

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

IN RE: INCRETIN MIMETICS
PRODUCTS LIABILITY
LITIGATION

MDL Case No.13md2452 AJB (MDD)

As to all related and member cases

ORDER FOLLOWING THIRD
STATUS CONFERENCE

17 On January 16, 2014, the Court held a Status Conference in the above entitled
18 action. Various counsel appeared on behalf of the represented parties, Judge Dembin
19 appeared as the presiding Magistrate Judge, and Judge Higberger of the Los Angeles
20 Superior Court appeared as the presiding judge in the State Court Judicial Council
21 Coordinated Proceedings (“JCCP”).¹ Prior to the commencement of the Status Confer-
22 ence in open court, the Court, Judge Highberger, and Judge Dembin, met with members
23 of Plaintiffs’ Lead and Liaison Counsel, the Defendants’ Steering Committee, as well as
24 the JCCP Liaison Counsel. A discussion of the Court’s Order following the Second
25 Status Conference, the Joint Proposed Agenda, and the Joint Submission Regarding
26 Science Day ensued. (Doc. Nos. 200, 262, 258.) Following the in-chambers conference,
27
28

¹ All appearances were noted on the record of the Court. (Doc. No. 270.)

1 court convened on the record to report the status of the case and the interim plan to move
2 forward. Those matters are as follows:

3 **1. Master Pleadings**

4 The Master Consolidated Complaint and the Master Consolidated Short Form
5 Complaint (collectively, "Complaints") were both approved by the Court on December 2,
6 2013. (Doc. No. 203). Pursuant to the Court's December 2, 2013 Order, Defendants
7 filed their Master Answers on December 31, 2013. (Doc. Nos. 237, 238, 240, 241.) The
8 parties have conferred regarding a Case Management Order to complement the Master
9 Answers and address issues regarding service of the Complaints filed directly in the
10 MDL. The parties will submit a proposed order detailing the agreed upon procedures
11 shortly.

12 **2. Case Management Schedule**

13 The parties have conferred, and are continuing to confer, on an overall case
14 management schedule to govern this litigation. The Court recently agreed to extend the
15 time for the parties to reach agreement or, alternatively, to apprise the Court of their
16 respective positions. The deadline in this regard is now *February 10, 2014*. To the
17 extent the parties can reach agreement or articulate their positions prior to the Science
18 Days, the Court will convene a Case Management Conference on *February 7, 2014 at*
19 *9:00 a.m.* to enter an appropriate scheduling order. To the extent the parties are unable to
20 submit either a joint motion or their respective positions by the Science Days, the
21 deadline for the parties' respective submissions remains *February 10, 2014*, and the
22 Court will hold a telephonic Status Conference on *February 18, 2014 at 9:00 a.m.*
23 Plaintiffs' counsel is directed to make arrangements for the February 18, 2014 conference
24 call, which be held regardless of whether the Court enters a scheduling order prior to this
25 date.

26 **3. Science Days**

27 The parties have agreed on an agenda for Science Days, which will be held on
28 February 5 and 6, 2014. (Doc. No. 258.) The parties will continue to refine their

positions with regard to the necessary time allotment for each party on each topic. To the extent all of the necessary topics cannot be adequately covered in the time allotted, the Court will convene further sessions as appropriate.

4. Discovery Disputes

Judge Dembin has resolved each of the parties' disputes submitted to date. Judge Highberger reported no tensions between discovery related matters in the JCCP and the MDL proceedings pending in this Court.

5. JCCP

Judge Highberger provided a report on the status of the cases in the Los Angeles County JCCP. This included a trial scheduled to commence on February 18, 2014 regarding pancreatitis. Judge Highberger will participate in the Science Days, but will defer participating in future Case Management Conferences until issues warrant.

6. Thyroid Cancer Cases

There are now thirty-five (35) cases involving thyroid cancer pending in the Southern District of California involving Defendants Eli Lilly and Amylin. There is a potential that this number may grow to something in the hundreds (100s). Counsel are conferring with regard to consolidation of those cases by low number, or the potential to file a motion before the JPML to join those cases with the MDL. The Court will continue to monitor counsels' progress in this regard to ensure a plan is soon in place. In the meantime, any new thyroid cancer cases filed in the Southern District of California cannot be filed directly in the MDL, and must have independent subject matter jurisdiction in this court.

7. Other Matters

The Court asked counsel for information regarding the recent filing of several cases against AstraZeneca Pharmaceuticals and Bristol-Myers Squibb Company, which allege pancreatic cancer as a result of the use of the drug Onglyzer. Counsel were able to report that there are a small number of these cases, that Onglyzer is an Incretin Mimetic type drug, and pancreatic cancer is the only claimed injury. Whether these cases will be

1 joined with the MDL, or handled by separate low number consolidation, is currently
2 being discussed by counsel. This issued will be addressed again at the next status
3 conference. Counsel also reported that there are approximately fourteen (14) drugs on
4 the market that have the same six (6) ingredients that allegedly caused the injuries
5 claimed in these cases. This may mean that additional drugs and/or defendants will
6 become related, consolidated, or member cases at some point. The Court will continue to
7 monitor the filing of new cases and will look to counsel for further status on these matters
8 as the case proceeds.

9 **8. Upcoming Case Management and Status Conferences**

10 A Case Management Conference is tentatively scheduled for *February 7, 2014 at*
11 *9:00 a.m. in Courtroom 3B*. The February 7, 2014 Case Management Conference will
12 proceed if counsel has been able to submit a joint case management plan or their disputed
13 alternatives before the start of Science Days. The Court is also calendaring the next
14 Status Conference for *February 18, 2014 at 9:00 a.m.* The Status Conference will be
15 held telephonically in order to resolve case management issues and otherwise discuss the
16 status of the case.

17
18 IT IS SO ORDERED.

19 DATED: January 17, 2014

20 
21 _____
22 Hon. Anthony J. Battaglia
23 U.S. District Judge
24
25
26
27
28