

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ZOLOFT (SERTRALINE
HYDROCHLORIDE) PRODUCTS
LIABILITY LITIGATION

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MDL NO. 2342

12-MD-2342

HON. CYNTHIA M. RUFÉ

*THIS DOCUMENT APPLIES TO:
ALL ACTIONS*

PRETRIAL ORDER NO. 44
(Trial Pool Selection Protocol)

AND NOW, this 4th day of December 2013, upon consideration of the scope of these proceedings, the number of plaintiffs, the amount of discovery that will be required, the time necessary to complete pre-trial preparation, and Reports and Recommendations No. 3 and No. 4 (R&R 3 and 4) of the Special Discovery Master, which it has adopted, the Court hereby establishes the following Trial Pool Selection Protocol to govern these MDL proceedings. R&R 3 and 4 are **ADOPTED AS MODIFIED AND SET FORTH HEREIN.**¹

I. TRIAL POOL CASES

A. Initial Discovery Pool Case Strikes

1. No later than May 5, 2014, up to two cases chosen for the Initial Discovery Pool by the Pfizer Defendants may be stricken from the Initial Discovery Pool by the PSC, and up to two cases chosen for the Initial Discovery Pool by the PSC may be stricken from the Initial Discovery Pool by the Pfizer Defendants. The Pfizer Defendants may not strike more than one case in which Plaintiffs are represented by the same primary counsel. The voluntary dismissal of a case by a plaintiff shall be considered one of the PSC's strikes for the purposes of this paragraph.

¹ This Pretrial Order clarifies that the final decision as to the order in which cases will be tried rests with the Court, and to the extent that Pretrial Order No. 39 may be read otherwise, this Pretrial Order No. 44 controls. The dates set forth in R&R 3 and 4 have been modified in this Pretrial Order No. 44 to conform to the dates in Pretrial Order No. 39.

2. The voluntary dismissal of any case or cases selected by the Pfizer Defendants in the Initial Discovery Pool after the PSC has exercised its two strikes shall entitle the Pfizer Defendants to identify and strike an equal number of cases selected by the PSC for the Initial Discovery Pool, regardless of the identity of Plaintiffs' primary counsel.

3. Any strikes not exercised by May 5, 2014, are forfeited.

B. On May 14, 2014, the PSC and the Pfizer Defendants shall each designate three cases for the Trial Pool from the Initial Discovery Pool. Each of the three cases designated by each party must have a different primary counsel for Plaintiffs. The parties shall inform the Special Discovery Master of their selections simultaneously in a manner and at a time to be arranged by the Special Discovery Master. If the selections yield five or six cases, because there is little or no overlap between the designations, then the selection process will be complete. If the selections yield fewer than five cases, then the parties shall select additional cases by simultaneously disclosing additional selections to the Special Discovery Master within two business days thereafter, until the parties have selected a minimum of five and a maximum of six cases.

C. The parties will provide a list of the Trial Pool cases, along with a short summary of each Plaintiff's case, to the Court. It is from this list that the Court will select cases for trial. The list should note which, if any, cases have been selected by both parties, and the Court will consider this factor in determining the order in which the cases will be tried.

D. After May 5, 2014, Initial Discovery Pool cases and Trial Pool Cases may be voluntarily dismissed only by order of the Court and any such dismissal will be with prejudice in the absence of good cause shown why the dismissal should be without prejudice. If the Court permits a Trial Pool Case chosen by the Pfizer Defendants to be dismissed in these circumstances, the Pfizer Defendants will be permitted to select a replacement case, and the Court will consider these circumstances in determining the order in which the cases will be tried.

II. LEXECON

Plaintiffs and the Pfizer Defendants agree to waive the right to seek remand to the transferor court pursuant to the Supreme Court's decision in *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), for Trial Pool Cases in order to permit trials to be presided over by the MDL court; provided, however, that the Pfizer Defendants may revoke such waiver unilaterally if the Plaintiffs refuse to make available to testify live at trial the mother (unless she has terminated or lost custodial rights to the minor plaintiff), guardian(s), and/or other legal representative(s) bringing the claim on behalf of the minor plaintiff.

III. TRIAL EXPERT DISCOVERY

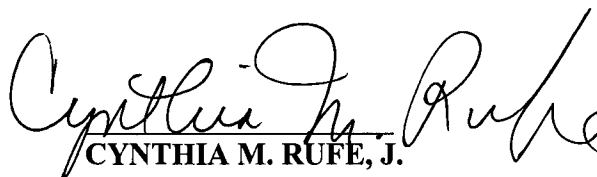
Plaintiffs' experts on a particular issue shall be deposed before the Pfizer Defendants' expert on that same issue, but all of Plaintiffs' experts need not be deposed before the deposition of the first Pfizer Defendants' expert. Depositions shall not be duplicative.

IV. PRETRIAL

The Court shall conduct pretrial and final settlement conferences at dates to be determined. The Court will issue future orders related to conduct of the pretrial conference and submission of a Proposed Pretrial Order, including items such as jury instructions, as may be necessary.

IT IS SO ORDERED.

BY THE COURT:


CYNTHIA M. RUFÉ, J.