

**IN THE COURT OF COMMON PLEAS  
OF PHILADELPHIA COUNTY, PENNSYLVANIA**

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA  
TRIAL DIVISION - CIVIL**

IN RE	:	
	:	
REGLAN®/METOCLOPRAMIDE	:	JANUARY TERM, 2010
LITIGATION	:	NO. 01997

**DISCOVERY MASTER ORDER NO. 29**

**AND NOW**, to wit, this 13th day of April, 2011, following a discovery conference with counsel on April 12, 2011, and a conference with the Court on this date, the Court-appointed Discovery Master, Harris T. Bock, Esquire, hereby **ORDERS** as follows:

1. **Depositions of Treating/Prescribing Physicians:** The following protocol applies to the depositions of all treating/prescribing physicians for the entirety of this litigation:
  - a. Either plaintiffs’ counsel or defense counsel may take the initiative to schedule a physician’s deposition;
  - b. There shall be no distinction between depositions noticed as “discovery” depositions or “trial” depositions of treating physicians and prescribing physicians, and under no circumstances will any party be deemed to have waived the rights conferred by Pa.R.C.P. Rules 4017.1 and 4020 to use the transcript and/or video at trial.
  - c. PLC and DLC shall evenly split the costs of the physician’s fees.
  - d. In the event plaintiffs’ counsel meet with the deponent physician prior to the deposition:
    - i. Plaintiffs’ counsel shall promptly inform defense counsel upon

meeting with the physician prior to the deposition and shall promptly identify for defense counsel all documents that were shown and/or provided to the physician at the pre-deposition meeting(s).

- ii. At least fifteen (15) minutes prior to the commencement of the deposition, plaintiffs' counsel shall provide to defense counsel the original documents shown to the physician at the pre-deposition meeting. If any documents were retained by the physician, then plaintiffs' counsel shall provide true and correct copies of said documents.
- iii. At the commencement of the deposition, defense counsel may elect to conduct a discovery deposition subject to Pa.R.C.P. Rule 4011, which portion shall not exceed one (1) hour. No more than three defense counsel will be permitted to participate in the discovery deposition of the deponent.
- iv. Plaintiffs' counsel may then elect to conduct a discovery deposition subject to Pa.R.C.P. Rule 4011, which portion shall not exceed one (1) hour.
- v. Thereafter, plaintiffs' counsel may elect to conduct their trial direct examination, which portion shall not exceed one (1) hour.
- vi. At the conclusion of plaintiffs' direct examination, defense counsel may proceed with a trial cross examination not to exceed one (1) hour. DLC shall designate no more than two "primary counsel" to conduct the majority of the cross-examination, while, time permitting, each defendant retains the right and opportunity to cross examine the

physician.

- vii. A “meeting” with the physician shall include any communication with the doctor on substantive issues, and shall include any communications between plaintiffs’ counsel and the physician’s counsel.

Communications regarding scheduling and logistical arrangements are not considered substantive issues hereunder.

- e. In the event plaintiffs’ counsel did not meet with the deponent physician prior to the deposition:
  - i. At the commencement of the deposition, plaintiffs’ counsel may elect to conduct a discovery deposition subject to Pa.R.C.P. Rule 4011, which portion shall not exceed one (1) hour.
  - ii. Defense counsel may then elect to conduct a discovery deposition subject to Pa.R.C.P. Rule 4011, which portion shall not exceed one (1) hour. No more than three defense counsel will be permitted to participate in the discovery deposition of the deponent.
  - iii. Thereafter, plaintiffs’ counsel may elect to conduct a trial direct examination, which portion shall not exceed one (1) hour.
  - iv. At the conclusion of plaintiffs’ direct examination, defense counsel may proceed with a trial cross examination not to exceed one (1) hour. DLC shall designate no more than two “primary counsel” to conduct the majority of the cross-examination, while, time permitting, each defendant retains the right and opportunity to cross examine the physician.

- f. In the event that a physician is joined as a defendant in the litigation, said physician may be treated as a hostile witness, pending objections by counsel attending the deposition, including any objection asserted by the physician's counsel.
2. **Privilege Logs:** Counsel shall meet and confer to develop a protocol for challenging asserted privileges, as well as opposing said challenges, and the ultimate resolution of same. Counsel shall provide to the Discovery Master a status report by the end of the calendar day on Thursday, April 21, 2011.
3. **Trial Management Orders:** Counsel shall meet and confer to prepare trial management orders comporting with the directives of the Court, and shall provide the Discovery Master mutually agreed upon proposed orders by the end of the calendar day on Thursday, April 21, 2011.
4. **Noticing of Depositions of Corporate Designees:** By the end of the calendar day on Tuesday, April 19, 2011, plaintiffs' counsel shall provide the Discovery Master with a status update regarding the issuance of Notices of Deposition for all corporate designees for cases selected for trial in accordance with CMO 13. The Discovery Master expects that every effort will be made by all parties to exchange whatever information is necessary to allow plaintiffs to issue Notices in accordance with Pa.R.C.P. Rule 4007.1(e) by April 29, 2011.
5. **Plaintiffs' Master Second Set of Requests for Production of Documents:** Counsel shall meet and confer in an attempt to resolve any disputed requests. By the end of the calendar day on Tuesday, May 3, 2011, DLC shall provide to PLC and the Discovery Master a status report of any resolved issues, as well as any formal objections in the event that there remain unresolved issues.

6. **Teva Israel Jurisdictional Discovery:** Without prejudice to plaintiffs' right to revisit these matters following the deposition of Kobi Altman, the Discovery Master finds as follows regarding disputes involving Requests for Admissions and Requests for Production of Documents:

a. ***Requests for Admissions***

The Discovery Master finds that Teva's answers are sufficient. Based on Mr. Price's representation in his March 16, 2011 correspondence to Mr. Funk, wherein he wrote, "...had we asserted no objections whatsoever, the substantive response to each RFA would have been exactly the same as in the served Responses," the Discovery Master finds that plaintiffs have received answers that will sufficiently allow plaintiffs to pursue the determination of personal jurisdiction. It appears there is no need to resolve any asserted objections at this juncture, unless advised by counsel to the contrary.

- b. ***Requests for Production of Documents:*** Counsel were unable to reach agreements on stipulations that would have mooted certain pending discovery disputes. It is outside the purview and jurisdiction of the Discovery Master to impose a resolution on proposed stipulations. However, the Discovery Master deems Teva's revisions to plaintiffs' proposals as unsolicited admissions, which shall be deemed *de facto* verified in accordance with Pa.R.C.P. Rules 4006 and 4009.12. As detailed below, the foregoing unsolicited admissions are deemed to resolve certain disputes:

- i.* **RFP No. 9** – Teva’s objections are overruled as follows: Teva shall produce any document in its possession sent to or received from the Pennsylvania Department of State regarding a corporate name change from 1984 to the present.
- ii.* **RFP Nos. 11, 12, 17, 55, 59, 60, 61, 62, and 63** – Teva’s unsolicited admissions will sufficiently allow plaintiffs to pursue the determination of personal jurisdiction, and thereby obviate the need for Teva to produce the requested documents.
- iii.* **RFP No. 25** – Plaintiffs are given leave to redraft this request. The Discovery Master is not familiar with the term “mailing accounts.” Plaintiffs may submit to the Discovery Master and counsel for Teva a revised RFP No. 25 by the end of the calendar day on April 29, 2011.
- iv.* **RFP No. 38** – Based on plaintiffs’ limitation, the Discovery Master finds that Teva has sufficiently responded to this revised request.
- v.* **RFP No. 50** – Teva’s objections are overruled as follows: By the end of the calendar day on April 21, 2011, Teva shall identify all departments of Teva Ltd., including the identity of the heads of each department. By the end of the calendar day on April 29, 2011, plaintiffs may propound a revised request specifically identifying the departments for which they seek organizational charts.

*c.* ***Schedule for Argument***

- May 31, 2011 – Jurisdictional discovery must be completed
- June 3, 2011 – Plaintiffs’ deadline to respond to Defendant’s Preliminary Objections

- June 8, 2011 – Defendant’s deadline to reply to Plaintiffs’ Response
- June 15, 2011 – Oral Argument

*d. Deposition of Kobi Altman*

Plaintiffs’ counsel shall notify counsel for Teva immediately if the proposed dates of May 3, 2011, May 4, 2011, or May 23 – 27, 2011 are not acceptable for scheduling Mr. Altman’s deposition.

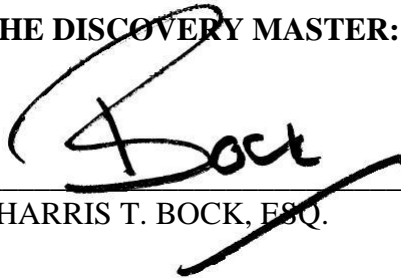
7. **Plaintiffs’ Motion to Compel More Sufficient Searches:** Defendants shall conduct more sufficient searches as follows:

- Alaven, Wyeth, Baxter, Morton Grove/Wockhardt, Pliva/Duramed, Watson, Qualitest/Generics Bidco Vintage, Actavis, Sandoz, Harvard Drug, and Pharmaceutical Associates/Beach Products:** The foregoing defendants shall conduct fuzzy searches with 75% or 80% similarity (whichever the individual defendants and/or their vendors can accommodate, and if both can be accommodated, then at the defendant’s choice) for the following search terms: “Reglan”, “Metoclopramide”, “MCP”, “Antiemetic”, “Neuroleptic”, and “Dopamine”.
- Schwarz Pharma, Teva, Ranbaxy, and Silarx:** The foregoing defendants shall conduct strict searches of the following: “Reglan”, “Raglan”, “Reglen”, “Rgln”, “Metoclop\*”, “Metac\*”, “MCP”, “MPC”, “MTP”, “MPT”, “Antiemetic”, “Neurolep\*”, and “Dopa\*”.
- Mutual Pharmaceutical Company:** The foregoing defendant shall conduct fuzzy searches with 75% or 80% similarity (whichever the defendant and/or its vendors can accommodate, and if both can be accommodated, then at the defendant’s choice) for the following search

terms: “Reglan”, “Metoclopramide”, “Antiemetic”, “Neuroleptic”, and “Dopamine”. The foregoing defendant shall also conduct strict searches of the following: “MCP”, “MTP”, and “MPT”.

- d. **Northstar Rx:** The foregoing defendant shall conduct searches in accordance with the agreement it reached with plaintiffs’ counsel as per Mr. Funk’s March 8, 2011 correspondence.
  - e. **Timing of Searches:** The parties shall meet and confer on an immediate basis to develop a time-line to complete the foregoing. Counsel shall provide to the Discovery Master a status report by the end of the calendar day on Thursday, April 21, 2011. In the event that the parties are unable to reach an agreement, the Discovery Master may convene an emergency conference to address the foregoing.
8. **PEM Master Discovery:** Counsel shall continue to meet and confer to resolve disputes regarding proposed master discovery. In the event that any issues remain unresolved, counsel shall notify the Discovery Master, who may convene a special conference to address the foregoing.

**BY THE DISCOVERY MASTER:**



HARRIS T. BOCK, ESQ.