

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARY K. JONES, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

— vs —

PFIZER INC., et al.,

Defendants.

Case No. 10-cv-03864 (AKH)

ECF Case

~~PROPOSED~~ RULE 502(D) ORDER

The parties have engaged in discussions concerning the production of certain documents, communications, and information subject to the attorney-client privilege and/or work-product protection. In connection with those discussions, the parties have agreed to the following terms of protection, and the Court having found that good cause exists for issuance of an appropriately-tailored order, it is therefore hereby

ORDERED, pursuant to Federal Rule of Evidence 502(d), that:

1. By relying on communications from attorneys in connection with (i) legal advice regarding Pfizer's legal proceedings disclosures concerning the government investigations that culminated in the \$2.3 billion settlement announced on January 26, 2009 and memorialized in the Settlement Agreement between the United States Department of Justice and Pfizer Inc. (the "Government Investigations") and (ii) legal advice regarding Pfizer's FAS 5 reserves in connection with potential losses arising out of the Government Investigations (together, the "Waived Subjects"), Pfizer will be deemed to have waived the attorney-client privilege as to the Waived Subjects.
2. The waiver does not extend to any other subject other than the Waived Subjects.
3. Plaintiffs will be entitled to discovery of privileged documents related to the Waived Subjects withheld from Pfizer's prior productions, as well as privileged documents related to the Waived Subjects in future Pfizer productions; provided, however, that Pfizer shall not be required to undertake a search of the productions made in the Government Investigations for such documents. Plaintiffs will not be entitled to, nor

will they seek to obtain, any other privileged documents from any other source absent the discovery of material new facts and only then upon a showing of good cause.

4. To the extent that Pfizer produces documents related to the Waived Subjects that also contain additional privileged information not related to the Waived Subjects, Plaintiffs will not argue that the production of this additional information in the produced documents constitutes a further waiver of privilege beyond the agreed upon scope.
5. Plaintiffs and Defendants may solicit or offer testimony regarding the Waived Subjects. Defendants will not assert any privilege objections to such questions, and Plaintiffs will not assert that the answers to such questions or subsequent use of any such testimony constitutes a further waiver of privilege beyond the agreed upon scope.
6. Plaintiffs and Defendants will be free to use the produced documents, as well as any testimony relating to the Waived Subjects, for any and all purposes in the case.
7. If Defendants' subject matter waiver remains confined to the Waived Subjects, Plaintiffs will not seek to expand the waiver or attempt to obtain additional documents beyond those encompassed by this Order. Plaintiffs, however, reserve the right to argue that some additional waiver has taken place if Defendants do not confine the subject matter waiver to the Waived Subjects.
8. The effect of disclosure made pursuant to this Order in any other proceeding, investigation, or litigation shall be determined in accordance with Federal Rules of Evidence 502(a) and (d), and other applicable Federal law as interpreted by the United States Court of Appeals for the Second Circuit.

IT IS SO ORDERED

DATED:

Jan 18, 2013


THE HONORABLE ALVIN K. HELLERSTEIN
UNITED STATES DISTRICT JUDGE