to the entry of the case management order, they are encouraged to file a notice with the court.

Along with the proposed case management order, the parties should also submit the proposed protective order.

IV. COURT STAFF CONTACT INFORMATION

For the parties' convenience, below is the contact information of key court staff involved in the MDL action:

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Randy Hausner

Court Security Officer

V. UPCOMING CONFERENCES

The second case management conference will be held on January 30, 2017. The court has reserved February 22 and 23, 2017 for the third case management conference. At that time, the court will also hold an evidentiary hearing, if necessary, or oral argument on OPC's motion to dismiss. Additionally, the court would like to

hear from a representative of the chosen data analytics firm. The fourth case management conference will be held on March 27, 2017.

In advance of every case management conference, the court will meet off the record with Plaintiffs' lead counsel and liaison counsel for both sides in chambers. This conference will take place forty-five minutes prior to the case management conference. Any party objecting to this procedure should notify the court within ten days of this Order's entry on the docket.

DONE and **ORDERED** on this 8th day of November, 2016.

M. Casey Rodgers

M. CASEY RODGERS

CHIEF UNITED STATES DISTRICT JUDGE