

IN RE: BAYCOL  
LITIGATION IN PHILADELPHIA COURT  
OF COMMON PLEAS

COURT OF COMMON PLEAS  
PHILADELPHIA COUNTY

NOVEMBER TERM, 2001 DOCKETED  
NO. 00001 COMPLEX TER

JUN 10 2002

IN RE: BAYCOL CASES I & II  
CALIFORNIA JUDICIAL COUNCIL  
COORDINATED PROCEEDING

SUPERIOR COURT  
LOS ANGELES COUNTY

J. Stewart

JCCP No. 4217 AND 4233 PURSUANT TO Pa. R.C.P. 236(b)

COPIES SENT

JUN 10 2001

First Judicial District of Pa.  
Case ID: 245

**STIPULATION AND ORDER**  
**RE: COORDINATION OF WRITTEN DISCOVERY AND DEPOSITIONS**  
**OF BAYER AG, BAYER CORPORATION AND GSK WITNESSES**

It is hereby STIPULATED and AGREED by and between the undersigned Liaison Counsel for Plaintiffs, each plaintiff's counsel who signs this Stipulation in counterpart, and counsel for defendants Bayer Corporation, Bayer AG, and GlaxoSmithKline, as follows:

**I. Scope of This Stipulation and Order**

This Stipulation and Order applies to all actions that are part of a program of coordinated pretrial proceedings relating to the drug, cerivastatin ("Baycol"), in the Philadelphia Court of Common Pleas. This Stipulation and Order also applies to all actions that are part the Baycol California Coordinated Litigation, JCCP 4217 & 4233 (the "Coordinated Actions"). Further, to the extent that the undersigned counsel for plaintiffs and counsel associated with them are prosecuting actions against Bayer Corporation, Bayer AG, and/or GlaxoSmithKline in other jurisdictions, the parties agree to be bound by this Stipulation in those other cases. Also bound are all counsel whose

names appear on the list of counterpart signatories to this Stipulation as well as any additional counsel who may subsequently become counterpart signatories.

## **II. Deposition Scheduling**

1. Depositions of Bayer Corporation and GlaxoSmithKline employees and former employees will begin in July 2002, unless otherwise agreed (hereinafter "global witnesses").
2. Plaintiffs will limit depositions to no more than five Bayer Corporation global witnesses, and a reasonable number of GlaxoSmithKline global witnesses per month. Not included within this limitation are depositions of regional sales, detail, marketing and advertising persons, third parties, and witnesses relevant to a particular case and not to the Coordinated Actions as a whole. Plaintiffs will consult with defendants concerning the scheduling of non-global witnesses and will cooperate in the scheduling of those witnesses in light of the other demands placed on the witnesses and counsel for defendants. When plaintiffs seek to schedule depositions of global witnesses for Bayer Corporation during the same month(s) that witnesses for Bayer AG are being deposed, the parties will meet and confer if Bayer requests for good cause a reduction in the number of Bayer Corporation witnesses who can be deposed during that month(s).
3. Depositions shall be scheduled by agreement of the parties based upon the following criteria:
  - (a) Availability of Bayer Corporation and GlaxoSmithKline documents relevant to the specific witness;
  - (b) The extent to which production of Bayer AG documents is necessary for the witnesses' depositions to proceed; and,
  - (c) Availability of the witnesses and counsel.

4. Depositions of Bayer Corporation witnesses will take place in West Haven, Connecticut, or a more convenient location closer to Philadelphia, or at a location determined by mutual agreement. Depositions of GlaxoSmithKline witnesses will take place in Philadelphia, or a convenient nearby location, or at a location determined by mutual agreement.

5. All depositions in these Coordinated Actions will be limited to eight hours of examination by counsel for the noticing parties, except for good cause shown.

6. Depositions in the Coordinated Actions may be cross-noticed into other state court jurisdictions. No depositions noticed in any other jurisdictions may be cross-noticed with these Coordinated Actions, absent agreement of Plaintiffs' Liaison Counsel.

7. As a courtesy to plaintiffs herein and if requested by plaintiffs, defendants Bayer Corporation and GlaxoSmithKline will notify the plaintiffs' liaison counsel in the Coordinated Actions of any state or federal court depositions of employees and former employees of Bayer Corporation and GSK (other than regional or local sales personnel) in Baycol-related cases filed in any jurisdiction in the United States.

8. The parties agree that testimony at federal and state court depositions will be treated as if taken in the Coordinated Actions and all actions prosecuted by the undersigned counsel. Further, such depositions will be admissible pursuant to the Rules of Evidence of the jurisdiction in which the actions are prosecuted by the undersigned counsel.

9. Plaintiffs in this coordinated Action have the right to depose witnesses previously deposed in other Baycol litigation. However Plaintiffs shall make a good faith effort to avoid unnecessary duplicate examination of the witness.

10. The parties to this Stipulation and Order agree that they will not notice depositions of Bayer Corporation or GlaxoSmithKline global witnesses in connection with any Baycol-related actions they are prosecuting in any other jurisdictions.

### **III. Deposition Objections**

In the event plaintiffs seek to use at any trial the deposition testimony of any witness offering an opinion, defendants agree not to raise at such deposition or trial the objection that the deposition questions asked or the answers given regarding such expert opinion do not conform to the evidentiary form typically required by the jurisdiction whose law would control the case being tried. For example, if one jurisdiction requires an opinion to be expressed to a "reasonable degree of certainty," the defendants shall not object to an opinion given to a "reasonable degree of probability." Further, defendants agree not to object to the form of the question posed at a deposition or instruct any witness not to answer on the grounds it seeks testimony in support of a particular legal theory (e.g., negligence or strict liability) that is not being prosecuted in all of the cases for which the deposition is being taken. Defendants, however, reserve the right to seek to exclude any particular deposition testimony at the trial of any individual case on the grounds that such testimony is not relevant to the allegations of that case. Further, the parties do not waive any objection or argument they might have that answers given by a witness are legally insufficient, without factual basis or otherwise fail to meet applicable substantive or evidentiary standards. Before the start of depositions, the parties shall discuss the issues raised in this section to identify potential problem questions and attempt to resolve any issues before the deposition begins.

**IV. Written Discovery**

1. The Parties agree that the document and written discovery requests served upon Bayer Corporation, Bayer AG, and GlaxoSmithKline in these Coordinated Actions shall be treated as though propounded in all Baycol-related actions that those law firms are prosecuting in other jurisdictions.

2. The Parties agree that no duplicative discovery will be served in other proceedings.

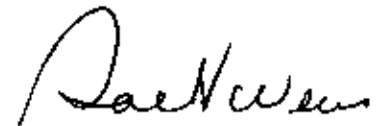
3. Any supplemental discovery not relating to issues specific to a particular case or geographic region will be served in these Coordinated Actions.

4. The schedule for production of privilege logs in these Coordinated Actions will apply in all Baycol-related actions being prosecuted by the Parties.

ANAPOL, SCHWARTZ, WEISS, COHAN  
FELDMAN & SMALLEY, P.C.

GREITZER & LOCKS

BY:



SOL H. WEISS, ESQUIRE  
1900 Delancey Place  
Philadelphia, PA 19103  
Plaintiffs' Liaison Counsel

BY:

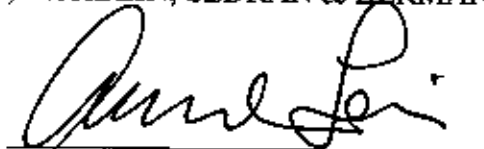


LEE B. BALEFSKY, ESQUIRE  
1500 Walnut Street, 20th Floor  
Philadelphia, PA 19102  
Plaintiffs' Liaison Counsel

LEVIN, FISHBEIN, SEDRAN & BERMAN

SHERMAN, SALKOW, PETOYAN &  
WEBER

By:



ARNOLD LEVIN, ESQUIRE  
510 Walnut Street, Suite 500  
Philadelphia, PA 19106  
Plaintiffs' Liaison Counsel

By:



ARTHUR SHERMAN, ESQ.  
11601 Wilshire Blvd., Ste. 675  
Los Angeles, CA 90025  
Plaintiffs' Co-Lead Counsel

ROBINSON, CALCAGNIE & ROBINSON

LOPEZ, HODES, RESTAINO, MILMAN & SKIKOS

By: Mark P. Robinson Jr.  
MARK P. ROBINSON, JR., ESQUIRE  
620 Newport Center Dr., 7<sup>th</sup> Flr.  
Newport Beach, CA 92660  
**Plaintiffs' Co-Lead Counsel**

By: Ramon Rossi Lopez  
RAMON ROSSI LOPEZ, ESQUIRE  
STEVEN J. SKIKOS, ESQUIRE  
450 Newport Center Dr., 2<sup>nd</sup> Flr  
Newport Beach, CA 92660  
**Plaintiffs' Liaison Counsel**

ECKERT SEAMANS CHERIN & MELLOTT, LLC

DECHERT

By: Albert G. Bixler  
ALBERT G. BIXLER, ESQUIRE  
1515 Market Street, Ninth Floor  
Philadelphia, PA 19102  
**Defendants' Liaison Counsel**

By: Hope S. Freiwald  
HOPE S. FREIWALD, ESQUIRE  
4000 Bell Atlantic Tower  
1717 Arch Street  
Philadelphia, PA 19103  
**Attorneys for Defendant  
SmithKline Beecham Corporation  
d/b/a Glaxo SmithKline**

Dated: Jan 10, 2002

BY THE COURT:  
[Signature]  
ACKERMAN, J.

Dated: \_\_\_\_\_

\_\_\_\_\_  
MORTIMER, W

**OF COUNSEL:**

ALLY & INGRAM  
701 East Washington Street  
P.O. Box 3127  
Tampa, FL 33601-3127

ASHCRAFT & GEREL  
2000 L Street NW  
Washington DC 20036

BEASLEY ALLEN CROW METHVIN  
PORTIS & MILES  
200 Coosa Street  
P.O. Box 4160  
Montgomery AL 36103

BEASLEY CASEY & ERBSTEIN  
1125 Walnut Street  
Philadelphia PA 19107

COHEN MILSTEIN HAUSFELD & TOLL  
825 Third Avenue  
Thirtieth Floor  
New York NY 10022-7519

EDWARD T. FEIERSTEIN ASSOCIATES  
1609 E. Wadsworth Avenue  
Philadelphia PA 19150-1019

FELDMAN & RIFKIN  
101 Greenwood Avenue  
Jenkintown Plaza  
Suite 230  
Jenkintown PA 19046

GANCEDO & NIEVES  
119 East Union Street, Suite G  
Pasadena, CA 91103

HARTLEY O'BRIEN PARSONS  
THOMPSON & HILL  
2001 Main Street  
Wheeling, WV 26003

HERMAN, MATHIS, CASEY & KITCHENS  
100 Peachtree Street  
Suite 1400, The Equitable Building  
Atlanta, GA 30303

LAW OFFICES OF STUART A. KRITZER  
HILL PETERSON CARPER BEE & DEITZLER  
North Gate Business Park  
500 Tracy Way  
Charleston, WV 25311

HUGO & POLLACK  
440 Commercial Street  
Boston MA 2109

HUTTON & HUTTON  
Tallgrass Executive Park  
8100 East 22nd Street N.  
Building 1200  
Wichita KS 67226

JAMES RICHARD HOOPER  
815 North Garland Avenue  
Orlando FL 32801

JANET WILLOUGHBY GERSHON  
GETZ & JENNER  
Woodholme Center  
1829 Reisterstown Road  
Suite 320  
Baltimore MD 21208

LAW OFFICES OF JACK MEYERSON  
1700 Market Street Suite 2632  
Philadelphia PA 19103

Law Offices of Stuart A. Kritzer  
One Sherman Place  
140 Nineteenth Avenue  
Third Floor  
Denver, CO 80203-1035

LEVIN PAPANTONIO THOMAS MITCHELL  
ECHSNER AND PROCTOR  
316 South Baylen Street Suite 600  
Pensacola FL 32501

LEVY ANGSTREICH BALDANTE  
ROBENSTEIN & COREN  
1616 Walnut Street  
5th Floor  
Philadelphia PA 19103

LOPEZ HODES RESTAINO MILMAN  
SNIKOS & POLOS  
450 Newport Center Drive  
2nd Floor  
Newport Beach CA 92660

MILBERG WEISS BERSHAD  
HYNES & LERACH  
One Pennsylvania Plaza  
New York NY 10119-0165

PELLETTIERI RABSTEIN & ALTMAN  
790 Woodlane Road Suite 6  
Tarnsfield Plaza  
Mt. Holly NJ 08060

RHEINGOLD VALET RHEINGOLD  
Shkolnik & McCartney LLP  
113 East 37th Street  
New York NY 10016

ROBINSON CALCAGNI & ROBINSON  
620 Newport Center Drive  
7th Floor  
Newport Beach, CA 92660

SCHIFFRIN & BARROWAY  
Three Bala Plaza East  
Suite 400  
Bala Cynwyd PA 19004

SCHMIDT RONCA & KRAMER  
209 State Street  
Harrisburg PA 17101

SEGER WEISS  
One William Street  
New York NY 10004-2502

SHELLER LUDWIG & BADEY  
1528 Walnut Street 3rd Fl  
Philadelphia PA 19102

SUGGS KELLY & MIDDLETON  
500 Taylor Street  
Columbia SC 29201

TOMAR O'BRIEN KAPLAN  
JACOBY & GRAZIANO  
20 Brace Road  
Cherry Hill NJ 08034-0379

URY & MOSKOW  
518 Riverside Avenue  
P.O. Box 231  
Westport CT 06881

WAPNER NEWMAN WIGRIZER  
115 South 21st Street  
Philadelphia PA 19103-4483

WEITZ LUXENBERG  
180 Maiden Lane  
New York NY 10038-4925

WILENTZ GOLDMAN & SPRITZER  
90 Woodbridge Center Drive  
Woodbridge NJ 07095  
Portland, OR 97204

WILLIAMS DAILEY O'LEARY CRAINE & LOVE  
1001 SW Fifth Ave., Suite 1900  
Portland, OR 97204