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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

)
IN RE: FLUOROQUINOLONE) File No. 15-md-2642 (JRT)
PRODUCTS LIABILITY LITIGATION)
)
) Courtroom 15 East
) Minneapolis, Minnesota
) Thursday, August 10, 2017
) 2:16 p.m.
)

BEFORE THE HONORABLE JOHN R. TUNHEIM
CHIEF UNITED STATES DISTRICT COURT JUDGE

(STATUS CONFERENCE)

RENEE A. ROGGE, RMR-CRR
Official Court Reporter - United States District Court
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15 * * *

16 **P R O C E E D I N G S**

17 **IN OPEN COURT**

18 THE COURT: You may be seated. Good afternoon.

19 This is Multidistrict Litigation No. 2642, In Re
20 Fluoroquinolone Products Liability Litigation.

21 All right. Let's have counsel note appearances
22 for the record of today's hearing. First, for the
23 plaintiffs.

24 MR. ROBINS: Good afternoon, Your Honor. Bill
25 Robins for the plaintiffs.

MR. BUDD: Good afternoon. Russell Budd for the
plaintiffs.

1 MR. SIMS: Good afternoon. Thomas Sims for the
2 plaintiffs.

3 MR. RICHARDS: Jason Richards for the plaintiffs.

4 MS. WELLS: Devona Wells for the plaintiffs.

5 MS. HIRSCH: Andrea Hirsch for the plaintiffs.

6 MR. WOOL: David Wool for the plaintiffs.

7 MS. FLAHERTY: Good afternoon, Your Honor. Yvonne
8 Flaherty.

9 THE COURT: All right. And for the defendants
10 here at the courtroom.

11 MR. SOLOW: Andrew Solow for the Bayer defendants,
12 Your Honor.

13 THE COURT: Good afternoon.

14 MR. PRICE: Joe Price, Bayer defendants, Your
15 Honor.

16 MS. LESKIN: Good afternoon. Lori Leskin for the
17 Bayer defendants.

18 MS. SCHRECK: Debra Schreck for the Bayer
19 defendants.

20 THE COURT: All right. And now on the telephone.
21 First, for the plaintiffs.

22 MR. CORLEY: Daniel Corley for the plaintiffs,
23 Your Honor.

24 MR. LEE: Dae Lee for the plaintiffs, Your Honor.

25 MS. CORDES: Lindsay Cordes for the plaintiffs.

1 MS. VINER: Olga Viner for the plaintiffs.

2 MS. GOLDSTEIN: Jamie Goldstein for plaintiffs.

3 MS. GRIFFIN: Katie Griffin for plaintiffs.

4 MR. NIDEL: Chris Nidel for the plaintiffs.

5 MS. STEVENS: Lindsay Stevens for the plaintiffs.

6 THE COURT: That was two at once. Say those
7 again.

8 MR. NIDEL: Sorry. Chris Nidel for the
9 plaintiffs, Your Honor.

10 MS. STEVENS: Lindsay Stevens for the plaintiffs,
11 Your Honor.

12 MR. MALUSH: Greg Malush for the plaintiffs.

13 MS. NEVIN: Barbara Nevin for the plaintiffs.

14 MR. BHASKER: Kedar Bhasker for plaintiffs.

15 MS. LEE: Kathy Lee for plaintiff Dirk Nation.

16 THE COURT: All right. Anyone else?

17 MR. SUFFERN: Good afternoon, Your Honor. My name
18 is Michael Suffern, and I represent Teva Canada and Cobalt
19 in the Actavis case.

20 THE COURT: All right. Anyone else on the phone?
21 All right.

22 All right. Let's go ahead with our proposed
23 agenda, first addressing the status of the litigation.

24 MR. SIMS: Thank you, Your Honor.

25 THE COURT: Go ahead, Mr. Sims.

1 MR. SIMS: We show approximately 265 cases pending
2 in this MDL where Bayer or Merck are listed as a defendant.
3 Of those, approximately 180 are Bayer-only cases, in other
4 words, where Levaquin and Johnson and Johnson are not
5 alleged, and then 85 combo cases where Johnson and Johnson
6 or Janssen is a named defendant.

7 On the Philadelphia state court litigation, there
8 has been some recent activity there.

9 THE COURT: Okay.

10 MR. SIMS: As we discussed at the last hearing,
11 the cases that were filed in calendar year 2015 that would
12 have had trial settings in 2018, all but two of them have
13 been dismissed now is my understanding. Those dismissal
14 orders have been entered. The two remaining cases, of those
15 one of them is a case in which there was a motion to
16 withdraw as counsel by the plaintiff's firm and that motion
17 was granted. My expectation is that eventually that case
18 will be dismissed. Then there is a remaining case, the
19 Bryant case, Your Honor. There was a revised scheduling
20 order entered in that case. I believe at our last status
21 conference we had indicated Judge Younge was willing to push
22 the trial back to April. In the revised order he's pushed
23 it to June. So still not quite back as far as our first MDL
24 trial here, but closer. And there's always the potential --

25 THE COURT: June of 2018?

1 MR. SIMS: Correct, Your Honor.

2 And there's always the potential that it could be
3 pushed further, but under the current revised scheduling
4 order it has a June 2018 trial setting.

5 THE COURT: All right.

6 MR. SIMS: There then are a few, just a handful of
7 cases that were filed in 2016. I believe only one of those
8 has a trial setting in 2018. I could be mistaken. But that
9 case pursuant to an agreement will be dismissed from the
10 Philly state court proceeding and eventually refiled here in
11 the MDL. And we're waiting to kind of see what's going to
12 happen to the remaining 2016 cases. They may follow a
13 similar path.

14 THE COURT: How many?

15 MR. SIMS: I believe there's three, Your Honor,
16 but I can't be certain about that. And I know at least two
17 of those are going to be dismissed. We're waiting on one
18 more to find out.

19 But it, just in terms of trial settings, it looks
20 like the only case is the one that has that June 2018
21 setting. And that's where we are in the Philadelphia state
22 court litigation.

23 THE COURT: Okay. This is the Bryant case, did
24 you say?

25 MR. SIMS: The Bryant case, Kimberly Bryant, Your

1 Honor. It is my firm's case.

2 THE COURT: And the defendant is?

3 MR. SIMS: Is Bayer HealthCare. It is not a combo
4 case. It is an Avelox case, Your Honor.

5 THE COURT: Okay.

6 MR. SIMS: Unless something from Bayer's counsel,
7 I will move on to Item No. 2.

8 MR. SOLOW: Factually, that's correct, Your Honor.
9 I just want to continue to note our concern. You know, the
10 status quo is as Mr. Sims indicated. There's a trial-ready
11 date of June of 2018 for that Bryant case, but that is now
12 going to be potentially the tail wagging the dog here.
13 Obviously, all the discovery is taking place through Baron &
14 Budd here in the MDL through the PSE, and I think you will
15 kind of have a better appreciation of some of the scheduling
16 issues at the end of this conference. So it is a concern
17 for us still. We have indicated from our side that we will
18 reapproach Judge Younge come this spring, but right now it's
19 looming as a potential issue for us.

20 THE COURT: So that, according to their rules, as
21 I understand it, they're supposed to have those cases done
22 in the calendar year 2018; is that correct?

23 MR. SIMS: That's my understanding, Your Honor.

24 THE COURT: Okay. All right.

25 MR. SOLOW: Thank you, Your Honor.

1 THE COURT: Thanks.

2 MR. SIMS: And I confess, Your Honor, I don't know
3 if it's three years from the date it is filed or the end of
4 that calendar year. It was filed in August of 2015.

5 Item No. 2. I don't think there are any issues to
6 bring to the court's attention. There were a couple of
7 deficiencies, and I've worked with counsel on those cases,
8 and I think we've resolved all but one or two of them and
9 hope to have the rest of them put to bed here shortly.

10 THE COURT: All right.

11 MR. SIMS: With respect to Item No. 3, we have
12 begun to receive documents from Bayer Pharma AG, the German
13 Bayer entity. And, in fact, about a week ago, maybe ten
14 days ago, we received about 2 million pages of documents.
15 So it's a very large production. All told, I think we are
16 at about maybe 11, 11 and a half million pages of documents
17 that have been produced and we're at about 4 million that
18 have been produced just in the last 30 days. So we're --
19 we're still receiving a large volume of documents; but other
20 than one issue I'm going to get to in just a little bit,
21 there hasn't been any lingering disputes with respect to
22 document production.

23 On the liability deposition front for witnesses
24 from Bayer and Merck, we have taken so far seven
25 depositions. And there was a request made at the end of

1 June for an additional twelve U.S.-based Bayer employees,
2 and so far I think we have received dates back on nine of
3 them, if I have that right, eight or nine of them. And Mr.
4 Solow is working on the remaining group. I think there is
5 one that we may not end up deposing and there is someone who
6 is a former employee that we may have to track down by
7 subpoena, but we are progressing. And those have been
8 scheduled, almost all of them, for September and we will
9 proceed then.

10 We do anticipate proceeding with depositions of
11 the BPAG folks. I have advised Bayer that we would like to
12 proceed with those in October, and I understand that those
13 will most likely go forward in Europe somewhere. We have
14 not submitted names, because we just received this very
15 sizable production of about 2 million documents. And so we
16 would like the opportunity to at least put our eyes on them,
17 some of them, and get a better feel for who we would like to
18 depose. We have some idea, but we would like to look at the
19 documents. There were a couple folks I had asked about
20 earlier, but they are no longer with the company, and so we
21 are looking at folks who are still there.

22 The treater depositions, the first one is --

23 MR. SOLOW: Tom, could I just jump in?

24 MR. SIMS: Sure. Of course.

25 MR. SOLOW: Your Honor, I just wanted to note for

1 the record that everything Mr. Sims said is correct. I just
2 want to put a fine point on the additional U.S. employees
3 that were requested. The three -- some of those included
4 former employees, which we have been able to get their
5 cooperation to schedule their depositions without a
6 subpoena. The remaining ones that we have not provided
7 dates with are all former employees. As I have indicated to
8 Mr. Sims, one is coming off of surgery, one has got a busy
9 work schedule, we are trying to work and accommodate that,
10 and there is one who, as of this point in time, will need to
11 be subpoenaed and we are working on getting the last-known
12 address and we will take care of that.

13 And then Mr. Sims did just finish that last point.
14 To be clear on the Bayer HealthCare Pharmaceuticals AG
15 depositions, those will only be current employees, because
16 there is not subpoena power outside and under foreign data
17 privacy laws the company can't compel former employees to
18 testify.

19 THE COURT: All right.

20 MR. SIMS: All right. Turning to depositions of
21 treating physicians. As the court is aware, we have a bit
22 of a dispute about that, but in the interim we went ahead
23 and received a list from Bayer of the prescribing physicians
24 they would like to depose, physicians or nurse
25 practitioners, I should say. There were ten of those. And

1 about a week or ten days ago we got a subsequent list of
2 three treating physicians for each of the bellwethers, since
3 the plaintiffs have already said we would be willing to
4 agree to that. And so we have started on the treating
5 physicians and reaching out to them. We have made some
6 progress on the prescribing physicians. There is one who is
7 actually scheduled to be deposed next week I believe on the
8 17th. And there is some other dates out there for some
9 folks. We have run into a couple of issues. Someone's been
10 on vacation, we don't quite know when they are going to be
11 back, things like that. But we are getting close to getting
12 all of those prescribers scheduled and then we are working
13 on treaters.

14 Finally, on the sales representatives. So the
15 court probably recalls when we were negotiating the
16 defendant fact sheet there was some disagreement about the
17 scope and what would be included in there. We have served
18 discovery on Bayer and Merck seeking the production of
19 custodial files from two groups of employees, sales
20 representatives who had direct contact with the prescribing
21 physicians and what I call district managers, so regional
22 managers, essentially. That was served the beginning of
23 July. We received their responses at the beginning of
24 August. There was no documents produced. They did indicate
25 they would produce some documents beginning 30 days from the

1 date of their response, which would be early next month, and
2 that production would be on a rolling basis. Based on their
3 responses and the objections, there are some disputes. We
4 are going to meet and confer over the coming days regarding
5 that; and if we can't resolve that, plaintiffs will file a
6 motion to compel and ask that that be heard at the next
7 status conference.

8 THE COURT: All right.

9 MR. SIMS: I am also a little worried about the
10 pace of production, but we will just -- we will see once the
11 documents start rolling in how that works out. And that's
12 where we are on sales representatives.

13 THE COURT: All right. Mr. Solow.

14 MR. SOLOW: Your Honor, we did just receive an
15 email from Mr. Sims a few hours before the conference
16 indicating that they would like to meet and confer over our
17 responses to those requests, and we will do that; and if we
18 need to, there will be motion practice.

19 I would just point out, Your Honor, that Your
20 Honor may recall we had an argument about the scope of the
21 defendant fact sheet. And we started serving defendant fact
22 sheets in 2016, in the fall of 2016. So from our
23 perspective the fact that the requests for these sales rep
24 productions came in July is not really any fault of ours,
25 Your Honor. This information was available. These

1 bellwethers were selected. So to the extent that there is a
2 JML on deadlines is certainly not of our doing. As Mr. Sims
3 indicated, we produced over 11 and a half million pages of
4 documents. There are additional documents rolling out. So
5 the notion that everything should just be dropped to get out
6 these sales rep custodial files in any way is inconsistent
7 with the case management order is just not the case.

8 THE COURT: Okay.

9 MR. SIMS: I'll hold off for rebuttal at this
10 time.

11 THE COURT: All right.

12 MR. SIMS: Thank you, Your Honor.

13 THE COURT: Okay. So we have got a couple of
14 motions today. Mr. Robins.

15 MR. ROBINS: Yes, Your Honor. Bill Robins.

16 I'm just here to talk about the motion to limit
17 treater depositions, and I think I can be pretty brief about
18 this.

19 As we set out in our papers, we have gotten a
20 request from the defendant related to the 10 bellwethers.
21 They essentially have asked for 72 depositions of
22 treater/prescribers, as many as 12 for one plaintiff. We've
23 got one plaintiff that they asked for three and everything
24 else sort of around seven, seven or so, which we just
25 believe is excessive given the nature of the case.

1 I am arguing this because they've attached some of
2 my statements in the earlier conferences concerning some of
3 the things that we said about discovery, and, frankly, what
4 we are saying now is entirely consistent with what I said
5 back then. I had originally told Your Honor that I thought
6 we would need around eight depositions total for each
7 bellwether plaintiff case, and that's more than what we
8 usually do in an MDL. At least in terms of the workup on
9 bellwethers, it's usually we tend to have, you know, one
10 treater, one prescriber, a couple of sales reps or district
11 managers and a plaintiff, so it's usually four to five
12 depositions. I had estimate I thought it would be more like
13 eight, because we did have people that, you know, do have
14 long medical histories and sometimes you got to go take a
15 few more of the treaters for that. But we just think their
16 position that they can, you know, come in and take 12
17 depositions in one case of treaters is just excessive under
18 the circumstances.

19 We have set forth what we felt was a reasonable
20 proposal, which was one prescriber and three treaters. We
21 are also, of course, open to the notion that if there are
22 other treaters or prescribers that we would, you know,
23 intend to call at trial that we would certainly, you know,
24 say that they needed -- those people would -- they'd have a
25 right to depose those people as well, if they are not

1 included within the three. But we really think that's a
2 reasonable approach, you know, just given all of the other
3 depositions and the limits Your Honor put on our side, you
4 know, with regard to the number of company witnesses that
5 was ultimately allowed, you know, just in terms of having a
6 balance overall in this. We're essentially saying, you
7 know, 40, 40 depositions of treaters and prescriber. You
8 know, there may be some exceptions that we would be open to
9 a good cause, you know, reason. For example, if a plaintiff
10 had two prescribers where they -- it was important to go
11 take both of them for some reason, you know, theoretically
12 we could agree to that if it was necessary and it's relevant
13 to the failure to warn issues. You know, of course, the
14 prescribers would get into that issue directly on liability.
15 But to just have sort of open-ended, no limits essentially
16 on treaters for, you know, things like -- there are examples
17 of, you know, folks have been in car wrecks and, you know,
18 had some kind of numbness prior in their life before they
19 took Avelox and they want to go take that person's
20 deposition, we just think it's excessive and not necessary.
21 Their experts will have all the opportunity they need to
22 review the medical records. And to just sort of be chasing
23 after, you know, large numbers of treaters we just think is
24 not reasonable under the circumstances.

25 So, you know, that's essentially what we would say

1 about it, and we would ask the court to put in just a sort
2 of baseline limit of one prescriber and three treaters,
3 subject to good cause, if we need to come back on, you know,
4 for some reason outside of that.

5 THE COURT: So the group that are proposed for
6 depositions, the treaters, you said there is 72. Is three
7 the minimum in any particular case?

8 MR. ROBINS: There's only one where they ask for
9 three. Then everyone else is seven or above.

10 THE COURT: And these are treating physicians who
11 treated these plaintiffs over what period of time? A long
12 period of time? Short period of time?

13 MR. ROBINS: Essentially any time in their life.
14 Some of these people are people that they saw before they
15 took the drug, but the patient may have had some type of
16 symptom that the defendant says, well, they had numbness or
17 something like that, so we want to go take the treater, even
18 though he was pre-Avelox. Some of these people are -- in
19 the usual case it's people that they saw afterwards for, you
20 know, various conditions or for their symptoms related to,
21 you know, to the drug. These patients do have complicated
22 histories. There's no doubt about it. They see -- a lot of
23 these people see a lot of doctors, but it's not unlike a lot
24 of cases we have like this where, you know, by its nature
25 it's involving a pharmaceutical drug, it's involving

1 complicated histories. And normally we have some rule of
2 reason. We gave some examples from some of the other
3 courts, you know, that have looked at this, in terms of
4 putting some reasonable limits on the number of
5 prescriber/treater depositions.

6 THE COURT: All right. Ms. Leskin.

7 MS. LESKIN: Thank you, Your Honor.

8 Your Honor, I want to be clear. Counsel keeps
9 referring to the 12, the 12, the 12. One plaintiff we have
10 asked -- we listed 11, actually, one of whom is the
11 prescriber, so there are 10 treaters. That plaintiff, Ms.
12 Heller, identified over 30 treaters, 30 treaters in her fact
13 sheet and at her deposition, who she has seen for treatment,
14 diagnosis, evaluation of her condition, some of whom she
15 says gives her causation assessments, some of whom are
16 treating her for everyday pain and other issues.

17 So we are not just going out and naming doctors
18 for the sake of naming doctors. We have taken a very
19 reasoned and thoughtful approach to who we need to depose.
20 This isn't just about failure to warn. This isn't just
21 about causation. Certainly, those are critical to the case,
22 but from the very beginning we have stood here and told you
23 that there are significant statute of limitations issues.
24 And the notice question of the causal association, if any,
25 between the use of Avelox or Cipro and the onset of symptoms

1 is going to be critical, is going to be very fact-based and
2 deposition-based. This is our one and only time to take the
3 discovery we need in these bellwethers, unlike the cases
4 that plaintiff cite to you. Those MDLs had a provision to
5 do overall discovery -- do some initial discovery of the
6 plaintiffs and when the trial cases were selected an
7 additional time period to do discovery. We don't have that
8 here. We had proposed that. Plaintiffs rejected that, and
9 that's not the way this bellwether order is written. We
10 have one and only opportunity to do all of our discovery.
11 And so we need to go out and we have the right to establish
12 our witnesses, beyond just the cold record of medical
13 records, to assess the opinions being expressed in some of
14 those records. If there's a causal opinion being expressed
15 one way or the other, we have the right to explore that and
16 what the basis is for having that in the notes. If there
17 are alternative causes for the plaintiffs' symptoms, we have
18 the right to explore that and understand the severity of the
19 preexisting conditions.

20 So there are a lot of issues and there are a lot
21 of reasons why we have selected the physicians we did.
22 Plaintiffs have not pointed you to a single doctor that we
23 requested that is not relevant to the case. That is just
24 simply silly. We are talking about third-party witnesses --
25 third-party witnesses who are short. We are not talking

1 all-day depositions. These I think we've agreed total about
2 three hours. We have asked the plaintiffs who have insisted
3 on doing all the scheduling to do them on back-to-back days,
4 to minimize the travel of everyone, but that doesn't mean
5 that we need to impose an arbitrary number for patients with
6 very complex medical histories. We have to be able to
7 assess this. We have to be able to evaluate them.

8 The proposal that I just heard for the very first
9 time is that if there's some treaters that they would call
10 at trial, then we'd get to ask those proposals as well.
11 Today is the first time I have heard them ask that. We
12 provided -- we offered that. We offered as a compromise let
13 us pick our three or four key ones, and then if there are
14 additional doctors that you intend to rely on at trial we
15 would include those as additions, and that was rejected. So
16 we had no choice but to pursue the overall number. We
17 haven't been permitted to talk to the doctors. All we have
18 are records. So we don't have a way to evaluate the
19 importance of those records, other than by sitting and
20 taking those depositions.

21 Again, we have tried to limit the number. We are
22 not asking for every doctor that's been named. If you take
23 out -- the numbers that you were given included prescribers,
24 so I believe there's one prescriber in each of the 10 cases,
25 Your Honor, so it's a total of 60 -- I think it's actually

1 61 treaters that we had requested over 10 cases.

2 Again, Mr. Robins himself stood in this court and
3 stressed to you the need for flexibility in deciding
4 discovery. The initial orders that we had requested had
5 limits. They fought against that. They didn't want limits
6 on treaters. They didn't want limits on these doctors and
7 stressed the need for flexibility. And that's exactly
8 right.

9 As we go through these records, Your Honor, these
10 are patients that we don't even think necessarily have
11 peripheral neuropathy. These are patients who have
12 preexisting conditions that are very possible likely causes.
13 We have had patients with diabetes, patients with car
14 accidents that's caused disk issues, we have patients with
15 symptoms that their own doctors aren't even calling
16 peripheral neuropathy. So we have to be able to explore
17 what these doctors are saying, how they are treating, what
18 the damages might be, the severity of the injury, and those
19 are the focus of the doctors. If it is a particular one
20 that we have asked for that plaintiffs do not believe is
21 relevant or necessary, then we can meet and confer on that,
22 just as we are doing with the company witnesses, and we can
23 decide if we can drop them or not. But to set an arbitrary
24 limit in a case this complicated with these complicated
25 medical histories simply prejudice us in our ability to

1 develop our class.

2 THE COURT: So are you still supportive of the
3 idea of a limit, so long as you are then able to depose
4 treaters who plaintiffs intend to call at trial?

5 MS. LESKIN: I think we would be agreeable to a
6 limit. I think three is a little tight, given what I know
7 about the --

8 THE COURT: Yeah, that was my next question. What
9 would be reasonable, do you think?

10 MS. LESKIN: I think in addition to a prescriber
11 we should be allowed to go up to four -- maybe four
12 treaters. We may not need them in every single case. We
13 are not going to name them just for the sake of naming them.
14 But with the caveat that if the plaintiffs intend to rely on
15 any causation opinions in the medical records or call any of
16 the other treaters at trial, then we have the -- they need
17 to identify them now and we need to be able to depose them.

18 THE COURT: So is that reasonable to identify them
19 now, Mr. Robins?

20 MR. ROBINS: To identify the treaters that we
21 might call at trial?

22 THE COURT: Right.

23 MR. ROBINS: I don't know that we can do it this
24 afternoon.

25 THE COURT: No.

1 MR. ROBINS: But I think we can do it within, you
2 know, a week or so. We can take a look at that.

3 THE COURT: So this is not something that's a
4 process that you would decide later, much later in the --

5 MR. ROBINS: Yeah. I mean, I guess I should say
6 we probably still -- I think we'd probably need a little bit
7 more time than just because, you know, we do have some
8 plaintiffs I think we may even still be trying to get
9 last-minute records in and that sort of thing, but I think
10 we could, you know, certainly give notice, you know, within
11 enough time left on the schedule where we can get them
12 deposed still within the time frame.

13 One of the things that I had spoken to counsel
14 about just before we came up today was that in the schedule
15 as we have it right now the case specific deadline is early
16 October. The general liability deadline is at the end of
17 October. And so just given the amount of additional work
18 that we need to do in terms of getting these treaters done
19 and also the sales reps and that testimony, we were talking
20 about approaching the court about just putting that
21 deadline -- that case specific deadline married up with the
22 remaining fact discovery, so we sort of end everything by
23 the end of October. I think if we were able to adjust the
24 schedule in that way and we had, you know, some time built
25 in for us to make a decision about, you know, who are

1 treaters that we definitely would want to call, we could get
2 those to the other side and then have enough time, you know,
3 to get those depositions done, if we needed to, assuming we
4 are going to do discovery until the end of October.

5 I wasn't involved in the negotiation, and I spent
6 the last two months in trial with Judge Kennelly in Chicago,
7 so if I have missed some of the negotiations on what went
8 back and forth, I apologize to my opposing counsel. In
9 looking at the papers I didn't see anything, you know, where
10 there was this kind of discussion, but if there was, you
11 know, so be it.

12 My suggestion, again, would be, you know, if we
13 start off with one and three, that's a fair number to start
14 with under the circumstances. That's four depositions.
15 That's 40 depositions across the 10 plaintiffs. And then if
16 we add, you know, the caveat that we, you know, would
17 disclose who we would call and they could do those on top of
18 them, I think that would be a reasonable approach, Your
19 Honor, that we could live with.

20 MS. LESKIN: The only thing I would add, Your
21 Honor, again, I think three is a little small, given what I
22 know about these complex plaintiffs. And, again, we
23 wouldn't name three just for the sake of naming three or
24 four. It would be those that we really think we need.
25 Sometimes you take a deposition and what appears on the

1 records is not necessarily the case, and sometimes you learn
2 something at a deposition that may identify another doctor
3 who becomes important, and so we would, you know, obviously
4 meet and confer and hopefully agree to add that. It
5 wouldn't be a strict limit, whatever it would be, and there
6 would still be some room for flexibility at that point.

7 THE COURT: All right. Yeah, I think some
8 additional flexibility is probably necessary there.

9 I will grant the motion to the extent of limiting
10 the depositions to one prescriber and four treaters, with
11 the proviso that the plaintiffs in a reasonable period of
12 time would identify any additional treaters that they are
13 likely to call at trial, so that their depositions could be
14 taken by the defendants as well during the requisite time
15 period. All right?

16 MS. LESKIN: Thank you, Your Honor.

17 MR. ROBINS: That's fine.

18 THE COURT: Okay. All right. The second motion.
19 Ms. Flaherty.

20 MS. FLAHERTY: Good afternoon, Your Honor.

21 As the court is aware, plaintiffs filed a motion
22 to amend the protective order as it pertains to the
23 privilege log. Since we filed that motion, we continued to
24 meet and confer with defendants literally right up until
25 this status conference. And I am pleased to report that we

1 have reached an agreement where defendants will provide us
2 with some additional information and we are optimistic that
3 that is going to address our concerns.

4 THE COURT: All right.

5 MS. FLAHERTY: So based on their representations,
6 we will pull our motion down at this time.

7 THE COURT: All right. The record will note the
8 motion having been withdrawn. If there is any issue that
9 arises, we could even have a telephone conference, if
10 necessary, to resolve it. Okay?

11 MS. FLAHERTY: One more item, Your Honor.

12 THE COURT: Yes.

13 MS. FLAHERTY: We have submitted to the court a
14 jointly proposed order regarding the establishment of a bank
15 account for the common benefit fund. We have also forwarded
16 that to Johnson and Johnson's counsel, which we
17 inadvertently left off the initial email. But if the court
18 has any questions regarding the account, we are happy to
19 answer those, otherwise I think that is ready for your
20 review.

21 THE COURT: Western Bank in Bloomington?

22 MS. FLAHERTY: That is correct.

23 THE COURT: Okay. And there is no objection here
24 from the defense, correct?

25 MS. LESKIN: No, Your Honor.

1 THE COURT: Okay. I will sign it and file it this
2 afternoon.

3 MS. FLAHERTY: Thank you.

4 THE COURT: All right.

5 MS. FLAHERTY: I believe the last issue would be
6 the scheduling of our next status conference.

7 THE COURT: Okay. All right.

8 Yes, Mr. Solow.

9 MR. SOLOW: On that last agenda item, Your Honor,
10 of scheduling the September conference, we had a moment to
11 speak right before the conference. I didn't get a chance to
12 speak to your clerk about it, but with all these depositions
13 in September --

14 THE COURT: It sounds like there's a few going on.

15 MR. SOLOW: Yeah. And the Jewish holidays in
16 September, we were wondering if we could thread the needle
17 on Tuesday, September 12th.

18 THE COURT: Let's see here.

19 Heather, we have the Rozycky trial that day?

20 COURTROOM DEPUTY: It will be day two. They said
21 it might be done in a day and a half, but we may still be in
22 trial.

23 THE COURT: Yeah. If we can do it later in the
24 day on Tuesday the 12th, that would work fine with me, or we
25 could just break during trial if we're -- I think we have

1 the three days for that, don't we?

2 COURTROOM DEPUTY: Yes, Your Honor.

3 THE COURT: Well, Wednesday I have got a little
4 bit of a problem later in the day. No. That's fine. Let's
5 do it on Tuesday the 12th. We can do it at the same time at
6 2:00. We will just break the trial for -- give the jury a
7 little extra break in the afternoon.

8 MR. SOLOW: Thank you, Your Honor.

9 MR. ROBINS: Your Honor, Bill Robins again. I'm
10 going to be starting another bellwether trial in front of
11 Judge Kennelly on the 18th, so I most likely won't be here.

12 THE COURT: All right.

13 MR. ROBINS: But my co-counsel will be here at the
14 next hearing.

15 THE COURT: Okay. He's got you on a tight trial
16 schedule this year.

17 MR. ROBINS: Yeah. Kind of going back to back at
18 the moment.

19 THE COURT: How long did the one in July last?

20 MR. ROBINS: Well, we started -- the first one we
21 started in June. We tried it for about a little over a week
22 and then it was a mistrial, because one of the lawyers
23 involved had a health issue, and we took a short break, and
24 then we started the next case, and I think it -- in trial I
25 think it ended up being about 13, 14 days, something like

1 that.

2 THE COURT: That's long enough.

3 MR. ROBINS: Yeah. Something like that.

4 THE COURT: All right. Anything else for today?

5 MR. ROBINS: Nothing from the plaintiffs, Your
6 Honor.

7 THE COURT: And the 12th works for you, right?

8 MR. ROBINS: It does for our side.

9 THE COURT: Okay. Very well. We will see you all
10 on the 12th of September.

11 Court's in recess. Thank you.

12 COURTROOM DEPUTY: All rise.

13 (Court adjourned at 2:51 p.m., 8-10-2017.)

14 * * *

15 I, Renee A. Rogge, certify that the foregoing is a
16 correct transcript from the record of proceedings in the
17 above-entitled matter.

18 Certified by: /s/Renee A. Rogge
19 Renee A. Rogge, RMR-CRR

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