

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

IN RE INCRETIN-BASED THERAPIES  
PRODUCTS LIABILITY LITIGATION

Case No. 3:13-md-02452-AJB-MDD  
MDL 2452

---

*This Document Relates to All Cases*

**JOINT SUBMISSION  
IDENTIFYING DISCOVERY  
MATTERS  
ON WHICH THE PARTIES ARE  
IN DISPUTE**

Hon. Mitchell D. Dembin

Pursuant to the Court’s October 18, 2013 Order Following First Status Conference (Doc. No. 143) (the “Order”), the parties have continued to meet and confer regarding a number of case management and discovery issues, including the issues identified in the Court’s Order. These discussions have been productive and have helped the parties achieve agreement on a number of issues, narrow the areas of disagreement, and clarify the scope and the basis of remaining disagreements. On a number of issues, the parties are continuing their dialogue.

1 ISSUES TO BE RAISED WITH JUDGE DEMBIN

2 On some of the issues identified in the Court’s Order, however, the parties  
3 have been unable to reach complete agreement. The parties have reached an  
4 impasse and request that Magistrate Judge Dembin schedule a procedure to  
5 resolve the following issues in accordance with Judge Dembin’s Chambers Rules  
6 or otherwise as may be appropriate. The Defendants respectfully request the  
7 opportunity to brief issues in accordance with Judge Dembin’s Chambers Rules in  
8 order to provide the proper context in advance of any hearing or decision by the  
9 Court. The PSC believes briefing of many of the disputes is largely unnecessary  
10 and will cause needless delay of the issues. The PSC requests an opportunity to  
11 meet and confer with Defense counsel and Judge Dembin to determine whether  
12 certain of the outstanding issues outlined herein can be further narrowed or agreed  
13 to without the necessity of a briefing schedule.

14 I. General deposition protocol.

- 15 a. The parties have met and conferred concerning an appropriate  
16 deposition protocol, but have reached impasse on several substantive  
17 provisions.

18 II. Order Implementing Plaintiff fact sheet.

- 19 a. The Parties have reached impasse over whether the Plaintiff Fact  
20 Sheet entered in the *Moses Scott* case should be implemented as-is in  
21 the MDL, or whether it should be revised.

22 III. Defendant fact sheet.

- 23 a. The parties have reached impasse on several substantive provisions  
24 including the relevant time period for responsive plaintiff-specific  
25 information, sources of information required to be searched, and the  
26 scope of documents to be produced.

27 IV. Order Implementing Protective Order.

28

1 a. The Parties have reached impasse over whether the Protective Order  
2 entered in the *Moses Scott* case should be implemented as is in the  
3 MDL, or whether it should first be altered to account for situations  
4 where a third-party witness appears at a deposition (e.g., a  
5 prescribing physician) and refuses to execute the acknowledgment to  
6 the Protective Order.

7 V. Depositions pursuant to Fed.R.Civ.P. 30(b)(6).

8 a. Plaintiffs and Defendant Eli Lilly and Company have reached  
9 impasse over the scope of 30(b)(6) depositions concerning Adverse  
10 Event Reporting and regulatory matters, including the utilization of  
11 depositions taken in the California state court *Byetta*® *Cases*  
12 litigation, JCCP No. 4574.

13 b. Plaintiffs and Defendant Amylin Pharmaceuticals, LLC have reached  
14 impasse over the scope of 30(b)(6) depositions, including the  
15 utilization of depositions taken in the California state court *Byetta*®  
16 *Cases* litigation, JCCP No. 4574. Plaintiffs and Amylin have also  
17 reached impasse concerning the production of certain materials  
18 related to adverse event reports, which Plaintiffs have requested in  
19 connection with a Rule 30(b)(6) deposition.

20 VI. Master consolidated complaint

21 a. The parties are continuing to work to finalize a proposed Master  
22 Complaint.

23 VII. ESI Protocol

24 a. The relevant parties have reached impasse regarding ESI protocols  
25 for Lilly and Amylin.  
26  
27  
28

1 b. Plaintiffs have reached an agreement on the ESI protocol with Merck  
2 and Novo Nordisk, but are still negotiating search terms related to  
3 same.

4 VIII. Document Production

5 a. The parties are continuing to work through document production  
6 related issues and are working to make agreements.

7 IX. Amylin Insurance Coverage and Amounts Remaining

8 a. The parties have reached an impasse and seek the assistance of the  
9 Court resolving their disagreements.

10 X. Thyroid Cancer Direct Filing Order

11 a. Plaintiffs, Lilly, and Amylin will continue to work on this order to  
12 determine whether an agreement is possible.

13 XI. Privilege Logs

14 a. The PSC has proposed a Privilege Order to Defendants. The  
15 Defendants do not, at this time, believe such an Order is necessary.  
16 The parties will meet and confer on the proposal. If the parties reach  
17 impasse, the issue will be presented to the Court for resolution.

18  
19 Respectfully submitted:

20  
21  
22 Dated: November 18, 2013

RYAN L. THOMPSON  
WATTS GUERRA LLP

23  
24 By: /s/ Ryan L. Thompson  
25 Ryan L. Thompson  
26 Plaintiffs' Counsel  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: November 18, 2013

HUNTER J. SHKOLNIK  
NAPOLI BERN RIPKA SHKOLNIK

By: /s/ Hunter J. Shkolnik  
Hunter J. Shkolnik  
Plaintiffs' Counsel

Dated: November 18, 2013

THOMAS P. CARTMELL  
THOMAS J. PREUSS  
WAGSTAFF & CARTMELL

By: /s/ Thomas J. Preuss  
Thomas J. Preuss  
Plaintiffs' Counsel

Dated: November 18, 2013

TOR A. HOERMAN  
JACOB W. PLATTENBERGER  
TORHOERMAN LAW LLC

By: /s/ Tor A. Hoerman  
Tor A. Hoerman  
Plaintiffs' Counsel

Dated: November 18, 2013

NINA M. GUSSACK  
KENNETH J. KING  
PEPPER HAMILTON LLP

By: /s/ Kenneth J. King  
Kenneth J. King  
Attorneys for Defendant  
Eli Lilly and Company, a  
corporation

Dated: November 18, 2013

RICHARD B. GOETZ  
AMY J. LAURENDEAU  
O'MELVENY & MYERS LLP

By: /s/ Amy J. Laurendeau  
Amy J. Laurendeau  
Attorneys for Defendant  
Amylin Pharmaceuticals, LLC

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: November 18, 2013

DOUGLAS MARVIN  
EVA ESBER  
PAUL BOEHM  
WILLIAMS & CONNOLLY LLP

By: /s/ Paul Boehm  
Paul Boehm  
Attorneys for Defendant  
Merck Sharp & Dohme Corp.

Dated: November 18, 2013

LOREN BROWN  
HEIDI LEVINE  
RAYMOND WILLIAMS  
DLA PIPER

By: /s/ Heidi Levine  
Heidi Levine  
Attorneys for Defendant  
Novo Nordisk Inc.

**SIGNATURE ATTESTATION**

I hereby certify that authorization for the filing of this document has been obtained from each of the other signatories shown above and that all signatories concur in the filing's content.

/s/ Amy J. Laurendeau  
Amy J. Laurendeau

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on November 18, 2013, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail address denoted on the electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 18, 2013, at Newport Beach, California.

/s/ Amy J. Laurendeau  
Amy J. Laurendeau