

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

**IN RE: Seroquel Products
Liability Litigation**

Case No.: 6:06-md-1769-Orl-22DAB

(ALL CASES)

**MDL PLAINTIFFS' AND DEFENDANTS'
JOINT MOTION REQUESTING THE COURT TO ADOPT AND
ENTER PROPOSED CASE MANAGEMENT ORDERS,
AND COMBINED MEMORANDUM**

_____The MDL Plaintiffs, and the Defendants, ASTRAZENECA PHARMACEUTICALS LP and ASTRAZENECA LP (hereinafter collectively "AZ"), by and through their respective undersigned counsel, hereby file and submit this Joint Motion Requesting the Court to Adopt and Enter the two (2) proposed Case Management Orders submitted herein, and in support of this Joint Motion and Combined Memorandum, the following would be stated:

1. This Joint Motion and Memorandum is being filed pursuant to M.D. Fla. L. R. 3.01(a).
2. Pursuant to the Hearing before Judge Baker on December 12, 2006, after what was, essentially an all night negotiating session between the Plaintiffs and Defendants, the parties were to jointly submit as a follow-up to the Joint Stipulation presented that day two (2) Case Management Orders to be considered, and hopefully approved by the Court, on December 20, 2006. (Hrg. Tr., 12/12/06, 9/18-20; 10/5-14)
3. This Motion is being made jointly by the parties for the specific purpose of advising the Court that through cooperation, negotiation, compromise, mutual respect and, in essence, hard work by all counsel involved that the proposed two (2) Case Management Orders are being hereby

timely submitted to the Court. The primary purpose of this Joint Motion is to advise the Court of the overall concept by which agreements were reached between the parties on what are very difficult, complex, and not easily resolved issues which affect legal rights of all the parties, but also the practical aspects of preserving individual Plaintiffs' claims, and the corporate business and operations of AZ.

4. Contemporaneous with this Joint Motion the parties are also filing a Joint Motion requesting a Status Conference and/or Oral Argument on these requested and submitted Case Management Orders for the Court's approval. In addition to this, the parties jointly would like to advise the Court of the following:

- A. Plaintiffs' Fact Sheets: An issue of great concern to the MDL Plaintiffs has been the completion and service to AZ of Plaintiffs' Fact Sheets (hereinafter PFS). Although the parties did earlier reach agreement on the PFS, they have completely divergent interests and concerns with regard to the PFS, which were then subsequently affected by Judge Baker's decision not to accept the proposal concerning the serving of PFS and their timing, the latter of which was for the MDL Plaintiffs a *quid pro quo* for the adoption of the PFS form that AZ wanted. The Court is advised that after additional discussions between the parties, as reflected in proposed CMO 2, the MDL Plaintiffs have effectively explained to AZ all of the practical impediments, despite good faith efforts by the attorneys, to fully complete PFS from clients in this type of litigation. AZ represents that it has a full and complete understanding and appreciation of the difficulties that MDL Plaintiffs' counsel have with the completion of the PFS. Consequently, CMO 2 reflects both the practicalities

and the real life difficulties with these potential MDL Plaintiffs, and the parties have addressed both the needs of the Plaintiffs, consistent with the requirements of AZ in receiving and being able to process the PFS, all of which is reflected in proposed CMO2.

B. Document Production by AZ: Commensurate with the sensitivity and unique interests of the MDL Plaintiffs with the PFS, similarly, AZ has had an opportunity to fully explain to the understanding of MDL Plaintiffs the real problems, practical and logistical in nature, commensurate with the business practices of AZ, that counsel for AZ have had with regard to the production of custodial and other documents that will be necessary for the MDL Plaintiffs to have in this case. It is the stated policy of AZ counsel, and its client, that commensurate with the goals of these MDL cases to get to Plaintiffs' counsel in a timely manner and in a format usable the necessary production documents that the opposing side will need to help them develop, evaluate, and understand their cases for purposes of ultimate prosecution and/or dismissal of cases. The MDL Plaintiffs now have a better understanding of the difficulties involved with any unreasonable time limit for AZ's production of documents. Consequently, CMO 2 reflects what the parties believe to be a reasonable production schedule that satisfies both the practical and real world difficulties that a company the size of AZ has with its document maintenance, even in this electronic age, as well as the needs of the MDL Plaintiffs in acquiring production of documents which are relevant and likely to lead to admissible evidence. It is submitted that CMO 2 reflects

the confluence of the competing interests of both parties, and reflects a workable, practical and judicially efficient methodology and system for the production of documents to the MDL Plaintiffs.

- C. The Parties would like the Court to know that over the course of December 12th through December 20th almost every day negotiations were going on between MDL counsel, specializing in certain of the areas at issue having been requested to do so by co-lead counsel, Camp Bailey, and AZ lead counsel, attorneys from his office, as well as Sidley attorney, Tamar Kelber. Numerous meetings were held over lengthy periods of time throughout the days since the last hearing in order to finalize proposed CMO 1 and CMO 2. The Parties would also submit that these discussions were held on a regular basis, and matters were not left to last minute or completed under urgent time circumstances. Even from the September-November time frame, the parties held regular discussions, but were less successful in resolving disputed matters.
- D. The parties submit to the Court that the agreements reached in these two (2) CMOs are all tied together, mutually dependent, and submitted as a package. The Court is respectfully requested to accept these proposals in that light.

5. The parties wish to state that their intent in arriving at the mutually agreed to and proposed CMO 1 and CMO 2 was to comply with the Court's stated policy of having this MDL in a position by which Judge Conway, as the transferee Court, to transfer back to the originating

jurisdictions these cases in accordance with the Court's two (2) year time table. The parties believe that what they are submitting to the Court is, in their good faith judgment, intended to assist the Court to accomplish its goal of two (2) year completion of this MDL prior to remand to the original jurisdictions for whatever remaining cases then exist.

6. As Court-appointed MDL Liaison Counsel the undersigned would further state that he has been involved in most of the continuing, and regularly scheduled conferences which have taken place between the MDL Plaintiffs' attorneys handling these matters at the appointment and request of co-lead counsel, as well as AZ attorneys at Dechert and Sidley & Austin. These regular conferences have taken place during normal business hours, and several times during evenings. Attorneys on each side have sacrificed both personal and other professional obligations and responsibilities in order to arrive at the proposed CMO 1 and CMO 2. Liaison Counsel, for example, can attest to the hard work, good faith, reasonableness, mutual understanding and respect evidenced between counsel for both sides in arriving at the crossroads where the parties now stand in submitting these proposed CMOs to the Court. As a practical example, despite the Holiday season, conference calls were held during the evening hours where attorneys were participating from home, and California lawyers, under East Coast business hours, were conferring and participating while driving their children to school, and even when other attorneys were on their vacations. The purpose of advising the Court of this is simply to say in response to the concern voiced by Judge Baker on December 11th and 12th, and whatever misunderstandings may have been generated or created after the September 7, 2006 Status Conference with both Judges Conway and Baker, that the parties on both sides have taken their responsibilities seriously and have tried to meet both the Court's personal and professional expectations for the judicial and litigation attorneys' handling of this complicated Multi-District Litigation.

7. That MDL Plaintiffs' Liaison Counsel has been specifically authorized by Lead Counsel for AZ, Fred Magaziner, to submit this Joint Motion with his electronic signature.

WHEREFORE, both the MDL Plaintiffs and the Defendants, AZ, by and through their respective counsel, hereby request the Court to adopt and approve the proposed Case Management Orders No. 1 and No. 2 submitted hereto and attached as Attachment 1 and Attachment 2.

RESPECTFULLY SUBMITTED this 20th day of December, 2006.

/ s/ Fred T. Magaziner

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of December, 2006, I electronically filed the foregoing: **MDL PLAINTIFFS' AND DEFENDANTS' JOINT MOTION REQUESTING THE COURT TO ADOPT AND ENTER PROPOSED CASE MANAGEMENT ORDERS AND COMBINED MEMORANDUM** with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to the counsel listed on the attached Service List. I further certify that I mailed the foregoing document and the Notice of Electronic Filing by First-Class mail delivery to the non-CM/ECF Participants listed on the attached Service List.

/s/ Larry M. Roth
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(As of December 15, 2006)

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