

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Gary Selinsky, et al. and
related cases

Civil No. 06-873 (JMR/FLN)

Plaintiffs,

v.

ORDER

Boehringer Ingelheim Pharmaceuticals, Inc.,
Pfizer Inc., Pharmacia Corporation, and Pharmacia
& Upjohn Company LLC,

Defendants.

Tara Sutton, Gary Wilson, and Sarah Bray for Plaintiffs
Steven Ellison and Michael Brown for Defendant Pfizer
Tracy Van Steenburgh and Beth Rose for Defendant Boehringer Ingelheim Pharmaceuticals

THIS MATTER came before the undersigned United States Magistrate Judge on February 26, 2007, on Plaintiffs' motion to compel interrogatory answers and production of responsive documents [#110] and Joint motion by Defendants Boehringer Ingelheim Pharmaceuticals, Inc. ("BIPI") and Pfizer for a protective order quashing Rule 30(b)(6) deposition on document collection and production [#119].

Plaintiffs contend that Defendants have failed to produce responsive documents from before 2003. In particular, Plaintiffs assert that a greater number of research and development documents must exist. While the Court notes that there appears to be a dearth of documents from prior to 2003, Defendants do not appear to be withholding any documents based upon a time limitation. At the hearing, Defendants acknowledged an obligation to produce all responsive documents from prior to 2003 and it is the Court's expectation that they will fulfill that obligation.

Defendant BIPI did argue that it has not produced some material from before 2003 because it is in the possession of Boehringer Ingelheim (“BI”) and BI is a separate entity not a part of this action. The Court rejects BIPI’s argument. BIPI can access responsive documents from BI and no reason exists why BIPI should not find responsive documents in BI’s possession.

In support of the contention that Defendants must possess more documents from before 2003, Plaintiffs asserted that Defendants’ work product claims created a duty to preserve as of August 8, 2003. Given a duty to preserve as of August 8, 2003, Plaintiffs contend that FDA regulation would have required Defendants to retain documents dating as far back as 1993. In response to Plaintiffs’ argument, Defendants assert that the work product designation on the August 8, 2003, documents was erroneous. The Court ordered the August 8, 2003, documents to be produced for an *in camera* review. After reviewing the documents, the Court observes that invocation of the work product privilege by Defendants was not erroneous.

Based on all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that Plaintiffs’ motion to compel interrogatory answers and production of responsive documents [#110] is **GRANTED** in part and **DENIED** in part as follows:

1. To the extent that Plaintiffs seek BIPI to produce responsive documents in BI’s possession, the motion is **GRANTED**. BIPI must produce BI’s documents that are responsive to Plaintiffs’ document production requests.
2. To the extent that Plaintiffs seek the production of documents pertaining to Monford Piercey and the scientists listed on the patent application, the motion is **GRANTED**. Defendants shall produce these documents by March 15, 2007.
3. To the extent that Plaintiffs seek an order compelling the production of documents from pre-2003, the motion is **DENIED**. Plaintiffs have not shown that Defendants are withholding documentation based upon time limitations.
4. To the extent that Plaintiffs seek full and complete responses to Plaintiffs’ Interrogatory No. 16, the motion is **GRANTED**. Defendants shall respond to this interrogatory by March 15, 2007.

5. To the extent that Plaintiffs seek Defendants to identify the “most knowledgeable” persons in regard to Plaintiffs’ Interrogatory Nos. 6-9; 21, the motion is **GRANTED**. Defendants shall respond to these interrogatories by March 15, 2007.
6. To the extent that Plaintiffs seek full and complete responses to Plaintiffs’ Interrogatory Nos. 14-15, the motion is **GRANTED**. Defendants shall respond to these interrogatories by March 15, 2007.
7. To the extent that Plaintiffs seek the production of requested case report and adverse event report forms, the motion is **GRANTED**. Defendants shall produce these documents by March 15, 2007.
8. To the extent that Plaintiffs seek Defendants to provide dates when witnesses will be made available in response to Plaintiffs’ Rule 30(b)(6) depositions, the motion is **GRANTED**. Defendants shall submit the dates to Plaintiffs and the Court by March 15, 2007.
9. To the extent that Plaintiffs seek to require Defendants to schedule Plaintiffs’ Rule 30(b)(6) depositions earlier than April 2007, the motion is **DENIED**.

Defendants brought a joint motion to quash Rule 30(b)(6) depositions regarding documents collection and production. Defendants argued that the subject matter of these depositions would invade the attorney-client privilege. Defendants proposed addressing Plaintiffs’ questions and concerns through meet-and-confers and submitting signed affidavits.

Based on all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that the Joint motion by Defendants BIPI and Pfizer for a protective order quashing Rule 30(b)(6) deposition on document collection and production [#119] is **DENIED**. Defendants should address their concerns regarding attorney-client privilege by making appropriate objections at the depositions.

DATED: March 7, 2007

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge