

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

IN RE YASMIN AND YAZ)	3:09-md-02100-DRH-PMF
(DROSPIRENONE) MARKETING, SALES)	
PRACTICES AND PRODUCTS LIABILITY)	MDL No. 2100
LITIGATION)	

This Document Relates to:

ALL CASES

MINUTES OF STATUS CONFERENCE

PRESIDING: Chief Judge David R. Herndon

DATE: November 29, 2011

PLACE: East St. Louis, Illinois

COURT REPORTER: Laura Blatz COURTROOM DEPUTY: None Appearing

**APPEARING FOR PLAINTIFFS: Roger Denton, Mark Niemeyer, Seth Katz,
Michael London, Michael Burg, Ned McWilliams**

**APPEARING FOR DEFENDANTS: Adam Hoeflich, John Galvin, Tim Coon,
Michael Suffern**

TIME: 1:30 PM – 1:50 PM

The following matters were addressed:

Motion to Withdraw *Bradish* Case from Bellwether Trial Pool

A motion has been filed in *Bradish et al v. Bayer Corp., et al*, 3:09-cv-20021-DRH-PMF ("*Bradish*") (Doc. 57) to withdraw the case from the Bellwether Trial Pool. The parties have agreed to place the three back-up Bellwether cases in abeyance (*Daubert* deadlines will remain). If the first Bellwether case cannot be tried, the motion to withdraw the *Bradish* case from the Bellwether trial pool (*Bradish*, doc. 57) may be renewed at that time.

Exhibit Lists and Deposition Designations

Plaintiffs served defendants with exhibit lists and deposition designations on November 21 and 22. Two exhibit lists were provided: (1) the *Sims* exhibit list (1,100 documents) and (2) the Master exhibit list (7,700 documents). Plaintiffs state that it is their present intent to use the *Sims* exhibit list in the *Sims* trial. However, plaintiffs assert that depending on the course of the trial, they may elect to utilize documents in the Master exhibit list. Defendants claim that plaintiffs' exhibit lists and deposition designations are grossly over-designated. They also object to plaintiffs' proposal regarding use of the Master exhibit list during the *Sims* trial. The Court will not order the plaintiffs to narrow or reduce their deposition designations or exhibit lists. The Court further rules that the *Sims* exhibit list is *the* exhibit list for the *Sims* trial. Plaintiffs, however, may seek leave of court to supplement the *Sims* exhibit list with documents from the Master exhibit list as they see fit.

Authenticity and Business Records

The parties have been conferring; however, disputes regarding establishing authenticity and business record foundation remain. Plaintiffs request setting a date to begin custodian of records depositions. Bayer asks the Court to delay any such depositions pending further negotiation by the parties. The Court concludes that time is of the essence. Custodian of records depositions shall begin Monday December 5, 2011. The depositions shall be limited to documents on the *Sims* exhibit list and questions shall be limited to business records and foundational issues. Plaintiffs shall designate the documents that will be the subject of the depositions. Defendants are responsible for identifying the witness or witnesses with the proper knowledge.

Depositions of Dr. Rosing and Dr. Kessler

Plaintiffs have noticed preservation depositions of two of their retained experts, Dr. Rosing and Dr. Kessler, for December 13 and December 16, respectively. Defendants have moved to quash (MDL 2100 Doc. 2116). The motion is **denied**.

Supplementing Expert Reports

If recently published studies or scientific material are read and considered by the parties' experts, expert reports should be supplemented accordingly. The parties have agreed, if supplementation is necessary, they will submit simultaneous supplements (at a date and time agreed to by the parties).

Plaintiffs' Advisory Committee Material

Plaintiffs' leadership counsel shall survey plaintiffs' attorneys and will produce this material by Thursday December 1, 2011.

Rolling Discovery

On January 5, 2011, a production that catches all documents (advisory committee materials and custodian materials) through December 23rd shall be produced by the defendants.

Motion to Unseal

Plaintiffs' motion to unseal (MDL 2100 Doc. 2113) is taken under advisement.

Daubert Hearings

Defendants are submitting a letter to the Court regarding proposed argument for these hearings. The Court reminds the parties of its desire to focus on the most important aspects of their briefs only. Plaintiffs contend that many of defendants' *Daubert* motions are not properly brought as *Daubert* motions. Plaintiffs request further guidance from the Court regarding issues to be argued during the hearings. The Court takes the issue under advisement and will confer with the state court judges.

Next Conference

The next status conference will be during the pretrial hearings scheduled for December 19th, 2011. The time of the status conference will be announced as that date approaches.