

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE: TAXOTERE (DOCETAXEL))	MDL No. 2740
PRODUCTS LIABILITY LITIGATION)	
)	SECTION: "H" (5)
)	
THIS DOCUMENT RELATES TO:)	
ALL ACTIONS)	

CASE MANAGEMENT ORDER NO. 14C
(AMENDMENT TO TRIAL POOL SELECTION)

The Court hereby amends CMO 14 (Rec. Doc. 3064), CMO 14A (Rec. Doc. 5035), and CMO 14B (Rec. Doc. 6768) as follows:

1. **Amended Trial Pool Selection:** The provisions in CMO 14A relating to the selection of Trial Pool plaintiffs on May 1, 2019, are hereby amended as follows.
 - a. On June 19, 2019, twenty (20) additional Plaintiffs shall be selected for inclusion in the Trial Pool. Plaintiffs shall select eight (8) cases and Defendants (collectively) shall select twelve (12) cases. Four (4) of the twelve (12) Defense selections are replacements for cases Plaintiffs dismissed from those selected by Defendants on November 1, 2018.
 - b. The parties shall meet and confer and attempt to reach agreement on the number of cases that will be selected as to each Defendant. Absent agreement, the parties shall raise the issue with the Court at least thirty (30) days before the date for selecting cases.
 - c. The twenty (20) cases shall be subject to Phase I discovery pursuant to deadlines to be adopted in a subsequent Order.
 - d. The Court expects the parties to select Plaintiffs whose claims are representative of the characteristics of claims in the litigation overall. Unless otherwise agreed upon by the parties or ordered by the Court, venue for each

selected case must be proper in a United States District Court over which the United States Court of Appeals for the Fifth Circuit has jurisdiction. Plaintiffs nominated for the Trial Pool must have product identification as defined in Case Management Order No. 12A (Rec. Doc. 3492).

- e. To ensure correct venue and product identification, within fourteen (14) days of the selections, the parties shall meet and confer regarding the venue allegations and product identification information for each case and any concerns regarding venue and product identification either party may have. Prior to the close of the 14-day period, both parties must disclose any evidence bearing on the issue of product identification. If the parties cannot agree on whether the product identification information is sufficient, the parties should bring the issue to the Court.
- f. Unless otherwise agreed upon by the parties or ordered by the Court, nominated Plaintiffs must have single-defendant product identification. The parties will each send their selections in list format (including Plaintiff name and MDL Docket No.) to one another and the Court simultaneously at a time agreed to by the parties.
- g. During this 14-day period, Plaintiffs' counsel has a duty to certify that all nominated Plaintiffs are willing to proceed.

2. **Trial Pool Case Dismissals and De-Designations:** The following provisions shall apply to any Plaintiff seeking voluntary dismissal or withdrawal from the Trial Pool after the date of this Order.¹

¹ The Plaintiffs and the 505(b)(2) Defendants have reached a separate agreement as to the trial pool cases of Seraphine, Abbott, Barnett and Skelton. The Seraphine case will be dismissed with prejudice, and the Plaintiffs in Abbott and Barnett will dismiss the incorrect Defendant with prejudice and the Plaintiff in Skelton will add an additional Defendant. The Notice by Plaintiff Skelton Regarding Trial

- a. A Plaintiff selected for the Trial Pool may be removed from the Trial Pool only for good cause such as health or critical family matters.
- b. Any Plaintiff who seeks to be removed from the Trial Pool without good cause shall do so only by dismissal with prejudice.
- c. If within the 14-day period discussed herein, a Plaintiff nominated by Defendants elects to voluntarily dismiss his or her case without good cause, Defendants may nominate a substitute Plaintiff. Plaintiffs' counsel has a duty to certify the substitute Plaintiff's willingness to proceed within 5 days of selection. If certification cannot be obtained from the substitute Plaintiff, the parties shall bring the issue to the Court. The Court will determine an appropriate remedy, whether it be allowing another substitution or allowing de-designation.
- d. If after the 14-day period, a Trial Pool case selected by Defendants elects to voluntarily dismiss his or her case without good cause, Defendants may de-designate a Plaintiff from the Trial Pool.
- e. If after the 14-day period, a Trial Pool case selected by Plaintiffs is removed from the Trial Pool because of a settlement, the parties shall meet and confer and submit joint or competing proposals to the Court regarding replacement or other relief.

Selection Eligibility Under CMO 14A (Rec. Doc. 6741) is moot as a result of the agreement. These four cases will be removed from the trial pool. On or before April 30, 2019, Sandoz will replace the Abbott and Seraphine cases with two cases that have Sandoz as the only Defendant. On or before April 30, 2019, Accord will replace the Skelton case with a case that has Accord as the only Defendant. On or before April 30, 2019, the Plaintiffs will replace the Barnett case with a case that has Sandoz as the only defendant. All of these cases will have until at least August 30, 2019 to conduct Phase 1 discovery. The other trial pool cases selected in November 2018 will also have until at least August 30, 2019 to complete Phase 1 discovery. The Sanofi trial pool cases of Gabriel, Warren and Crayton are not part of this separate agreement and those will be dealt with through the pending motions.

f. If a Trial Pool case is determined to be ineligible for the Trial Pool as a result of venue or product identification information that was known by a party but not disclosed to the other party prior to the case being selected for the Trial Pool, the party who did not receive this information may replace the case if notified of the information within thirty (30) days of selection. If notified more than thirty (30) days after selection, the party who did not receive this information may de-designate a Plaintiff from the Trial Pool. If a Trial Pool case is determined to be ineligible for the Trial Pool as a result of venue or product identification information obtained subsequent to the case being selected as a trial plaintiff by the Court, within seven (7) days of receipt or otherwise learning of such information, the parties shall meet and confer and submit joint or competing proposals to the Court regarding replacement, or other relief.

All other provisions of CMOs 14, 14A, and 14B shall remain in full force and effect.

IT IS SO ORDERED.

New Orleans, Louisiana, this 22nd day of April, 2019.



HON. JANE T. MILAZZO
UNITED STATES DISTRICT JUDGE