

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 6/9/08

MICHAEL ABBATIELLO, et al.,

Plaintiffs,

-against-

06 CV 0266 (VM)

MONSANTO CO., et al.,

Defendants

ALAN ABELE, et al.,

Plaintiffs,

-against-

(formerly 06 CV 3461)

MONSANTO CO., et al.,

Defendants

SCHEDULING ORDER

After conducting status conferences on April 15, June 2, and June 13, 2008, and reviewing the proposed Stipulated Scheduling Order submitted jointly on April 25, 2008 and the separate submissions of counsel for Plaintiffs and counsel for Defendants submitted on June 6, 2008, the Court enters the following Scheduling Order for the above captioned Abbatiello and Abele actions:

1. This Case Management Order ("Order") shall govern the practices and

procedures of the two above captioned cases, Abbatiello and Abele, which together involve the claims of approximately 1,232 plaintiffs alleging personal injuries due to claimed exposure to polychlorinated biphenyls ("PCBs") during employment at the General Electric (G.E.) plant in Schenectady, New York. As used herein, the term "Parties" refers to the plaintiffs in Abbatiello and Abele and the defendants Monsanto Company and Pharmacia Corporation. These defendants sometimes will be referred to collectively as the Pharmacia Defendants. A Separate Stipulated Order entered on November 20, 2007, and modified on June 13, 2008, governs the practices and procedures in the related case styled Corlew et al. v. General Electric Company et al. (formerly 07 CV 3258), due, *inter alia*, to the additional defendant (General Electric) and the issues presented by the request for class certification included in that case.

2. Abbatiello and Abele and the claims of the numerous plaintiffs in them are coordinated for discovery and pretrial purposes. This Order does not constitute a determination that plaintiffs' claims or any issues related to any of these claims should be consolidated for trial.

3. For judicial efficiency, for this phase of the litigation, the Parties will focus their efforts on the 100 randomly selected plaintiffs (50 from each of the two cases) listed on Exhibit A hereto ("the 100 Randomly Selected Plaintiffs"). Plaintiffs other than the 100 Randomly Selected Plaintiffs will sometimes be referred to herein as "the Remaining Plaintiffs". Both groups of plaintiffs will sometimes be referred to collectively as "the Plaintiffs."

4. Paragraph intentionally left blank.

5. **Schedule for Discovery and Pretrial Matters.** With respect to discovery and pretrial matters in these cases the Parties shall adhere to the following schedule and procedures (subject to the rights of all Parties to seek future modifications thereof):

6. **Between July 15, 2008 and October 17, 2008**, on a rolling basis, each of the 100 Randomly Selected Plaintiffs individually, shall make their Initial Disclosures pursuant to Rule 26(a)(1) (A) – (D). **By July 15, 2008**, the Pharmacia Defendants shall make their Initial Disclosures pursuant to Rule 26(a)(1) (A) – (D).

7. **Between July 15, 2008 and October 17, 2008**, on a rolling basis, each of the 100 Randomly Selected Plaintiffs shall provide to counsel for the Pharmacia Defendants:

- (a) Signed Authorizations in the form attached hereto as Exhibit B for his or her Medical, Employment, Workers' Compensation Social Security, Educational, and Military Records;¹
- (b) A listing that states with specificity each past or present injury, illness, condition and/or disease that each plaintiff claims was caused by exposure to PCBs;
- (c) A listing that states with specificity each presently undiagnosed and/or latent injury, illness, condition and/or disease, if any, that each such plaintiff claims he or she has a significantly increased risk of contracting due to exposure of PCBs and for which plaintiff claims he or she has a present need for periodic diagnostic exams;
- (d) A list of all health care providers for each plaintiff;
- (e) A list of each plaintiff's dates of employment at G.E., and the buildings and departments worked in, and supervisors (to the extent the three latter categories of information are known);

¹ The format of the Authorizations required is set out in Exhibit B hereto. Throughout the course of this litigation, all Plaintiffs shall cooperate with the Pharmacia Defendants by providing "freshly" signed and dated Authorizations, as may be reasonably required under the circumstances.

- (f) A statement concerning where, when and how each plaintiff claims to have been exposed to PCBs;
- (g) Plaintiff's PCB test results (e.g., ng/g lipid and ng/g serum), if any, from blood, fat or other sampling, including copies of any sampling results or reports; and
- (h) Copies of each plaintiff's medical records including, without limitation, medical records that each plaintiff claims substantiate or support his or her claims listed in response to Paragraph 7 (b) and/or 7 (c) above.

8. **Between July 15, 2008 and October 17, 2008**, on a rolling basis, and in accordance with F.R.C.P. 33 and 34, each of the 100 Randomly Selected Plaintiffs shall provide verified answers to the Pharmacia Defendants' Interrogatories attached hereto as Exhibit C and shall provide documents and electronically stored information responsive to the Pharmacia Defendants' Requests for Production of Documents attached hereto as Exhibit D.

9. **On September 15, 2008**, Parties and other fact witness depositions commence as well as other discovery permitted under the Federal Rules of Civil Procedure, including the Pharmacia Defendants may commence the depositions of the 100 Randomly Selected Plaintiffs and their treating physicians.

10. Each of the 100 Randomly Selected Plaintiffs who intends to rely on blood or fat or other bodily sampling in support of any claim, and/or who has previously had such sampling conducted, shall seasonably cooperate with the Pharmacia Defendants, upon reasonable advance notice, on having a blood sample drawn by a qualified medical center acceptable to the Pharmacia Defendants pursuant to protocols acceptable to the Pharmacia Defendants and shall have the results sent for analysis to an analytical laboratory of the

Pharmacia Defendants' choice, at the Pharmacia Defendants' expense. Once any such blood sampling has occurred, the analytical laboratory will be directed promptly to send the analytical results to counsel for the Pharmacia Defendants. The Pharmacia Defendants shall produce any such sampling results to plaintiffs' counsel at least 30 days in advance of the Pharmacia Defendants' filing or service of any dispositive motion relying on any sampling permitted or obtained under this Paragraph.

11. **By October 17, 2008**, each of the 100 Randomly Selected Plaintiffs who is making a personal injury claims shall provide an affidavit of a qualified medical expert setting forth any diagnosis, conclusion or opinion that any past or present injury, illness, condition and/or disease of each individual plaintiff was caused by exposure to PCBs, and the scientific, medical and other bases for the expert's opinions, including all medical examinations, testing or treatment of each plaintiff and all other data or information relied upon or considered by the expert in forming the opinions. These expert affidavits must be prepared in compliance with F.R.C.P. 26(a)(2).

12. **By October 17, 2008**, each of the 100 Randomly Selected Plaintiffs who is making a "medical monitoring" or fear of cancer or disease claim shall provide an affidavit of a qualified medical expert setting forth any conclusion or opinion that, due to exposure to PCBs, such plaintiff has a significantly increased risk of developing in the future any presently undiagnosed or latent injury, illness, condition and/or disease and a resulting present need for periodic diagnostic exams, and the scientific, medical and other bases for the expert's opinions, and all data or other information relied upon or considered by the expert in forming the opinions. These expert affidavits must be prepared in compliance with F.R.C.P. 26(a)(2).

13. The Pharmacia Defendants shall have from **October 17, 2008 to February 16,**

2009, to depose the expert and other witnesses for the 100 Randomly Selected Plaintiffs identified by Plaintiffs by October 17, 2008 in accordance with Paragraphs 11 -- 12 above.

14. **By March 20, 2009**, the Pharmacia Defendants may serve reports of expert or other witnesses to rebut the opinions and conclusions contained in the Plaintiffs' Paragraph 11 and 12 submissions. Reports of opinion witnesses, if any, disclosed by Defendants pursuant to this Paragraph shall be prepared in compliance with Rule 26(a)(2) of the Federal Rules of Civil Procedure.

15. **Between March 20, 2009 to June 22, 2009**, Plaintiffs may depose any expert or witness disclosed by Defendants pursuant to Paragraph 14 of this Order.

16. Due to the nature of this case, the Parties are exempted from compliance with the ten deposition limit of F.R.C.P. 30(a)(2)(A). The Parties shall cooperate in making themselves, experts and other deponents under their control available for deposition on a timely basis.

17. **By June 22, 2009**, the Pharmacia Defendants may challenge the sufficiency of the Plaintiffs' submissions required by Paragraphs 11 and 12 of this Order including the opinions and conclusions of any expert witness, by filing *Daubert* motions and/or motions for summary judgment, consistent with Rule 56(b) of the Federal Rules of Civil Procedure, seeking the dismissal of the claims of any Plaintiff that the Pharmacia Defendants contend has failed to demonstrate a *prima facie* claim for personal injury and/or medical monitoring. **By July 22, 2009**, plaintiffs shall respond in compliance with the Federal Rules of Civil Procedure, including Rule 56. **By August 14, 2009**, the Pharmacia Defendants shall serve their Replies in Support of their Motions.

18. After the *Daubert* motions have been fully briefed, the Court will schedule a

status conference to discuss and develop with the parties a plan for appropriate coordination of the resolution of the pending *Daubert*/Summary Judgment Motions, including whether to schedule oral argument on the *Daubert*/Summary Judgment motions. The discovery and

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dispositive motion cut off date for all ^y other aspects of the litigation relating to ^{all} the ~~100~~ Randomly Selected Plaintiffs is **November 2, 2009**.

19. To prevent the loss of evidence due to the routine records retention policies of the medical care providers and other institutions relevant to the claims of the Remaining Plaintiffs (approximately 1,132 individuals), the Remaining Plaintiffs shall provide to counsel for the Pharmacia Defendants the signed Authorizations, lists of medical care providers, and other information required by Paragraph 7 of this Order, in accordance with the schedule in Paragraphs 20 (a) through (f) below. The information provided pursuant to Paragraph 7 shall be verified by each individual Remaining Plaintiff in accordance with 28 USC § 1746 in a format similar to Exhibit E attached hereto.

- (a) **By December 15, 2008**, 190 of the Remaining Plaintiffs shall comply with the requirements of Paragraphs 7 and 20 (leaving approximately 942 Remaining Plaintiffs yet to comply);
- (b) **By January 15, 2009**, another 190 of the Remaining Plaintiffs shall comply with the requirements of Paragraphs 7 and 20 (leaving approximately 752 Remaining Plaintiffs yet to comply);
- (c) **By February 25, 2009**, another 190 of the Remaining Plaintiffs shall comply with the requirements of Paragraphs 7 and 20 (leaving approximately 562 Remaining Plaintiffs yet to comply);
- (d) **By May 25, 2009**, another 190 of the Remaining Plaintiffs shall comply

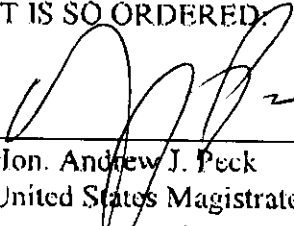
with the requirements of Paragraphs 7 and 20 (leaving approximately 372 Remaining Plaintiffs yet to comply);

(e) **By June 25, 2009**, another 190 of the Remaining Plaintiffs shall comply with the requirements of Paragraphs 7 and 20 (leaving approximately 182 Remaining Plaintiffs yet to comply); and

(f) **By July 25, 2009**, the final set of the Remaining Plaintiffs (approximately 182) shall comply with the requirements of Paragraphs 7 and 20.

20. Following the conclusion of the above proceedings with respect to the 100 Randomly Selected Plaintiffs identified in this Case Management Order, the Court will consider and adopt, with regard to each individual action that has not been dismissed upon dispositive motion or otherwise, appropriate additional pretrial procedures, including a mechanism for the selection of Plaintiffs for a bellwether trial.

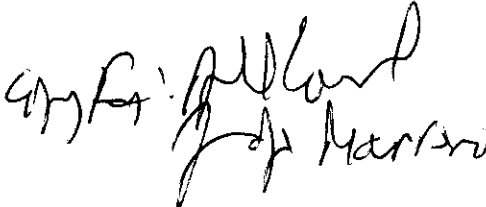
IT IS SO ORDERED.



Hon. Andrew J. Peck
United States Magistrate Judge

HON. ANDREW J. PECK
United States Magistrate Judge
Southern District of New York

Date: 6/9/08



BY FAX

Exhibit A

Abbatiello (current employees) - 50 randomly selected plaintiffs starting with Abbatiello and selecting each 12th name on the alphabetical plaintiff list through the end.

Abele (former employees) - 50 randomly selected plaintiffs starting with Abele and selecting each 9th name on the alphabetical plaintiff list through the end.

Abbatiello	Abele
1. Michael Abbatiello	1. Alan Abele
2. Thomas Amell	2. Peter Allen
3. Michael Ausfeldt	3. Alfred Articolo
4. Eric Baumes, Jr.	4. Harold Barbic
5. Wayne Bever	5. Martin Beal
6. Helen Baum	6. Gordon Bever
7. Stephen Brassard	7. David Bonthron
8. Richard Bullard	8. Ronald Browder
9. Joseph Calabello	9. Joan Burnett
10. James Calucci	10. Michael D. Carhidi
11. Douglas Clark	11. Frederick Clark
12. Daniel Corlew	12. Anthony Compagnone
13. John Curley	13. John P. Crane
14. Joseph Demers	14. Albert J. Dado
15. Joseph DiCesare	15. James Delella
16. Donnie Earl	16. John Digiorgio
17. Raymond Fetter	17. Walter J. Dunham
18. Dominick Friello	18. Thomas P. Favreau
19. Joe Giaminelli	19. Robert L. Flaherty
20. Luis Gracesqui	20. Joseph J. Gavel
21. Eric Harrison	21. Philip Guadagno
22. Douglas Hildreth	22. Elizabeth Harrington
23. Shawn Jablonski	23. Eleazar Hernandez
24. Lawrence Just	24. Theron M. Hoyt
25. David Kimball	25. Harry J. Izzo
26. Gregory Krylowicz	26. Robert D. Jones
27. Larry Laurence	27. William Kmyta
28. Robert Lombardi	28. James W. Lane
29. Brian Maiello	29. Robert E. Livingston
30. Paul Mason	30. Ernest C. Mancini
31. James Menge	31. Nicola Mastroianni
32. John Mongilo	32. Richard a. Mead
33. John Nelli	33. James Mitchell
34. Mark Olson	34. Philip F. Mundell, Sr.
35. Ralph Pasquariello	35. Stanley A. Olshefsky

36. Raymond Pfaffenback	36. Gloria M. Park
37. Michael Quant	37. Jesse A. Polak
38. Floyd Renzi	38. William N. Quay
39. Raymond Ropitsky	39. Bradley Relfance
40. David Saltsman	40. John Roscioli
41. Israel Seise	41. David W. Sany
42. David Skotarczak	42. Frank Schafroth
43. Stephen Smolinsky	43. William H. Singleton
44. Evelyn Suarez	44. Wayne D. Sotaling
45. Richard Taylor	45. Gilbert R. Strain
46. Ronald Twardzik	46. Emilio Suarez
47. James Walker	47. Glen Tevendale
48. Joseph Whalen	48. Harold Upton
49. Robert Wood	49. Giuseppe Viglione
50. Gustav Zuhlke	50. Alan R. Weisgerber