



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD183/2021

NOVARTIS AG and another named in the schedule
Applicants

PHARMACOR PTY LIMITED ACN 121 020 835
Respondent

ORDER

JUDGE: JUSTICE BURLEY

DATE OF ORDER: 22 March 2022

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. The Applicants are not permitted to rely at trial on the affidavit of Professor Giovannoni affirmed on 4 March 2022 (**Giovannoni Affidavit**), the affidavit of Professor McCombe affirmed on 24 February 2022 (**McCombe Affidavit**), or the affidavit of Professor Lublin affirmed on 26 February 2022 (**Lublin Affidavit**), other than those parts of the Lublin Affidavit indicated by the Court at the case management conference on 18 March 2022 to be outside its rulings (**Exempt Lublin Evidence**).
2. By 5pm on Tuesday, 22 March 2022, the Applicants:
 - a. by their counsel, seek to confer with the Respondent as to what parts of the Lublin Affidavit they consider to constitute the Exempt Lublin Evidence;
 - b. notify the Court by email to the Associate to Justice Burley (copying the solicitors for the Respondent) of what parts of the Lublin Affidavit the Applicants consider to constitute the Exempt Lublin Evidence, indicating any areas of agreement or disagreement notified by the Respondents.
3. The dates for the Applicants to comply with each of orders 7 and 11 of the orders made by Justice Burley on 23 July 2021, as varied by order 2 of the orders made by Justice Burley on 20 October 2021, be extended to 9 March 2022.



4. The date for compliance with order 13 of the orders made by Justice Burley on 23 July 2021, as varied by order 3 of the orders made by Justice Burley on 20 October 2021, be extended to 13 April 2022.
5. The Respondent have leave to file the affidavit of Mr Christopher Butler affirmed on 27 February 2022.

Notices of cross-examination

6. On or before 22 April 2022, each party is to indicate to the other parties which of the other party's witnesses are required for cross-examination.

Joint expert reports

7. On or before 19 April 2022, the parties are to:
 - a. confer regarding the expert conclaves and topics; and
 - b. provide an agreed list of participants and topics for the experts to the Associate to Justice Burley or, in the event of disagreement, a marked-up list of topics indicating the areas of disagreement.
8. The parties' expert witnesses (as specified) participate in joint expert conferences during the period between 2 and 13 May 2022, such conferences to be conducted in accordance with Part 7 of the Expert Evidence Practice Note (GPN- EXPT) and facilitated by a Registrar of the Court, and, by 16 May 2022, produce a joint report that identifies areas of agreement, partial agreement and disagreement, in respect of any matters in which they have expertise, and, where there is partial agreement or disagreement, short reasons for the partial agreement or disagreement.

Court book

9. On or before 26 April 2022, the Applicants' solicitors are to provide the Respondent's solicitors with a draft Court Book index, including:
 - a. the patents in suit;
 - b. all current pleadings and particulars;
 - c. a placeholder for all joint reports, which are to form part of a supplementary Court Book;



- d. all affidavits (including annexures and exhibits) relied upon; and
 - e. a list of all documents the Applicants intend to tender at the hearing other than by way of cross-examination
10. On or before 29 April 2022, the Respondent provide the Applicants with a revised draft Court Book index, marked up to include a list of all documents the Respondent intends to tender at the hearing other than by way of cross-examination.
11. The parties not be permitted, without leave or agreement of all other parties, to tender any documents at the hearing other than by way of cross-examination, if they have not been notified in accordance with paragraphs 9(e) or 10 above.
12. On or before 6 May 2022, the Applicants' solicitors are to:
- a. deliver two hard copies of the Court Book to the Registry marked to the attention of the Associate to Justice Burley;
 - b. deliver four hard copies of the Court Book to the Respondent's solicitors;
 - c. provide a searchable (OCR format), electronic copy of the Court Book to the Associate to Justice Burley and the Respondents' solicitors which:
 - i. includes an index with individual hyperlinks to each document included in the index, including each affidavit, exhibit and annexure;
 - ii. includes appropriate bookmarks within each document as required, including for annexures and exhibits containing multiple documents.

Trial timetable

13. On or before 25 May 2022, the parties are to provide the Associate to Burley J with a proposed trial timetable.

Objections

14. On or before 23 May 2022, the parties are to exchange written notices identifying any objections to any parts of the affidavits filed by the other party with a brief statement identifying in each case the basis of the objection.
15. On or before 30 May 2022:



- a. counsel are to confer in relation to the notices of objection exchanged pursuant to the above order and endeavour to resolve the parties' respective objections;
- b. the parties file a document or documents indicating:
 - i. the objections which the parties agree are to be upheld;
 - ii. any other proposed agreed rulings with respect to affidavit evidence; and
 - iii. any remaining objections on which a ruling by the Court is required.

Submissions

16. On or before 23 May 2022, the Respondent is to file and serve opening written submissions in chief on validity of no more than 15 pages.
17. On or before 27 May 2022, the Applicants are to file and serve opening written submissions in answer on validity of no more than 15 pages.
18. Prior to 23 May 2022, counsel for the parties are to discuss and agree on uniform headings to be used in opening submissions.

Authorities

19. On or before 30 May 2022, the parties are to exchange lists of the authorities and legislation on which they intend to rely in accordance with the General Practice Notice entitled "Lists of Authorities and Citations Practice (GPN:AUTH)".

Case management hearing

20. The case management conference listed for 9.30am on 6 April 2022 be vacated.
21. The proceeding be listed for a case management conference at 9.30am on 22 April 2022, including for the purposes of addressing the Court on any dispute regarding the framing of the joint expert topics.

Costs

22. The Applicants are to pay the Respondent's costs of and incidental to the case management conference of 18 March 2022.
23. Subject to the Applicants filing and serving on or before 4.00pm on 22 March 2022 any submissions seeking a different costs order (**Costs Submission**), the Applicants



are to pay the Respondent's costs thrown away by reason of the Giovanni, McCombe and Lublin Affidavits other than the Exempt Lublin Evidence (**Costs Thrown Away**).

24. In the event that the Applicants file and serve a Costs Submission:
- a. the Respondent is to file and serve a submission in answer by 4.00pm on 25 March 2022;
 - b. the issue of Costs Thrown Away be determined on the papers.

Date that entry is stamped: 22 March 2022

Sia Lagos
Registrar



Schedule

No: NSD183/2021

Federal Court of Australia
District Registry: New South Wales
Division: General

Second Applicant NOVARTIS PHARMACEUTICALS AUSTRALIA PTY
LIMITED (ACN 004 244162)

CROSS CLAIM

Cross-Claimant PHARMACOR PTY LIMITED ACN 121 020 835

Cross Respondent NOVARTIS AG

Second Cross
Respondent NOVARTIS PHARMACEUTICALS AUSTRALIA PTY
LIMITED (ACN 004 244162)