

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
MARY K. JONES,

Plaintiff,

-against-

PFIZER, INC. et al.,

Defendants.  
----- X

**ORDER DENYING MOTION TO  
COMPEL TESTIMONY OF  
THIRD-PARTY WITNESS**

10 Civ. 3864 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

On October 15, 2014, Plaintiffs and counsel for third-party witness Mary Holloway informed the Court by joint letter of an issue that has arisen in the final stages of discovery proceedings. Ms. Holloway is a former regional manager of one of Defendant Pfizer Inc.'s ("Pfizer") sales divisions. Plaintiffs wish to depose Ms. Holloway with regard to her awareness of Pfizer's misbranding of their drug, Bextra. Ms. Holloway, through counsel, advised the Court that she invokes her Fifth Amendment privilege not to answer questions that tend to incriminate herself. Nevertheless, Plaintiffs asked that I compel Ms. Holloway to testify.

On October 21, 2014, I ordered the parties to brief the issue and submit to Ms. Holloway, through her counsel, the subjects on which they proposed to question Ms. Holloway. Order Regulating Witness' Invocation of Fifth Amendment, Jones v. Pfizer Inc., No. 10 Civ. 3864 (S.D.N.Y. Oct. 21, 2014), ECF No. 230. I also ordered the parties, Ms. Holloway, and her counsel to appear for a hearing on the issue on October 30, 2014. *Id.*

Having conducted a hearing and reviewed the parties' and Ms. Holloway's submissions, I find that Ms. Holloway can validly invoke her Fifth Amendment privilege.

On June 29, 2009, Ms. Holloway pled guilty, pursuant to a plea agreement, to a one-count misdemeanor violation of the Food, Drug, and Cosmetic Act relating to her role in

Pfizer's misbranding of the Bextra drug. *See* 21 U.S.C. §§ 331(a), 333(a)(1), 352(f). Her conviction became final on or about July 13, 2009.

Among other things, Plaintiffs argue that, because Ms. Holloway's conviction became final over five years ago, and because their questions would be limited to Bextra-related matters, Ms. Holloway has no reasonable fear of criminal prosecution or criminal penalty, and therefore cannot validly invoke her Fifth Amendment privilege.

Ms. Holloway counters that, as part of her plea agreement, she: (1) agreed not to make statements inconsistent with the admissions in the agreement; and (2) agreed to waive her statute of limitations defenses—including such defenses to other possible Bextra-related conduct for which she was not prosecuted—in the event that she were to breach any provision of the agreement. Thus, Ms. Holloway argues, her testimony in this case could potentially expose her to criminal prosecution and incriminate her in the event that it is inconsistent, or claimed to be inconsistent, with her plea agreement or earlier statements. Accordingly, Ms. Holloway states that she would invoke her Fifth Amendment privilege as to all of the parties' proposed questions and exhibits.

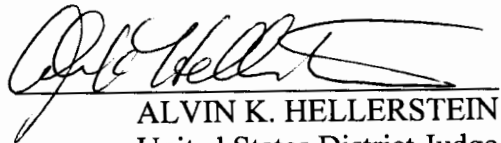
In light of the terms of her plea agreement, as well as the fact that her deposition testimony might elicit new or inconsistent information exposing her to additional prosecution, I find that Ms. Holloway has demonstrated that, if she were to be compelled to testify, she would be “confronted by substantial and real, and not merely trifling or imaginary, hazards of incrimination.” *United States v. Doe*, 465 U.S. 605, 614 n. 13 (1984); *Hoffman v. United States*, 341 U.S. 479, 486-87 (1951) (“To sustain the privilege, it need only be evident from the implications of the question, in the setting in which it is asked, that a responsive answer to the question or an explanation of why it cannot be answered might be dangerous because injurious

disclosure could result. The trial judge in appraising the claim must be governed as much by his personal perception of the peculiarities of the case as by the facts actually in evidence”) (internal quotations and citations omitted).

Accordingly, Ms. Holloway’s invocation of her Fifth Amendment privilege is proper, and she may not be compelled to testify.

SO ORDERED.

Dated: October 31, 2014  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge

**Regan Karstrand**

---

**From:** NYSJ\_ECF\_Pool@nysd.uscourts.gov  
**Sent:** Monday, November 03, 2014 11:43 AM  
**To:** CourtMail@nysd.uscourts.gov  
**Subject:** Activity in Case 1:10-cv-03864-AKH Jones et al v. Pfizer, Inc. et al Order

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

**U.S. District Court**

**Southern District of New York**

**Notice of Electronic Filing**

The following transaction was entered on 11/3/2014 at 11:43 AM EST and filed on 11/3/2014

**Case Name:** Jones et al v. Pfizer, Inc. et al

**Case Number:** [1:10-cv-03864-AKH](#)

**Filer:**

**Document Number:** [280](#)

**Docket Text:**

**ORDER DENYING MOTION TO COMPEL TESTIMONY OF THIRD-PARTY WITNESS: that Ms. Holloway's invocation of her Fifth Amendment privilege is proper, and she may not be compelled to testify. (Signed by Judge Alvin K. Hellerstein on 10/31/2014) (tn)**

**1:10-cv-03864-AKH Notice has been electronically mailed to:**

Jay B. Kasner jkasner@skadden.com

Kevin Anthony Burke kaburke@sidley.com, efilenotice@sidley.com, nyefiling@sidley.com

David Avi Rosenfeld drosenfeld@rgrdlaw.com, e\_file\_ny@rgrdlaw.com, e\_file\_sd@rgrdlaw.com

James P. Rouhandeh james.rouhandeh@dpw.com, ecf.ct.papers@davispolk.com

George Anthony Borden (Terminated) gborden@wc.com

Sheila L. Birnbaum sheilabirnbaum@quinnemanuel.com

Keir Nicholas Dougall kdougall@dougallpc.com

Mitchell M.Z. Twersky mtwersky@aftlaw.com

James M. Hughes jhughes@motleyrice.com, erichards@motleyrice.com, kweil@motleyrice.com, kweil@pacernotice.com

Leigh R. Lasky lasky@laskyrifkind.com

Stuart Michael Sarnoff ssarnoff@omm.com

Charles S. Duggan charles.duggan@dpw.com, ecf.ct.papers@davispolk.com

Gary John Hacker ghacker@skadden.com

Michael Barry Carlinsky michaelcarlinsky@quinnemanuel.com, brantkuehn@quinnemanuel.com, jomairecrawford@quinnemanuel.com

William H. Narwold bnarwold@motleyrice.com, ajanelle@motleyrice.com, vlepine@motleyrice.com

Michael Joseph Dowd miked@rgrdlaw.com, e\_file\_sd@rgrdlaw.com, e\_file\_sf@rgrdlaw.com, tome@rgrdlaw.com

Joe Kendall administrator@kendalllawgroup.com, hlindley@kendalllawgroup.com, jkendall@kendalllawgroup.com

Darren J. Robbins e\_file\_sd@rgrdlaw.com

Samuel Howard Rudman srudman@rgrdlaw.com, e\_file\_ny@rgrdlaw.com, e\_file\_sd@rgrdlaw.com, mblasy@rgrdlaw.com

Willow E. Radcliffe willowr@rgrdlaw.com, ptiffith@rgrdlaw.com

Scott D. Musoff smusoff@skadden.com, david.carney@skadden.com

Howard E. Heiss hheiss@omm.com, #nymanagingattorney@omm.com

Daniel Prugh Roeser droeser@goodwinprocter.com

Richard Mark Strassberg rstrassberg@goodwinprocter.com, nymanagingclerk@goodwinprocter.com

Ross Bradley Galin rgalin@omm.com, neverhart@omm.com

Steven M.. Farina (Terminated) sfarina@wc.com

John K. Villa (Terminated) jvilla@wc.com

Ryan A. Llorens ryanl@rgrdlaw.com, kirstenb@rgrdlaw.com, nbear@rgrdlaw.com

Hamilton Philip Lindley hlindley@deanslyons.com, mgoens@deanslyons.com

Jennifer Lynn Spaziano jen.spaziano@skadden.com

Trig Randall Smith trigs@rgrdlaw.com, e\_file\_sd@rgrdlaw.com, nhorstman@rgrdlaw.com

Henry Rosen henryr@rgrdlaw.com, dianah@rgrdlaw.com

Joseph F. Rice jrice@motleyrice.com

Cynthia Margaret Monaco cmonaco@cynthiamonacolaw.com, cmmonaco@gmail.com

Joseph G. Petrosinelli (Terminated) jpetrosinelli@wc.com

Donald Alan Migliori dmigliori@motleyrice.com

Ivy T. Ngo ingo@rgrdlaw.com, e\_file\_sd@rgrdlaw.com

Matthew Melamed mmelamed@rgrdlaw.com

Juliana Newcomb Murray juliana.murray@davispolk.com, ecf.ct.papers@davispolk.com

Alexander C Drylewski alexander.drylewski@skadden.com

Jason A. Forge jforge@rgrdlaw.com, e\_file\_SD@rgrdlaw.com, tholindrake@rgrdlaw.com

Amanda M. MacDonald (Terminated) amacdonald@wc.com

Seema Mittal (Terminated) smittal@wc.com

Paul T. Hourihan (Terminated) phourihan@wc.com

Danielle Suzanne Myers dmyers@rgrdlaw.com

James R. Harper coljamesrharper@me.com

Eugene Mikolajczyk genem@rgrdlaw.com

Michael Scott Bailey michael.bailey@skadden.com

William E. Schurmann (Terminated) wschurmann@wc.com

Lori McGill lorialvinomcgill@quinnemanuel.com

Sidney Bashago sidney.bashago@dpw.com

Brant Duncan Kuehn brantkuehn@quinnemanuel.com

**1:10-cv-03864-AKH Notice has been delivered by other means to:**

Catherine J. Kowalewski  
Robbins Geller Rudman & Dowd LLP (San Diego)  
655 West Broadway

Suite 1900  
San Diego, CA 92101

Daniel E. Hill  
Kendall Law Group, LLP  
3232 McKinney Avenue  
Suite 700  
Dallas, TX 75204

David C. Walton  
Robbins Geller Rudman & Dowd LLP (SANDIEGO)  
655 West Broadway  
Suite 1900  
San Diego, CA 92101

Jamie J. McKey  
Kendall Law Group, LLP  
3232 McKinney Avenue  
Suite 700  
Dallas, TX 75204

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1008691343 [Date=11/3/2014] [FileNumber=13817227-0] [8c6b880365dc82823e61701dc0d2be77543ca93fd7cbdee999f574847c220c0d72079c4a083e673997637ba6b0a84d266be51d0020bf89e1a273da636abbe56b]]