

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**COMMERCIAL COURT**

**Claim No. 2007 1585**

**MRS JUSTICE GLOSTER**  
**4 DECEMBER 2007**



**B E T W E E N:**

**XYTIS PHARMACEUTICALS SARL**

**(a company incorporated under the laws of Switzerland)**

**Claimant**

**and**

**LONDON SCHOOL OF HYGIENE AND TROPICAL MEDICINE**

**(a company incorporated by Royal Charter)**

**Defendant**

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**ORDER FOR AN INJUNCTION**

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**PENAL NOTICE**

**IF YOU LONDON SCHOOL OF HYGIENE AND TROPICAL MEDICINE DISOBEY THIS ORDER YOU (AND ANY OF YOUR DIRECTORS AND/OR OFFICERS) MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.**

**YOU SHOULD READ THIS ORDER CAREFULLY. YOU HAVE THE RIGHT TO ASK THE COURT TO VARY OR DISCHARGE THIS ORDER.**

### **The Order**

1. An Application was made on 4<sup>th</sup> December 2007 by Counsel for the Claimant to the Judge and was attended by Leading Counsel for the Defendant. The Judge heard the Application and read the documents listed in Schedule 1 and accepted the undertakings set out in Schedule 2.
2. There will be a further hearing in respect of this order on Monday 17 December 2007 or such other date this term as the parties may agree, it being directed that the application is fit for expedition ('the return date').

### **Injunction**

3. Until the return date or further order of the Court, the Defendant whether through the relevant committees, being the Protocol Committee, the Trial Steering Committee or the Data and Safety Monitoring Board, or otherwise must not:
  - (1) purport to make any determination or recommendation to terminate, or to take any other step which would lead to the determination or recommendation to terminate, the Phase II multi-centre clinical trial of XY2405 ("the Trial") without the prior written consent of the Claimant;
  - (2) purport to convene and/or hold any meeting of the Trial Steering Committee other than on 30 days' prior notice in writing to the Claimant, such notice setting out a full agenda of the business proposed to be conducted at the said meeting together with full supporting papers to be considered at any such meeting.

### **Costs of the Application**

4. The costs of this application are reserved to the judge hearing the application on the return date.

### **The effect of this Order**

5. A Defendant which is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees, or agents or in any other way.

### **Directions**

6. The Defendant do serve and file any evidence in opposition to the application by 10am on Tuesday, 11 December 2007.

7. The Claimant do serve and file (if so advised) any evidence in reply by 5pm on Wednesday, 12 December 2007.
8. The parties do file and exchange skeleton arguments by noon on Friday, 14 December 2007.
9. The Claimant do provide to the Defendant by 5pm on Friday, 7 December 2007 in reasonable detail the information upon which the table referred to in paragraph 99 of the witness statement of Mr. Simmon dated 4 December 2007 is based and details of where the figures are derived from.

### **Communications with the Court**

All communications to the court about this order should be sent to —  
Room EB09, Royal Courts of Justice, Strand, London WC2A 2LL quoting the case number. The telephone number is 0207 947 6826.  
The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

### **Schedule 1**

The Judge read the following before making this Order:

1. First Witness Statement of Vincent Simmon dated 4 December 2007 together with a substantial part of the exhibit
2. The Claim Form, Application Notice and Claimant's Particulars of Claim
3. The Claimant's skeleton argument and the Defendant's note
4. Faxes and emails provided by the Defendant in relation to the purported notice of the meeting of the Trial Steering Committee proposed to be held on 5 December 2007
5. Excerpts from The Medicines for Human Use (Clinical Trials) Regulations 2004, SI 2004 No. 1031

### **Schedule 2**

The Claimant gave the following undertakings to the court:

1. If the Court later finds that this Order has caused loss to the Defendant, and decides that the Defendant should be compensated for that loss, the Claimant will comply with any order the Court may make.
2. To provide the sum of £150,000 by way of fortification of the previous undertaking, such sum either to be paid into Court or secured to the satisfaction of the Defendant, in either case by 5pm on Monday, 10 December 2007.

3. In the event that the sum referred to in the previous undertaking is to be held by the Claimant's solicitor, Dechert LLP, in its client account:
  - (1) The Claimant will undertake to the Court not to instruct its solicitor to pay out such monies from its client account other than in accordance with a direction of the Court or upon the final determination of the action;
  - (2) The Claimant's solicitor will undertake to the Court not to pay out such monies from its client account other than in accordance with a direction of the Court or upon the final determination of the action.
4. The Claimant will serve upon the Defendant together with this order as soon as practicable an application notice for continuation of the order.

**Name and address of the Claimant's solicitors**

The Claimants' solicitors are:-

Dechert LLP  
160 Queen Victoria Street  
London  
EC4B 4QQ

Tel: 020 7184 7000  
Fax: 020 7184 7001