

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

STATUS CONFERENCE

In Re: Fluoroquinolone Products Liability	)	COURT MINUTES
Litigation,	)	BEFORE: John R. Tunheim
	)	U.S. District Judge
Plaintiff,)	
	)	Case No: 15-2642 JRT
v.	)	Date: October 24, 2016
	)	Deputy: Heather Arent-Zachary
	)	Court Reporter: Kristine Mousseau
	)	Time Commenced: 2:05 pm
Defendant.	)	Time Concluded: 3:33 pm
	)	Time in Court: 1 Hour & 26 Minutes

Hearing on: Status Conference

1. Status of Litigation

Counsel reported that there are currently 711 cases in the MDL, including 92 that have been tagged to transfer into the MDL. There are 142 Bayer-only cases, 440 Janssen-only cases, and 129 cases that involve Bayer and Janssen.

There are 30 cases pending in Pennsylvania state court and 1 pending in California state court. The parties reported that some written discovery has occurred in the Pennsylvania proceedings, and that the parties are discussing a stipulation for those cases under which written discovery from the MDL would also apply to those proceedings.

2. PTO-3, PFS & DFS deficiencies

The parties reported that following an order to show cause regarding two plaintiffs, Defendants heard from, but have not received a PFS from Plaintiff Cerney, possibly due to a miscommunication. Neither party has heard from Plaintiff Desalvo following the order to show cause on September 26, 2016. The Court stated that if Desalvo has not responded in a week, the Defendants should submit a proposed order. Defendants also reported that they continue to send deficiency notices, but none were ripe for the Court's consideration.

3. McKesson Discovery Plan and Briefing

The parties discussed their separate proposals regarding a discovery plan and motion schedule for Defendant McKesson. Janssen Defendants reported that 75 of the 711 cases in the MDL name McKesson. Defendants reported that they have requested, and in many cases received, voluntarily dismissal of the claims against McKesson in states without distributor liability. Additionally, Defendants will continue to seek affidavits from McKesson excluding them as distributors based on the pharmacy information in PFSs. Defendants reported that they expect only 10-20 cases involving McKesson to remain after this winnowing process. Defendants argued that based on this small number of cases, discovery against McKesson would not have broad applicability or serve the purposes of the MDL.

Plaintiffs stated that they would like to seek discovery against McKesson along the same timetable as the other defendants. Plaintiffs would like include McKesson cases in bellwether selection, and they argue that Defendants efforts to weed out some McKesson cases should not affect their ability to proceed on cases of their

choosing for the bellwether process, particularly because all parties agree that some McKesson cases will remain.

The Court stated that it would wait to decide on discovery against McKesson until seeing how many McKesson cases remain at the next status conference. The Court noted that it would likely enter an order on discovery of McKesson at the next status conference, and that there may be shorter discovery deadlines against McKesson to make up for the delay.

4. Discovery to PSC

The parties reported that Defendants continue to serve discovery. There have been some objections, on which the parties will meet and confer and file a motion if necessary.

5. Common Benefit Order

The parties discussed three unresolved issues with regard to the proposed Common Benefit Order: whether Defendants must maintain and provide Plaintiffs with a list of counsel appearing in other cases subject to the order; whether Defendants will be jointly liable for assessments that are not properly deposited in the fund; and whether the parties should meet and confer on a mechanism for verifying that all proper assessments are deposited to the fund.

Plaintiffs contend that the three disputed portions of the Common Benefit Order are tools to enforce compliance with the order that other courts have used in MDLs. Defendants counter that these requirements place additional burdens on Defendants for the benefit of Plaintiffs, and that they are not necessary to ensure compliance with the order.

The Court accepted the reporting requirement, finding that it would impose a minimal burden on Defendants. The Court declined to adopt the other two proposals, finding them unnecessary at this time, but stated that it would reconsider if problems arise.

6. Science Day Protocol

The parties confirmed that Science Day will occur on January 17, 2017, and stated that they would submit an agreed upon protocol promptly.

7. Bellwether Protocol

The parties discussed their competing proposed bellwether protocols. Janssen Defendants reported that their proposal included a limited waiver of *Lexecon*, and a bellwether pool of 40 cases, divided into eight categories of cases based on the prescription date, and indication at issue, in addition to other factors. Plaintiffs counter that Janssen Defendants' proposed pool size is too large and would be unmanageable. Plaintiffs also objected to requiring a certain number of cases fitting certain defined categories, arguing that the parties may take those variables into account, but that there is no need to limit their selections in this way. Plaintiffs also argued that Defendants' proposed categories are not representative of the MDL as a whole.

Janssen Defendants objected to the eligibility cut-off date in Plaintiffs' proposed protocol, which provides that only cases transferred into the MDL prior to April 21, 2016, may be considered for bellwether selection; whereas, Janssen Defendants' proposal would include cases filed prior to October 1, 2016. Plaintiffs counter that they have already been reviewing cases transferred into the MDL before April 21, 2016, and to require them to review cases filed after that date and make a selection within the proposed timeline would prejudice them.

Next Status Conference: Thursday, December 1, 2016, at 2:00 p.m.

APPEARANCES:

Plaintiffs: Bill Robins, Russell Budd, Yvonne Flaherty, Thomas Sims, R. Jason Richards, Vance Andrus, David Wool, Andrea Hirsch, Christopher Nidel, Olga Viner

Defendants: Tracy Van Steenburgh, Jan Bernier, Cicely Miltich, Andrew Solow, Lori Leskin, James Murdica, John Winter

On the phone: Lindsey Cordes, Katie Griffin, Jamie Goldstein, Sarah Wolter, Kristen Barton, Tom Cullen, Jenay Moshkovich

s/Heather Arent-Zachary
Courtroom Deputy Clerk