

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

**ENTERED**

**OCT 17 2002**

SAMUEL L. KAY, CLERK  
U. S. District & Bankruptcy Courts  
Southern District of West Virginia

IN RE:       **SERZONE**  
              **PRODUCTS LIABILITY LITIGATION**

MDL NO. 1477

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**THIS DOCUMENT RELATES TO ALL CASES**

**DISCOVERY ORDER # 1**

**Entry of Discovery Order # 1**

A copy of this order shall be entered in each Serzone-related case transferred to, removed to, or filed in this district and shall apply to all such cases. In cases subsequently filed in this district, a copy will be provided by the Clerk to each plaintiff at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy will be provided by the Clerk to each new party upon removal or transfer.

**Status Conference of October 16, 2002**

On October 16, 2002, the undersigned met with counsel for Plaintiffs (Marvin W. Masters and Carl N. Frankovitch) and Defendant (Michael A. Tanenbaum, Michael B. Victorson, Rob J. Aliff, and Martin Healy), for the purpose of planning the first phase of discovery. As a result of that meeting, it is hereby **ORDERED** as follows:

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### **Discovery Committee**

Lead and Liaison Counsel have nominated attorneys to serve as members of a Discovery Committee, and those nominations are confirmed by the court. The members of the Discovery Committee are:

a. For Plaintiffs: Marvin W. Masters, Daniel E. Becnel, Jr., John R. Climaco, Richard Arsenault, Michael Bollinger, Stephen B. Murray, Jr., Ronnie G. Penton, Turner W. Branch, Gano D. Lemione, III, Robert R. Hopper, Gerald Meunier and Todd R. Slack;

b. For Defendant: Michael B. Victorson, Rob J. Aliff, Michael Tanenbaum, and Martin Healy.

The purpose of the Discovery Committee is to participate in planning discovery and to minimize disputes which require resolution by the court. The existence of the Discovery Committee does not affect the authority and responsibility of Lead and Liaison Counsel and of Plaintiffs' Executive Committee as set forth in Pretrial Order # 2.

### **Document Depository**

1. On or before **November 1, 2002**, Messrs. Masters and Victorson (Liaison Counsel) will arrange for leased space for a joint use document depository to be located in Charleston, West Virginia. The depository will have suitable facilities including shelving for easy access to documents, security, desks and work spaces (including computer/data/telephone lines), restrooms,

adequate heating, cooling and lighting, and, if needed, a copier. Liaison Counsel will agree on a computer hardware/software system for scanning and viewing documents from remote locations. The document depository will not be operated as a profit center; fees shall be allocated among the users on an agreed basis. Each attorney seeking access to the depository will be required to sign the agreement regarding usage rules, protection of confidential documents as set forth in Pretrial Order # 2, and payment of fees.

2. Upon acquisition of the space and facilities for the document depository, Defendant will commence "rolling" production of copies of its New Drug Application ("NDA"), Investigational New Drug Application ("IND"), Medwatch forms, and marketing documents, estimated to total approximately 685,000 documents. Defendant will produce the copies to the document depository in the format in which they were filed with the Food and Drug Administration ("FDA"). Prior to production to the depository by any party, each document shall be marked with a five letter Bates stamp and page number (up to ten digits), which letter/number marking will be used consistently throughout this litigation. As required by Pretrial Order # 2 and applicable statute or regulation, some documents shall have patients' and physician-reporters' names redacted, and/or shall be marked "Confidential." As documents are produced to the depository by any party, they shall be "imaged" using the designated hardware/software system, and the availability of the

documents shall be communicated electronically to Liaison Counsel. Defendant's initial production of the NDA, IND, Medwatch forms and marketing documents shall be completed by **December 1, 2002**.

#### **Class Certification Discovery**

3. At the status conference scheduled for **December 18, 2002**, the parties and the court will finalize a schedule for class certification discovery.

#### **Requests for Production of Documents**

4. Defendant has proposed a form "Plaintiff's Fact Sheet" with attached Authorizations for use in this litigation. On or before **October 23, 2002**, Plaintiffs' Liaison and Lead Counsel will notify Defendant's Liaison and Lead Counsel of their response to the proposed form. Liaison and Lead Counsel will confer in an effort to reach agreement on a form and Authorizations. Disputes concerning the proposed form and Authorizations will be brought to the attention of Magistrate Judge Stanley via email prior to November 15, 2002, and will be addressed at the Discovery Committee telephone conference call on **Friday, November 15, 2002 at 2:00 p.m.**

5. On or before **November 1, 2002**, Plaintiffs' Liaison and Lead Counsel will prepare and transmit to Defendant's Liaison and Lead Counsel via email, proposed requests for production of documents by Defendant. Liaison and Lead Counsel will confer in an effort to reach agreement on such requests and a timetable for production. Disputes concerning the requests and timetable will be

brought to the attention of Magistrate Judge Stanley via email prior to November 15, 2002, and will be addressed at the Discovery Committee telephone conference call on **Friday, November 15, 2002 at 2:00 p.m.**

#### **Depositions of Critically Ill Plaintiffs**

6. If any party becomes aware of the severely declining health of any plaintiff and the need to preserve that plaintiff's testimony, that party shall promptly notify the Discovery Committee via email to arrange for a deposition or other discovery on an emergency basis. Disputes shall be brought to the attention of Magistrate Judge Stanley via email.

#### **All Other Discovery**

7. No discovery in addition to that which is described above shall be undertaken by any party without leave of court. Discovery will be conducted in stages as directed by the court with input from the Discovery Committee. The court and the Discovery Committee will consider the use of a limited number of carefully focused interrogatories for the purpose of streamlining discovery. On or before **December 10, 2002**, Lead and Liaison Counsel may submit to each other, via email, proposed interrogatories, and will confer in an effort to agree upon their use and wording. Disputes shall be brought to the attention of Magistrate Judge Stanley via email prior to December 13, 2002, and will be addressed at the Discovery Committee telephone conference call on **Friday, December 13, 2002 at**

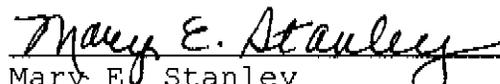
2:00 p.m.

**Depositions**

8. On or before **December 6, 2002**, Liaison and Lead Counsel will designate a proposed hardware/software system for use at some depositions which will enable remote users to observe and monitor the deposition online, and will advise all counsel of that system so that counsel can plan purchases accordingly.

The court directs the Clerk to send a copy of this order to Plaintiffs' Liaison Counsel and Defendant's Liaison Counsel.

ENTER: October 17, 2002

  
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Mary E. Stanley  
United States Magistrate Judge