



IN THE HIGH COURT OF JUSTICE

**BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES**

CP-2019-000023

Competition List (ChD)

DEPUTY MASTER LINWOOD

Friday 2 July 2021

BETWEEN

**(1) THE SECRETARY OF STATE FOR HEALTH AND SOCIAL CARE
(2) THE NATIONAL HEALTH SERVICE BUSINESS SERVICES AUTHORITY
(3) NHS WALES**

Claimants

and

**(1) LUNDBECK LIMITED
(2) H. LUNDBECK A/S
(3) GENERICS (UK) LIMITED
(4) MERCK KGaA
(5) ARROW GENERICS LIMITED
(6) ARROW GROUP ApS
(7) RESOLUTION CHEMICALS LIMITED
(8) XELLIA PHARMACEUTICALS ApS
(9) ALPHARMA LLC
(10) A.L. INDUSTRIER AS
(11) SUN PHARMACEUTICAL INDUSTRIES LIMITED**

Defendants

CONSENT ORDER

UPON the Claimants having issued the Claim in the High Court of Justice, Chancery Division on 19 June 2019, in relation to which the Claim Form (the “**High Court Claim Form**”) has not yet been served on the Defendants

AND UPON the agreement between the parties under CPR 2.11 to extend the time for completing the relevant step required by CPR 7.5(1) and/or CPR 7.5(2) to 7 days from the date of receipt of a sealed copy of this Order

AND UPON the Defendants agreeing to accept service of the High Court Claim Form only by way of email to their legal representatives and the Claimants agreeing that this does not constitute a general acceptance of or submission to the jurisdiction of this Court nor acceptance of service of any other document

AND PURSUANT TO Regulation 18(3A) of the Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019 (SI 2019/521), the effect of which is to provide that permission of the Court is not required, in respect of the Second, Fourth, Sixth and Eighth Defendants, to serve the High Court Claim Form in these Proceedings out of the jurisdiction

AND UPON the parties agreeing that this Order shall not be deemed to involve submission to the jurisdiction by any Defendant

AND UPON the parties set out in the Schedule to this Order accepting jointly and severally to pay any costs liabilities of the Third Claimant in relation to these Proceedings

AND UPON the Application of the Claimants

AND HAVING REGARD TO the overriding objective in CPR 1.1 and to the ability to transfer Proceedings in CPR 30 as supplemented in respect of Competition Cases within section 47A of the Competition Act 1998 by CPR PD 30 paragraphs 8.1-8.5

AND UPON the parties having agreed to this Order in draft form

AND UPON the Court concluding, in the light of all the circumstances of the Cases, including the wishes of the parties, that it is appropriate to make an Order pursuant to section 16(4) of the Enterprise Act 2002 in respect of these Proceedings

BY CONSENT IT IS ORDERED THAT the:

PARTIES

1. Pursuant to CPR 19.5 the parties set out in the Schedule to this Order be substituted for the Third Claimant, under the collective name “Welsh Ministers and Others”.

TRANSFER

2. The Claimants shall serve the High Court Claim Form within 7 days of receipt of a sealed copy of this Order, at which point these Proceedings shall be transferred to the Competition Appeal Tribunal (the “**CAT**”) pursuant to section 16(4) of the Enterprise Act 2002.

3. In respect of the Second, Fourth, Sixth and Eighth Defendants, the requirements under CPR 6.34 and CPR PD 6B paragraph 2.1 are hereby dispensed with.
4. Pursuant to paragraph 3 of CPR PD 30, this Order shall take effect forthwith on the date it is made.
5. The sending of this Order to the parties and the CAT shall constitute notice to them for the purposes of paragraphs 8.5 and 8.12 of CPR PD 30 and CPR 30.4(1).
6. The requirements for the Claimants to file Particulars of Claim in the High Court and for the Defendants to file Acknowledgements of Service in the High Court are hereby dispensed with.
7. The Claimants shall in due course instead file a claim form with the CAT in accordance with rule 30 of the CAT Rules. The Claimants shall also apply to serve the claim form referred to in this paragraph out of the jurisdiction and to effect service of such claim form on any Defendants out of the jurisdiction in accordance with rule 31 of the CAT Rules. This Order shall not be deemed to involve submission to the jurisdiction or acceptance of service by any Defendant for these purposes.
8. The Claimants shall not take the steps referred to in paragraph 7 above without first giving 8 weeks written notice to the Defendants, such notice not to be provided prior to 1 November 2021.
9. For the avoidance of doubt:
 - (1) Neither this Order giving effect to the said transfer, nor the transfer itself, is intended to alter, limit or exclude in any respect any element of the Claimants' Claim as constituted in this Court prior to the transfer taking effect. If and to the extent that any element of the Claimants' Claim as constituted in this Court prior to the transfer taking effect is not capable of falling within the jurisdiction of the CAT on a transfer, or would be altered, limited or excluded by this Order or the transfer, it is not subject to this Order and remains within the jurisdiction of this Court.
 - (2) Neither this Order giving effect to the said transfer, nor the transfer itself, is intended to alter, limit or exclude in any respect any element of the Defendants' accrued rights in respect of defence to the Claimants' Claim as constituted in this Court prior to the transfer

taking effect, including, but not limited to, applicable law, process for service, jurisdiction, liability (including as to any defence or argument based on limitation, time bar, laches, delay, or related issue), or the existence of a duty of care, or otherwise howsoever in relation to the Claim.

- (3) Any appeal to the Court of Appeal against the determination by the Tribunal of the issues transferred or an Order of the Court giving effect to that determination shall be governed by the rules in CPR Part 52.
 - (4) This Court may give such further directions or make such further Order as it thinks fit in connection with the transfer and/or with any such element as referred to above.
10. Liberty to apply to this Court in the event of any dispute arising as to the terms or effect of this Order or to vary this Order.
 11. Costs in relation to the Claimants' Application to transfer to the CAT to be costs in the Case.
 12. Costs in relation to the Claimants' Application to substitute the Third Claimant to be costs thrown away.
 13. The Claimants shall serve this Order on the legal representatives for each of the Defendants and send a copy to the CAT.

Service of the Order

The Court has provided a sealed copy of the Order to the **serving party**:

Claimants' Solicitors
Capsticks Solicitors LLP
1 St George's Road
London
SW19 4DR
Ref: JBW/JXB/085208

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(10) A.L. INDUSTRIER AS
(11) SUN PHARMACEUTICAL INDUSTRIES LIMITED

Defendants

SCHEDULE TO CONSENT ORDER DATED FRIDAY 2 JULY 2021

1. The parties to be substituted for the Third Claimant, under the collective name

“Welsh Ministers and Others”, pursuant to paragraph 1 of the Order, are:

- (1) The Welsh Ministers
- (2) ABM University Health Board
- (3) Cwm Taf Health Board
- (4) Aneurin Bevan Health Board
- (5) Ywel Dda Health Board
- (6) Betsi Cadwaladr University Health Board
- (7) Powys Teaching Health Board
- (8) Cardiff & Vale University Health Board