

**FILED**

FEB 17 2016

JUDGE JESSICA R. MAYER

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY**

CASE NO. 623

CIVIL ACTION

**CASE MANAGEMENT ORDER No. 6**

**IN RE: PROPECIA® LITIGATION**

**THIS MATTER** having come before the court at a case management conference on February 3, 2016, concerning the management of pending New Jersey state cases in the above litigation, and counsel having met and discussed a process for selecting potential bellwether trial cases, and for good cause having been shown;

**IT IS** on this 17<sup>th</sup> day of February, 2016,

**ORDERED** as follows:

1. With the consent of counsel for Plaintiffs and Defendants Merck & Co., Inc. and Merck Sharp & Dohme Corp. (“Merck”) (collectively, the “Parties”), the Parties will prepare an initial pool of potential bellwether cases (the “Case Pool”) using criteria and characteristics representative of the Propecia® cases pending in this court. The following criteria and characteristics will be applied to populate the Case Pool:

- a. The Case Pool will be comprised of persons claiming Propecia® caused them to suffer some form of harm to the Reproductive System or depression. For purposes of this order, harm to the Reproductive System shall encompass sexual dysfunction, including erectile dysfunction, libido disorders, ejaculation disorders and orgasm disorders, male infertility and/or poor seminal quality and testicular pain. Plaintiffs alleging that their consumption of Propecia® caused prostate cancer, breast

enlargement, suicide, or breast cancer are expressly excluded at this time;

- b. The Case Pool shall consist of those cases where Merck is the only named defendant;
- c. The Case Pool shall consist of those cases where the Plaintiff used Propecia® for hair loss/alopecia;<sup>1</sup>
- d. Plaintiffs must have submitted a completed Plaintiff Fact Sheet by January 1, 2016; and
- e. The Parties shall provide the Case Pool List to the court on or before July 1, 2016.

2. From the Case Pool List, each party will select five (5) cases for inclusion in a “Trial Pool.” The Parties will serve upon the other their respective Trial Pool selections on September 15, 2016 at 12:00 p.m. Eastern Standard Time. Neither Party may select a case for the Trial Pool unless the Plaintiffs supplied to Merck fully completed and executed medical record authorizations (including authorizations for the prescribing physician(s), the primary care physician(s), and pharmacy records). In the event Merck settles a “Plaintiff Pick”, the Plaintiffs may select another case from the Case Pool. In the event the Plaintiffs voluntarily dismiss a “Defense Pick”, Merck may select another case from the Case Pool. In the event Merck settles a “Defense Pick” or Plaintiffs dismiss a “Plaintiff Pick”, the Parties will not be entitled to an additional pick. Cases that are involuntarily dismissed pursuant to an order of this court shall not be substituted.

3. Case-specific discovery on cases selected for the Trial Pool shall commence on September 30, 2016 and be completed by March 1, 2017. Case-specific depositions for the ten

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<sup>1</sup> Plaintiffs that exclusively used Finasteride and/or Proscar® are excluded from the Case Pool.

(10) Trial Pool cases shall be limited to the following:

- (a) the prescribing physician(s);
- (b) the physician(s) who diagnosed the plaintiff's injury;
- (c) the plaintiff(s);
- (d) two (2) (current or former) sales representative(s) for the prescribing physicians. If Merck is unable to produce sales representatives for the prescribing physician(s), then it shall produce the district or regional sales manager for the appropriate geographical area. Plaintiffs reserve the right to notice depositions of additional sales representatives should they deem it necessary but agree to meet and confer with Merck before so doing. Merck reserves the right to object to additional depositions of sales representatives.

Plaintiffs shall be responsible for noticing the depositions of any prescribing and/or diagnosing physicians for all "Plaintiff Picks", and Merck shall be responsible for noticing the depositions of all witnesses for all "Defense Picks". The expense of conducting any such depositions shall be paid by the Party noticing the deposition. The order of questioning shall be as follows: for "Plaintiff Picks" the Plaintiffs' counsel shall be the initial questioner, and for "Defense Picks" Merck shall be the initial questioner.

4. On March 7, 2017 at 12:00 p.m. Eastern Standard Time, each Party shall file with the court its proposal for two (2) trial-ready cases from its picks among the Trial Pool. Plaintiffs and Merck shall file a statement with the court ranking their respective cases in the trial pool and identifying the reasons the proffered picks constitute a representative bellwether trial case.

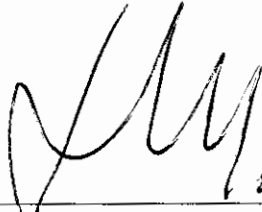
5. On March 14, 2017 the court will select two (2) cases from the "Trial Pool" for

further discovery. The court will schedule and conduct a case management conference after March 14, 2017 to address additional scheduling deadlines, including a trial date, for the select bellwether trial.

6. The Parties shall meet and confer to determine whether there are any choice of law issues that need to be resolved by the court:

- a. Any choice of law motion shall be filed no later than March 28, 2017;
- b. Opposition papers shall be filed no later than April 11, 2017;
- c. Reply papers, if any, shall be filed no later than April 19, 2017;
- d. Oral argument on the choice of law issue, if any, shall be conducted in accordance with the court's calendar.

7. A copy of this order shall be posted on line by the court.

  
2/17/16  
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HON. JESSICA R. MAYER, J.S.C.