

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF SOUTH CAROLINA
 CHARLESTON DIVISION

IN RE: LIPITOR (ATORVASTATIN CALCIUM) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION)))))))))))))	MDL No. 2:14-mn-02502-RMG CASE MANAGEMENT ORDER NO. 34 This Document Relates to All Actions.
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Plaintiffs’ Supplemental Expert Reports

This matter is before the Court on Plaintiffs’ motion to serve supplemental (or rebuttal) expert reports for two of their experts: statisticians Dr. Nicholas Jewell and Dr. Martin Wells. (Dkt. No. 865).

In accordance with CMO 29, Plaintiffs’ experts served their reports on March 6, 2015, and Defendant’s experts serve their reports on April 10, 2015, with the exception of Dr. Wei who served his report on April 12, 2015. Plaintiffs’ expert Dr. Jewell provided a report regarding the increased risk of diabetes for patients taking statins. He focused on patient-level data produced by Pfizer from seven placebo-controlled trials included in the Lipitor New Drug Application (NDA) and three long-term trials of Lipitor: SPARCL, TNT, and IDEAL. While several of Plaintiffs’ other experts considered data from the ASCOT trial, Dr. Jewell did not consider the ASCOT trial data in his analysis. In his deposition, Dr. Jewell testified that, “I chose not to study the data in ASCOT,” and provided a lengthy explanation as to why he chose not to study this data. Dr. Wells focused his expert report on the efficacy of the ASCOT trial.

Pfizer’s experts criticized the statistical methodologies and analyses of Dr. Jewell and Dr. Wells, and specifically attacked Dr. Jewell’s analysis on the fact that he did not consider the

ASCOT trial data. Plaintiffs now wish to file supplemental or rebuttal reports to address Pfizer's experts' criticism of Dr. Jewell's and Dr. Wells' methodologies.

Plaintiffs claim these additional reports are "rebuttal" reports, while Pfizer argues that the reports are just a continuation of Plaintiffs' case-in-chief. Regardless, Pfizer points out that in negotiating the agreed CMOs in this MDL, Plaintiffs agreed to not allow rebuttal reports. The Court need not resolve the dispute over whether the reports are indeed rebuttal reports. In abundance of caution, and to ensure this Court has the best information possible when addressing *Daubert* motions, the Court will allow Plaintiffs to serve these two additional reports by Dr. Jewell and Dr. Wells. However, the Court agrees that Pfizer is entitled to full discovery of these new opinions. Therefore, the Court amends the scheduling order as follows:

Date	Action
Sunday, May 10, 2015¹	Deadline for PSC to serve supplemental reports for Dr. Jewell and Dr. Wells. The PSC shall also provide two (2) deposition dates for Dr. Jewell and Dr. Wells between May 20, 2015 and June 17, 2015 . Plaintiffs' expert in a particular area of expertise will be deposed at least ten (10) days prior to any Pfizer expert in the same area of expertise.
Friday, May 15, 2015	Deadline for Pfizer to notify Plaintiffs if, as a result of Plaintiffs' supplemental expert reports, they need additional depositions of any of Plaintiffs' other experts. Pfizer must act in good faith and only request depositions that are necessitated by Plaintiffs' supplemental reports. Any disputes over whether an additional deposition is needed must be brought to the Court's attention immediately.
Tuesday, May 19, 2015	Deadline for PSC to provide two (2) deposition dates between May 25, 2015, and June 19, 2015 , for any experts identifies by Pfizer on May 15, 2015.

¹ Plaintiffs have represented to the Court that it will can and intends to serve supplemental reports by this date.

Date	Action
Friday, June 5, 2015	<p>Deadline for Pfizer to serve supplemental expert reports in response to Plaintiffs' supplemental reports. Pfizer shall also provide two (2) deposition dates for each of these experts between June 15, 2015, and July 10, 2015.</p> <p>Plaintiffs' expert in a particular area of expertise will be deposed at least ten (10) days prior to any Pfizer expert in the same area of expertise. If, to comply this requirement, the parties need to reschedule the depositions of other Pfizer experts, Pfizer must provide two (2) additional deposition dates on or before July 10, 2015, for such experts.</p>
Friday, June 12, 2015	Pfizer's case-specific expert reports due for the first two cases selected for trial, together with two (2) dates for the deposition of each expert to take place between June 22 and July 24, 2015 .
Friday, July 24, 2015	Deadline to file Daubert motions on general causation and liability experts.
Friday, July 31, 2015	Deadline for the parties to submit joint or competing proposals for pre-trial schedule in <i>Daniels v. Pfizer</i> , Case No. 2:14-cv-1400, including briefing on motions in limine and the exchange of and objections to deposition and exhibit designations.
Friday, August 7, 2015	Deadline for Daubert motions on case-specific experts and for dispositive motions for the first two cases selected for trial.
Friday, August 21, 2015	Deadline for responses to Daubert motions on general causation and liability experts.
Friday, September 4, 2015	Deadline for reply briefs in support of Daubert motions on general causation and liability experts.
Friday, September 4, 2015	Deadline for responses to Daubert motions on case-specific experts and dispositive motions for the first two cases selected for trial.
Friday, September 18, 2015	Deadline for replies in support of Daubert motions on case-specific experts and dispositive motions for the first two cases selected for trial.
Thursday, September 24, 2015	Hearing on Daubert motions on general causation and liability experts.
Thursday, October 8, 2015	Hearing on Daubert motions on case-specific experts and dispositive motions for the first two cases selected for trial.

Date	Action
Tuesday, November 3, 2015	Jury Selection for <i>Daniels v. Pfizer</i> , Case No. 2:14-cv-1400
Wednesday, November 4, 2015	Trial in <i>Daniels v. Pfizer</i> , Case No. 2:14-cv-1400

AND IT IS SO ORDERED.



Richard Mark Gergel
United States District Court Judge

May 4, 2015
Charleston, South Carolina