

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-028831

03/05/2014

HON. JOHN REA

CLERK OF THE COURT
L. Gilbert
Deputy

SANTOSH GEORGE KOTTAYIL, et al.

LAURA E SIXKILLER

v.

INSYS THERAPEUTICS INC, et al.

JOEL P HOXIE

MATTHREW R KIPP

MINUTE ENTRY

East Court Building – Courtroom 414

9:02 a.m. This is the time set for an In-Person Status Conference. Plaintiffs are represented by counsel, E. Jeffrey Walsh, Tiffany M. Andras, and Nedda R. Gales. Defendants Insys Pharam, Inc., John N. Kapoor, John N. Kapoor Trust Dated 9/20/89, Michael L. Babich, Brian Tambi, Steve Meyer, and Rao Akella are represented by counsel, Joel P. Hoxie, Jim Condo, and Kelly Kzaywienski. Defendant Insys Therapeutics is represented by counsel, Jennifer J. Axel and counsel *pro hac vice*, Matthew Kipp.

A record of the proceedings is made by audio/videotape in lieu of a court reporter.

Discussion is held regarding the setting of a new trial date and the parties' pending motions.

IT IS ORDERED setting Oral Argument on Defendant Insys Therapeutics, Inc.'s February 25, 2014 Motion to Dismiss Count One of Plaintiffs' Second Amended Complaint and Petition for Appraisal on **April 18, 2014 at 10:00 a.m. (time allotted: 30 minutes with the time divided equally between the parties)**, before:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-028831

03/05/2014

HONORABLE JOHN C. REA
MARICOPA COUNTY SUPERIOR COURT
EAST COURT BUILDING
101 W. JEFFERSON
4TH FLOOR, COURTROOM 414
PHOENIX, AZ 85003
602-372-0382

The Court will also address the status of Plaintiffs' February 25, 2014 Motion to Dismiss Claims in the Second Amended Complaint at this time.

The proceeding will take place in the Superior Court's "e-courtroom." A record of the proceedings will be made by videotape and CD in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may request a videotape or CD of the proceedings for a \$20.00 charge. If a CD or videotape is requested, please obtain a form from the courtroom clerk or from the Self Service Center to request a daily copy of a court hearing or trial proceeding being conducted. Pay the applicable fee **at the Self Service Center**. Attach the receipt showing payment of the fee and present both the receipt and the form to the bailiff. **For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.** Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. To request a transcript, call 602-506-7100 and provide the date of the proceeding, the case number, the case caption, if the transcript is for an appeal, and your name, address, and telephone number.

With this new technology, a court reporter is likely not required and the parties are encouraged to experience the court's video recording system before requesting a court reporter. If a court reporter is required, the Court must receive a written request at least 3 court days before the commencement of the proceeding. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter.

PLEASE NOTE: This division requires that all motions, responses, replies and other Court requested filings in this case must be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. No pleadings will be accepted if filed in combination with another.

IT IS FURTHER ORDERED as follows:

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-028831

03/05/2014

1. Setting a Trial Management Conference on **November 14, 2014 at 10:00 a.m. (time allotted: 2 hours)**. All parties must appear in person and cannot appear telephonically.
2. Setting Trial to a Jury on **December 1, 2014 at 9:30 a.m. (time allotted: Sixteen (16) days)**. PLEASE NOTE: Trial will proceed as follows:
 - **Monday, December 1, 2014 through Friday December 5, 2014**
 - **Monday, December 8, 2014 through Friday, December 12, 2014**
 - **Monday, December 15, 2014 through Thursday, December 19, 2014**
 - **Monday, December 22, 2014 and Tuesday, December 23, 2014**

Duties Prior to Trial

3. Dispositive Motions: All dispositive motions, including Rule 56 motions, shall be filed no later than **September 1, 2014**.
4. Motions in Limine: All Motions in Limine shall be filed no later than **October 24, 2014** and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397; 499 P.2d 152 (1972): The primary purpose of a Motion in Limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. R. Evid. 103(c). A written response to a Motion in Limine may be filed no later than ten (10) calendar days thereafter. The Court may rule on Motions in Limine without oral argument. No replies shall be filed. The parties must comply with Rule 7.2(a) Ariz.R.Civ.P., prior to filing any Motion in Limine.

PLEASE NOTE: This division requires that all motions, responses, replies and other Court requested filings in this case must be submitted individually. Counsel shall not combine any motion with a responsive pleading. All motions are to be filed separately and designated as such. No pleadings will be accepted if filed in combination with another.

5. Joint Pretrial Statement: Counsel shall file, no later than **November 7, 2014**, a Joint Pretrial Statement signed by all counsel. In addition to the information required by Rule 16(d) the Joint Pretrial Statement shall include,
 - A Final Trial Witness List. This list shall contain the name of each witness a party actually intends to call at Trial, the day on which they intend to call each witness and the **estimated time needed for direct, cross and re-direct examination**. (see Witness Information Form attached)

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-028831

03/05/2014

- An agreed upon number of jurors to be seated as the final panel including any alternates, whether or not the alternates will deliberate, and an agreed upon verdict ratio in accordance with the number of jurors deliberating.
 - Whether or not the Rule of Exclusion of Witnesses is being invoked.
6. Jury Instructions and Voir Dire Questions: Counsel shall meet and agree on as many proposed jury instructions as possible. Counsel shall file with their Joint Pretrial Statement **(the Judge would appreciate counsel providing a copy of the jury instruction requests on CD, in Microsoft Word)**:
- a) Proposed voir dire questions.
 - b) A joint set of agreed-upon preliminary and final jury instructions and proposed forms of verdicts.
 - c) Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 3d Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

Recommended Arizona Jury Instructions (RAJI) need not be typed and may be requested in the following manner: RAJI 3d Standard 1 - Duty of Jurors. Non-RAJI instructions should be typed. Each instruction should cover only one subject.

Duties at Trial Management Conference

- 7. Counsel shall be prepared to argue Motions in Limine if the Court deems necessary.
- 8. Counsel shall be prepared to discuss:
 - a) Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
 - b) Preliminary jury instructions, mini opening statements and voir dire.
 - c) Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-028831

03/05/2014

- d) Any special scheduling or equipment issues.
9. Exhibits: LET THE RECORD REFLECT that the Clerk of this division is currently in possession of all exhibits previously marked for the trial that was set for January 24, 2014. The Clerk will retain possession of those exhibits and any additional exhibits to be marked for trial will be added to the end of the list that currently exists. All parties ***must*** contact the Clerk of this division at **602-506-8806**, no later than **November 10, 2014**, regarding the proper procedures for submitting additional exhibits to be marked for trial in this division.

No later than **November 17, 2014**, all parties shall deliver any additional exhibits. ***The parties are directed to meet in person to exchange the exhibits before coming to court. The parties will make sure that they do not bring to the clerk a set of exhibits that include duplicate exhibits.*** The parties should not reserve exhibit numbers for all Defendants' exhibits, all Plaintiffs' exhibits, miscellaneous demonstrative exhibits, and the like. The parties shall also present original depositions for filing at that time.

Exhibits are marked in numerical order per party, making it necessary to mark all of one party's exhibits before marking the other party's. Accordingly, the Defendant's exhibits numbering shall start at the next number following the last of Plaintiff's exhibits. (For example, Plaintiff submits 82 exhibits, which are marked Exhibit 1 through 82. Defendant submits 63 exhibits, which are marked 83 through 145). Please do not combine the parties' exhibits. Each side's exhibits must be submitted separately and in numerical order.

With regard to trial exhibits, the parties are strongly discouraged from marking exhibits they do not anticipate offering during trial. The parties shall include a section in the Joint Pretrial Statement regarding exhibits that *may* be used during trial (and need not be initially marked), separate and apart from those exhibits the parties know will be offered and should be initially marked as trial exhibits in this case.

10. One day's jury fees will be assessed unless the Court is notified of settlement before 2:00 p.m. on the judicial day before the Trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Rule 5.1(c), Ariz.R.Civ.P.
11. The dates set forth in this Order are FIRM dates and will not be extended or modified by this Court absent good cause. Lack of preparation will not ordinarily be considered good cause.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-028831

03/05/2014

A trial date now having been set, the parties may, without leave of the Court, modify the deadlines previously set in the previously filed Scheduling Order using the trial date as a guideline for the new dates. Should the parties reach an impasse in their discussions to modify the deadlines, they may contact the Court for the setting of a telephonic status conference.

The trial will take place in the Superior Court's "e-courtroom." A record of the proceedings will be made by audio and CD in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the parties or counsel may request a CD of the proceedings for a \$20.00 charge. If a CD is requested, please obtain a form from the courtroom clerk or from the Self Service Center to request a daily copy of a court hearing or trial proceeding being conducted. Pay the applicable fee **at the Self Service Center**. Attach the receipt showing payment of the fee and present both the receipt and the form to the bailiff. **For copies of hearings or trial proceedings recorded previously, please call Electronic Records Services at 602-506-7100.** Should an official transcript be required, you may request that the court prepare it. The party ordering the transcript must pay for it. To request a transcript, call 602-506-7100 and provide the date of the proceeding, the case number, the case caption, if the transcript is for an appeal, and your name, address, and telephone number.

With this new technology, a court reporter is likely not required and the parties are encouraged to experience the court's video recording system before requesting a court reporter. If a court reporter is required, the Court must receive a written request at least three (3) court days before the commencement of the proceeding. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter.

9:22 a.m. Matter concludes.

LATER:

There being a conflict on the Court's calendar,

IT IS ORDERED changing the time only for the Oral Argument set for **April 18, 2014** from 10:00 a.m. to **9:00 a.m.**

Effective April 15, 2014 new civil rules and forms are in effect for managing cases moving to trial. Be sure to review the new Civil Rules 16, 26, 37, 38, 72 through 74 and 77.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-028831

03/05/2014

WITNESS INFORMATION FORM

WITNESSES FOR PLAINTIFF(S)

	WITNESS NAME	DIRECT	CROSS
1			
2			
3			
4			
5			
6			

DIRECT & CROSS TOTAL: _____

WITNESSES FOR DEFENDANT(S)

	WITNESS NAME	DIRECT	CROSS
1			
2			
3			
4			
5			
6			

DIRECT & CROSS TOTAL: _____

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-028831

03/05/2014

TOTAL WITNESS TIME ESTIMATE: _____

TIME ESTIMATE FOR:	PLAINTIFF		DEFENDANT
OPENING STATEMENT			
CLOSING ARGUMENT	1 st :	2 nd :	