

## Direction

No. 2 of 2010

### Personal Injury Actions relating to the drugs Vioxx and Celebrex

I, the Lord President of the Court of Session, under and by virtue of the powers conferred on me by paragraph (2) of rule 2.2 of the Rules of the Court of Session 1994, having consulted the parties of proceedings already raised to which this direction applies and being of the opinion mentioned in paragraph (1) of that rule, make the following direction.

1. This direction applies to actions for damages for, or arising from, personal injuries or death arising out of the taking of either of the drugs commonly known as Vioxx and Celebrex.
2. This direction applies to an action already raised as well as a new action.
3. Expressions used in this direction which are also used in the Rules of the Court of Session 1994 have the same meaning here as they have in those Rules.
4. Chapter 43 of the Rules of the Court of Session 1994 shall not apply; accordingly—
  - (a) a new action shall be raised as an ordinary action; and
  - (b) an action already raised shall proceed as an ordinary action without the need for further procedure.
5. Subject to the following provisions, actions shall proceed as ordinary actions and be subject to the rules which apply to such actions.
6. Subject to paragraph 7, by the due date the pursuer shall—
  - (a) disclose to the defenders the identity of all medical practitioners or institutions from whom he or she has received medical treatment; and
  - (b) produce all medical records relating to the pursuer.
7. The “due date” is—

- (a) in relation to an action raised before the date of this direction, the date falling 12 weeks after the date of this direction;
  - (b) in relation to an action raised after the date of this direction, the date falling 4 weeks after the raising of the action.
- 8. Where the pursuer considers that any part of his or her medical records should not be disclosed under paragraph 7, that part is to be produced to the court in a sealed envelope together with a note setting out the reasons why they should not be disclosed. The court shall determine, on the application of any party, whether they should be disclosed.
- 9. Where paragraph 7 is not complied with, the court shall grant an appropriate order for the production of the medical records unless the pursuer shows special cause why such order should not be granted.
- 10. Defences require to be lodged by the date falling 12 weeks (or such longer period as the court may order on cause shown) after production of the relevant medical records by the pursuer.
- 11. The court will manage the actions with the aim of securing the efficient disposal of them.
- 12. To that end, the court shall have power to make appropriate orders, including—
  - (a) the fixing of by order hearings;
  - (b) determining further procedure;
  - (b) setting timetables;
  - (c) ordering disclosure of information;
  - (d) ordering the production and recovery of documents;
  - (e) ordering the production of expert reports (and rebuttal reports);
  - (f) ordering the production of affidavits;
  - (g) ordering the production of witness lists and notes of argument;

- (h) ordering the appointment of actions to procedure roll hearings or proofs on all or any part of the action;
  - (j) ordering the use of information technology in the presentation of documents and the recording and presentation of evidence;
  - (k) ordering the reservation of dates in the court diary for hearings;
  - (l) sisting actions.
13. The court may make any of these orders at its own initiative or on the motion or one or more parties, but if acting on its own initiative it must (with the exception of fixing by order hearings) give the parties an opportunity to be heard before making an order.
14. So far as reasonably practicable, the court's management function will be discharged by Lord Drummond Young.
15. Lord Drummond Young shall give early to consideration to whether, in order to determine or give guidance on any generic issues in the actions, it is appropriate to identify a lead action or actions to be progressed at an advanced rate.

Edinburgh  
23<sup>rd</sup> September 2010

Lord President of the Court of Session

