

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

IN RE: YASMIN AND YAZ (DROSPIRENONE)) MARKETING, SALES PRACTICES AND) PMF PRODUCTS LIABILITY LITIGATION))	3:09-md-2100-DRH- MDL 2100
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This Document Relates to:

Kerry Sims v. Bayer HealthCare Pharmaceuticals, et al.,
Case No. 3:09-cv-10012-DRH-PMF

Patti Bradish v. Bayer HealthCare Pharmaceuticals, et al.,
Case No. 3:09-cv-20021-DRH-PMF¹

Tracy Laforet-Neer v. Bayer HealthCare Pharmaceuticals, et al.,
Case No. 3:10-cv-10223-DRH-PMF²

THE PARTIES JOINT STIPULATION REGARDING MOTIONS *IN LIMINE*

Plaintiff Kerry Sims (“Plaintiff”) and Defendants Bayer Corporation, Bayer HealthCare LLC, Bayer HealthCare Pharmaceuticals Inc., and Bayer Pharma AG (collectively, “Defendants” or “Bayer”) submit this joint stipulation with respect to the admissibility of certain evidence and argument at trial relating

¹ Bayer’s motions *in limine* numbers 5 (Doc. 115); 14 (Doc. 122); 15 (Doc. 126); 16 (Doc. 127); 18 (Doc. 133); 19 (Doc. 139); and 36 (Doc. 129) relate only to the *Sims* case. All of plaintiff’s motions *in limine* relate only to the *Sims* case.

² Bayer’s motions *in limine* numbers 5 (Doc. 115); 14 (Doc. 122); 15 (Doc. 126); 16 (Doc. 127); 18 (Doc. 133); 19 (Doc. 139); and 36 (Doc. 129) relate only to the *Sims* case. All of plaintiff’s motions *in limine* relate only to the *Sims* case.

to motions *in limine* made by the parties. This stipulation and agreement is limited to the following:

I. PLAINTIFF'S MOTIONS *IN LIMINE*.

The parties agree and stipulate as follows with respect to the following subparts of Plaintiff's Omnibus Motion *in Limine* To Exclude Certain Subjects from Evidence at Trial (Plaintiff's Motion *in Limine* No. 1):

A. Subpart 11 -- Financial status or resources, of any of Plaintiff's attorney's or their law firms, or any of those attorneys' other business or cases.

The parties agree and stipulate that neither party shall seek to introduce evidence or argument about the financial status or resources of the parties' lawyers or their law firms or any of those attorneys' other businesses or cases.

B. Subpart 24 – Evidence, testimony, inference, or document that bolsters the unchallenged character (*e.g.*, honest) or traits (*e.g.*, generous) of the Defendants' current or former employees, managers, consultants, experts, agents or fiduciaries preemptively.

The parties agree and stipulate that that neither party shall seek to introduce evidence to bolster unchallenged character or unchallenged traits.

C. Subpart 27 - State warning defect or failure-to-warn laws pressure manufacturers to add unsubstantiated, false, or invalid warnings to avoid lawsuits.

The parties agree and stipulate that Defendants shall not seek to introduce evidence or argument, before the jury, that State warning

defect or failure to warn laws pressure manufacturers to add unsubstantiated, false or invalid warnings. Bayer reserves the right to advance such legal arguments and to present such evidence to the Court, outside the presence of the jury, through motions, arguments or otherwise.

D. Subpart 28 - State tort law undercuts the FDA's mission to provide only scientifically valid warnings.

The parties agree and stipulate that Defendants shall not seek to introduce evidence or argument, before the jury, that State tort law undercuts the FDA's mission to provide only scientifically valid warnings. Bayer reserves the right to advance such legal arguments and to present such evidence to the Court, outside the presence of the jury, through motions, arguments or otherwise.

E. Subpart 30 - State products liability laws frustrate the FDA's protective regime.

The parties agree and stipulate that Defendants shall not seek to introduce evidence or argument, before the jury, that State products liability laws frustrate the FDA's protective regime. Bayer reserves the right to advance such legal arguments and to present such evidence to the Court, outside the presence of the jury, through motions, arguments or otherwise.

F. Subpart 31 - Defendants should not be exposed to fifty-one separate tort-law regimes.

The parties agree and stipulate that Defendants shall not seek to introduce evidence or argument, before the jury, that Bayer should not be exposed to fifty-one separate tort-law regimes. Bayer reserves the right to advance such legal arguments and to present such evidence to the Court, outside the presence of the jury, through motions, arguments or otherwise.

G. Subpart 32 - State laws must be preempted to protect the public from recklessly warning of unsubstantiated associations between drugs and health risks.

The parties agree and stipulate that Defendants shall not seek to introduce evidence or argument, before the jury, that State laws must be preempted to protect the public from recklessly warning of unsubstantiated associations between drugs and health risks. Bayer reserves the right to advance such legal arguments and to present such evidence to the Court, outside the presence of the jury, through motions, arguments or otherwise.

H. Subpart 33 - The Court has any particular view of the evidence in this case.

The parties agree and stipulate that that neither party shall seek to introduce evidence or argue that the Court has a particular view of any of the evidence in this case.

I. With regard to the following Plaintiff's Motions in Limine, the parties agree that they are unopposed and should be granted: Plaintiff's

Motion in Limine No. 1 (Omnibus Motion) sub-parts 3, 4, 5, 10, 12, 14, 18.

II. BAYER'S MOTIONS *IN LIMINE*.

The parties agree and stipulate as follows with respect to the following Motions in *Limine* filed by Bayer.

A. Bayer's Motion in *Limine* No. 24 - Exclude Evidence and Argument About Assertions of Attorney-Client Privilege.

The parties agree and stipulate that neither party shall seek to introduce evidence or argument to the jury about a party's assertions of attorney-client privilege. This agreement and stipulation is not intended to prohibit either party, outside the presence of the jury, from arguing or asserting a challenge to a claim of privilege with regard to any document or seeking reconsideration of a prior determination by the Court that a document is, or is not, protected by an applicable privilege.

B. Bayer's Motion in *Limine* No. 25 – To Exclude Argument About Bayer's Lawyers At Trial.

The parties agree and stipulate that neither will make any disparaging arguments or statements about opposing counsel, however, simply referring to counsel or referring to or commenting on a prior argument or statement by counsel shall not be considered disparagement.

C. Bayer's Motion in Limine No 31 - Exclude Evidence and Argument Of Inappropriate Personal Conduct By a Former Bayer Employee.

The parties agree and stipulate that this motion should be denied as moot. The parties have now designated deposition testimony for the upcoming trial for Mr. Frick and neither party has designated deposition testimony for Mr. Frick (or from any other witness) regarding the incident of inappropriate personal conduct.

D. Bayer's Motion in Limine No. 37 - Exclude Argument That Compensatory Damages Should Be Used to Punish Defendants

The parties agree and stipulate that Plaintiff will not argue to the jury that compensatory damages should be used to punish defendants.

The parties' recognize that the Court has already ruled on the issue of the ability of Plaintiff to seek certain compensatory damages for future injury in this case and nothing in this agreement seeks to modify that decision.

E. Bayer's Motion in Limine No. 38 - Exclude Evidence and Argument Regarding Promises to Give Damages Awarded to Charity.

The parties agree and stipulate that Plaintiff will not present evidence or argument that Plaintiff intends or promises to give any damages award (or portion thereof) to charity.

F. With regard to the following Defendants' Motions in Limine, the parties agree that they are unopposed and should be granted:

Defendants' Motion in Limine Nos. 34, 39.

G. Defendants have withdrawn their Motion in Limine No. 17 as moot.

Dated: December 21, 2011

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