

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA

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In re MIRAPEX PRODUCTS LIABILITY  
LITIGATION

MDL No.: 07-1836 (JMR/FLN)

This document relates to

GARY E. CHARBONNEAU, et al.,

Civil No. 06-cv-01215 (JMR/FLN)

Plaintiffs,

vs.

BOEHRINGER INGELHEIM  
PHARMACEUTICALS, INC., a Delaware  
corporation, PFIZER INC., a Delaware  
corporation, PHARMACIA  
CORPORATION, a Delaware corporation,  
and PHARMACIA & UPJOHN  
COMPANY LLC,

**DEFENDANTS' MEMORANDUM  
OF LAW IN SUPPORT OF MOTION  
TO BIFURCATE THE LIABILITY  
PHASE OF TRIAL FROM THE  
PUNITIVE DAMAGES PHASE OF  
TRIAL**

Defendants.

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**I. INTRODUCTION**

Pursuant to Federal Rule of Civil Procedure 42(b), defendants request that this Court bifurcate the liability phase of trial from the punitive damages phase of trial.

**II. LEGAL ARGUMENT**

Under Federal Rule of Civil Procedure 42(b), the “to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third-party claims.” In the Eighth Circuit, “[t]he decision of whether to isolate the punitive damages phase of the trial is within the sound discretion of the trial court.” *Thorne v. Welk Inv., Inc.*,

197 F.3d 1205, 1213-14 (8th Cir. 1999). The Eight Circuit Court has recognized that bifurcation of trial into separate phases “to consider, first, liability and compensatory damages, and second, punitive damages, can avoid the potential that evidence pertinent to punitive damages will improperly prejudice a determination on liability and compensatory damages.” *Weimer v. International Flavors & Fragrances, Inc.*, 2007 U.S. Dist. LEXIS 48669, at \*6 (N.D. Iowa, July 3, 2007).

Here, bifurcation is warranted because evidence of defendants’ finances is irrelevant to the issue of liability and its introduction during the liability phase would be unduly prejudicial. Bifurcation is necessary to prevent unfair prejudice to defendants during the liability determination.

### III. CONCLUSION

For the foregoing reasons, defendants respectfully move for bifurcation of the liability phase of trial from the punitive damages phase of trial.

Dated: July 11, 2008

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