

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Baycol Products Litigation

MDL No. 1431

This Document Relates to All Actions

Pretrial Order No. 88

Richard A. Lockridge, Hugh V. Plunkett, Robert K. Shelquist and Yvonne M. Flaherty, Lockridge Grindal Nauen, PLLP, and Charles S. Zimmerman and Ronald S. Goldser for and on behalf of Plaintiffs.

Peter W. Sipkins and Elizabeth S. Wright, Dorsey & Whitney LLP, Philip S. Beck and Adam Hoeflich, Bartlit Beck Herman Palenchar & Scott, Susan A. Weber, Sidley Austin Brown & Wood, Gene C. Schaerr, Sidley Austin Brown & Wood. Thomas P. Hanrahan and Alycia A. Degen, Sidley Austin Brown & Wood LLP, and Richard K. Dandrea, Eckert Seamans Cherin & Mellott LLC for and on behalf of Bayer Corporation and Bayer AG.

Tracy J. Van Steenburgh, Halleland Lewis Nilan Sipkins & Johnson, P.A. and Fred T. Magaziner, Dechert LLP for and on behalf of SmithKline Beecham Corp. d/b/a GlaxoSmithKline.

This matter is before the Court upon Plaintiffs' motion for leave to file a multiparty complaint. Specifically, Plaintiffs would like to join the claims of three female plaintiffs, each from Mississippi who were born prior to 1939 and who have the same symptomatic muscle injury, short of rhabdo. Plaintiffs assert that if these claims were tried together, all would present evidence of the risk/benefit analysis of Baycol as it was known to Bayer prior to the time the drug was marketed, and all would present evidence of the risk benefit analysis of .4 mg, although one Plaintiff was prescribed .3 and .8 mg. None were co-prescribed gemfibrozil. Evidence would be presented that to show an

increased risk to elderly females, that Bayer targeted elderly individuals and that Bayer refused to conduct further studies regarding the increased risk to elderly women.

Despite the Court's previous orders, Plaintiffs believe that they have presented three plaintiffs whose claims are sufficiently similar that their claims can properly be joined pursuant to Fed. R. Civ. P. 20. Defendants oppose, arguing that joinder under Rule 20 is proper *only* if Plaintiffs can meet the "same transaction or occurrence" requirement.

Permissive joinder under Rule 20 is proper only where "the central facts of each plaintiff's claim arise on a somewhat individualized basis out of the same set of circumstances." In re: Orthopedic Bone Screw Products Liability Litigation, 1995 WL 428683, at *2 (E.D. Pa. 1995); see also, In re: Rezulin Products Liability Litigation, 168 F. Supp.2d 136, 145 (S.D.N.Y. 2001); In re Diet Drugs, 1999 WL 554584, at *4 (E.D. Pa. 1999); Simmons v. Wyeth Laboratories, Inc., 1996 WL 617492, at *3 (E.D. Pa. 1996).

In contrast to Plaintiffs' previous motion to bundle, in which Plaintiffs provided the Court no information from which the Court could determine that joinder was appropriate, Plaintiffs have now provided such information. Plaintiffs have demonstrated that the claims of the three plaintiffs subject to this motion have many common characteristics, and that their claims arise from the same set of circumstances. Based on the Plaintiffs' submissions, the Court finds that joinder of Doris Bernard's, Josephine Clarether Berry's and Celine Marie Folse Dempster's claims under Rule 20 is proper.

As discovery proceeds in these cases, and it is determined that joinder is no longer appropriate, the Court may revisit this issue.

IT IS HEREBY ORDERED that Plaintiffs' motion for leave to file a multi-party complaint in the Bernard et al. v. Bayer AG et al. matter is GRANTED.

Date:

Michael J. Davis
United States District Court