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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

TONY R. MOORE, CLERK
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE, LOUISIANA

IN RE: ACTOS (PIOGLITAZONE)
PRODUCTS LIABILITY LITIGATION

MDL No. 6:11-md-2299

JUDGE DOHERTY

This Document Applies To:
*Allen, et. al. v. Takeda Pharmaceuticals
North America, Inc., et al.*
(Case No. 12-cv-00064)

MAGISTRATE JUDGE HANNA

MEMORANDUM RULING

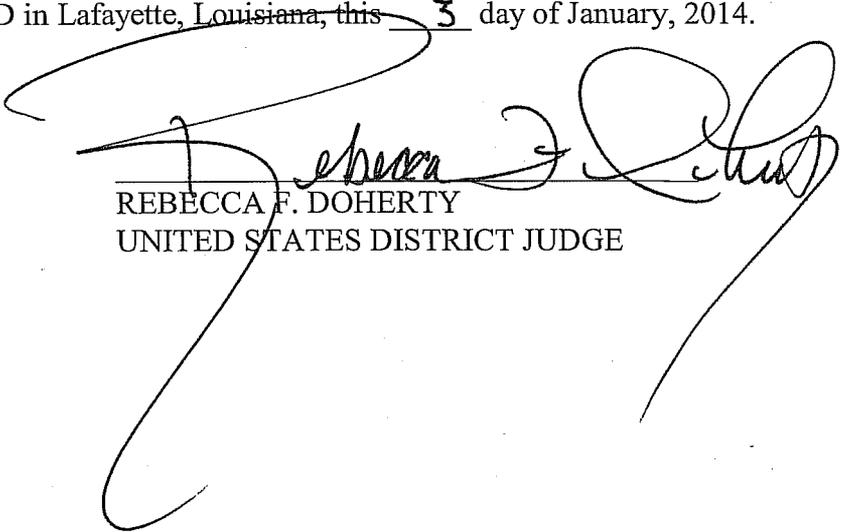
Before the Court is Plaintiffs' Motion in Limine to "Exclude any Evidence that Pioglitazone is Beneficial to or Decreases the Risk of Certain Types of Cancer" [Doc. 3428] filed on October 14, 2013. Defendants filed a Memorandum in Opposition on November 6, 2013. [Doc. 3547] The Plaintiffs filed a Reply on November 11, 2013. [Doc. 3587] On November 21, 2013, this Court held a hearing on all pending motions in limine where this motion was addressed. At that time, this Court deferred the motion pending resolution of questions of the applicable standard under New York law.

After reviewing the latest submissions from the parties as to applicable New York law, this Court cannot determine, at this time, as to what legal issue this evidence might be addressed by the parties, as the parties, it would seem, have not fully exposed their respective theories of their respective cases. This Court notes the Plaintiffs' recent decision to forego pursuit of their design defect claim under strict products liability, and Defendants' heretofore unexpressed argument, made at oral argument on a *Daubert* motion [Doc. No. 3466]. Consequently, as this Court is unable, at this juncture, to make a determination, this Court DEFERS this motion to trial. The Court cautions both parties that prior to any presentation of testimony or evidence subject to this motion, the parties must seek a side bar, outside of the presence of the jury, with the Court. The Court also cautions a

proper foundation must be laid upon which this evidence or testimony may be admitted.

Considering the foregoing, Plaintiffs' Motion in Limine to "Exclude any Evidence that Pioglitazone is Beneficial to or Decreases the Risk of Certain Types of Cancer" [Doc. 3428] is DEFERRED to trial.

THUS DONE AND SIGNED in Lafayette, Louisiana, this 3 day of January, 2014.



REBECCA F. DOHERTY
UNITED STATES DISTRICT JUDGE