

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE BAYCOL PRODUCTS :
LIABILITY LITIGATION : MDL No. 1431
 : (MJD/JGL)
 :
 :
This Document Relates to All Actions : Pretrial Order No. 131
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In order to promote the fair and efficient administration of this litigation, to comply with its continuing obligations as an MDL court, to more clearly define the requirements of Pretrial Order 114, to facilitate the categorization of claims under Pretrial Order 127, and to expedite the evaluation of the case specific evidence relating to plaintiffs' claims of injuries or damages, the Court has determined that it is necessary to further supplement expert discovery procedures and deadlines for the parties.

Plaintiffs' Steering Committee ["PSC"], Bayer, and GSK lawyers have met, conferred, and submitted proposed recommendations regarding this pretrial order. These recommendations have been discussed with Special Masters Roger Haydock and Lewis Remele, who additionally solicited and received the input of representative individual plaintiffs' counsel.

Based upon these proceedings and the cases filed with this Court, IT IS HEREBY ORDERED:

1. **Supplemental Order.** This Order supplements Pretrial Order 114 (PTO 114) regarding the content of case specific expert reports, establishes deadlines for plaintiffs to comply with any necessary supplementation, and permits requests for time extensions.
2. **Case Specific Expert Report.** Each plaintiff is to submit a Case Specific Expert Report pursuant to this Pretrial Order using the attached Stipulated form ["Stipulated Report Form"] or is to provide the information required in the Stipulated Report Form, in accord with the deadlines in Paragraph 4.
 - A. A Plaintiff who has not submitted a case specific report required by PTO 114 as of the date of this Pretrial Order shall submit a report utilizing the Stipulated Report Form.
 - B. A Plaintiff who has already submitted all of the information under PTO 114 as now required by the Stipulated Report Form need not submit any additional information.

- C. A Plaintiff who has previously submitted a letter, report, documents and/or records under PTO 114 that do not provide all the information required by the Stipulated Report Form shall do so in a Supplemental Report by providing the missing information in the format prescribed in the Stipulated Report Form.

3. Compliance with Stipulated Report Form.

- A. On or before November 24, 2004, the PSC and Bayer shall meet and confer regarding which Plaintiffs, who have submitted reports, have provided all of the information required by the Stipulated Report Form. The PSC shall notify all Plaintiffs who the PSC and Bayer agree have NOT complied with this Order by November 24, 2004.
- B. For Plaintiffs who submit reports after November 24, 2004 in accord with this Order, the PSC and Bayer shall periodically meet and confer regarding which Plaintiffs have provided all of the information required by the Stipulated Report Form. The PSC shall promptly notify all Plaintiffs who the PSC and Bayer agree have NOT complied with this Order.
- C. If the parties disagree regarding compliance, the PSC or Bayer may request that Special Master Lewis Remele determine whether compliance has occurred. If Special Master Remele determines that information is missing, he shall notify all parties of the missing information and allow the Plaintiff at least 30 days to provide the additional information.

4. Deadlines for Compliance with this Order

- A. All plaintiffs who have previously submitted an attorney letter pursuant to Section I.B.1 of PTO 114, whose deadline under that section has not yet passed and who have not yet submitted the required case specific expert report pursuant to Section I.B.2, shall submit a report utilizing the Stipulated Report Form on or before January 31, 2005.
- B. All plaintiffs who fall within Paragraph 2.C of this Pretrial Order shall submit a Stipulated Report Form on or before February 28, 2005.
- C. For all plaintiffs whose deadlines under PTO 114 have passed as of the date of this Pretrial Order, but who have not yet made a submission, the deadline and enforcement provisions of PTO 114 shall continue in force. If, however, any such plaintiff makes a PTO 114 letter submission under Section I.B.2. on or before the

final deadline as set by the Court pursuant to PTO 114 Section VI, that plaintiff shall have 120 days from the applicable PTO 114 deadline within which to submit a Stipulated Report Form under this Pretrial Order.

- D. All plaintiffs whose deadlines under PTO114 (whether by the terms of that order or by an extension granted under Section III.B of that order) have not yet passed as of the date of this Pretrial Order shall submit a report utilizing the Stipulated Report Form according to the following schedule:
1. Plaintiffs represented by the law firms of Sweet & Freese, Cory Watson Crowder & Degaris, Porter & Malouf, Tyner Law Firm, and Beasley Allen Crow Methvin Portis & Miles, whose deadline was extended to November 1, 2004, shall submit a report utilizing the Stipulated Report Form on or before January 31, 2005.
 2. Plaintiffs represented by Aylstock Witkin & Sasser, whose deadline was extended to November 8, 2004, shall submit a report utilizing the Stipulated Report Form on or before January 31, 2005.
 3. Plaintiffs represented by the Law Offices of M. Shane Lucado, whose deadline was extended to November 24, 2004, shall submit a report utilizing the Stipulated Report Form on or before January 31, 2005.
 4. Plaintiffs transferred to this MDL by Conditional Transfer Orders 39, 40, 41, 42, or 43 or who filed in the District of Minnesota between July 20, 2004 and the date of this Pretrial Order shall submit a report utilizing the Stipulated Report Form on or before January 31, 2005.
- E. Plaintiffs represented by Weitz & Luxenberg shall submit a report utilizing the Stipulated Report Form as follows:
1. On or before February 15, 2005 for approximately one-third of its cases.
 2. On or before April 15, 2005 for approximately one-third of its cases.
 3. On or before June 30, 2005, for all its remaining cases.
- F. For all future cases:

1. Plaintiffs whose cases are originally filed in other jurisdictions and are transferred by the Judicial Panel on Multidistrict Litigation to this MDL shall serve a completed report utilizing the Stipulated Report Form within 120 days from the date a certified copy of the applicable Transfer Order is entered in the MDL No. 1431 docket.
2. Plaintiffs whose cases are originally filed in the District of Minnesota shall serve a completed report utilizing the Stipulated Report Form within 120 days from the date of filing.
5. **Time Extensions.** Any plaintiff may submit, prior to her or his deadline, an e-mail to Special Master Roger Haydock (rhaydock@arb-forum.com), with copies to the PSC (jeangeoppinger@wsbclaw.com) and defendants (jmizgala@sidley.com), requesting one extension of no more than 30 days. No further extensions will be granted except on a showing of extraordinary circumstances. Special Master Haydock will promptly review and decide each request.
6. **Use of Reports.** Reports utilizing the Stipulated Report Form may be supplemented by other expert reports, or additional expert reports may be submitted pursuant to ongoing discovery, pretrial, and trial preparation procedures and pretrial orders. All reports utilizing the Stipulated Report Forms may be used for any purposes for which a Rule 26 report may be used. If a plaintiff elects to use the Stipulated Report Form as a Rule 26 report, defendants retain the right to challenge the sufficiency of that report under Rule 26(a)(2) and the Federal Rules of Evidence. This Court or any transferor judge may rule in a specific case that Rule 26 requires or allows additional information to that contained in the Stipulated Report Form.
7. **Additional Provisions.** The provisions of PTO 114 regarding service, notice of PTO obligations, notice of overdue supplemental discovery, sanctions for non-compliant plaintiffs, discovery extension deadlines, and other related or applicable provisions shall apply with full force and effect to this Pretrial Order.

October __, 2004

Honorable Michael J. Davis
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

In Re: BAYCOL PRODUCTS LITIGATION

MDL 1431

This Document Relates to:

Name of Plaintiff: _____

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CASE SPECIFIC EXPERT REPORT PURSUANT TO PTO 131

1. My name is: _____

2. My professional address is: _____

3. My curriculum vitae, including all my publications for the past ten years, is attached as Exhibit 1. I am being compensated at \$_____/hour, and my charges for my review and this report are \$_____.

4. Attached as Exhibit 2 is a list of cases in which I have testified as an expert, either at trial or in deposition, in the past four years. If no such list is attached, I have not testified as an expert in the past four years.

5. I have reviewed the following medical records of the above patient. My opinion is

based on my review of these records. I understand that there may be other records for this patient beyond those which I have reviewed:

- a. _____
- b. _____
- c. _____
- d. _____

6. **IF APPLICABLE:** My opinion is also based on my examination of the patient, which consisted of the following:

- a. _____
- b. _____
- c. _____

Any forms completed by me, my staff, or this patient in connection with my examination and the results of any testing performed as part of my examination are attached as Exhibit 3.

7. **IF APPLICABLE:** My opinion is based on an oral or written medical history of the patient provided to me. Any forms completed by me or my staff, or provided to me regarding this patient, documenting this oral or written history are attached as Exhibit 4.

8. It is my understanding that this patient used Baycol at the following dose(s) and time period(s):

- a. _____ mg/day from [DATE] to [DATE]
- b. _____ mg/day from [DATE] to [DATE]

The prescription, sample, medical records or other information I am relying on for this opinion

are attached as Exhibit 5.

9. It is my understanding that the patient was using the following medications, in addition to Baycol, during the period of time set forth in paragraph 8 above:

- a. _____
- b. _____
- c. _____
- d. _____

10. It is my expert opinion that Baycol caused the following specific injury or injuries to this patient for the period of time from the onset of the injury (list actual or approximate date) through the [date on which the injury resolved (list actual or approximate date)] or [present as the injury is ongoing]:

- a. _____
- b. _____
- c. _____

The medical records I am relying on for this opinion are attached as Exhibit 6.

11. The following are the case specific bases and reasons for my opinion that Baycol caused the plaintiff to suffer injuries listed in paragraph 10:

b. Injury: _____

(i) Possible alternative causes: _____

(ii) Reasons for excluding each of the possible alternative causes: _____

c. Injury: _____

(i) Possible alternative causes: _____

(ii) Reasons for excluding each of the possible alternative causes: _____

[List any additional injuries on a separate page.]

OPTIONAL FINDING [No. 13 Need not be included]

13. Prior to using Baycol, the medical history of this patient was significant as follows:

(Include any complaints or injuries the same as, or similar to, those listed in Paragraph 10 that pre-existed the use of Baycol)

- a. _____
- b. _____
- c. _____

14. I understand, pursuant to PTO 131, that I may supplement this report pursuant to ongoing discovery, including my review of additional medical records.

Date: _____

Signature: _____