

**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: December 20, 2017
	)	Deputy: Heather Arent-Zachary
	)	Court Reporter: Kristine Mousseau
	)	Time Commenced: 3:15 pm
Defendant.	)	Time Concluded: 3:47 pm
	)	Time in Court: 32 Minutes

Hearing on: Status Conference

1. Status of General Litigation

a. Federal Filing Update

293 Bayer cases are still pending. 205 are Bayer only, while 88 are combination cases.

b. Philadelphia state court peripheral neuropathy litigation

Counsel reported that two cases are still pending in Philadelphia. The first case is *Turner*, which is a *pro se* case where Plaintiff has failed to appear for his deposition. Counsel for Defendants intends to file a motion to dismiss based on that failure to show. The second case is *Bryant*, where there are some outstanding issues with scheduling. The Court talked to Judge Younge a few weeks ago about rescheduling that case for after three MDL bellwether cases. Counsel for Defendants stated that Bryant's attorneys want a December 2018 date, which would be a challenge given that the bellwether trials are scheduled for November 2018, January 2019, and February 2019. Defendants' motion to postpone/move the trial was denied by Judge Younge. The Court mentioned that Judge Younge is concerned about getting the trial done by the end of 2018 and does not have a lot of discretion to move the cases. Counsel for Defendants recommended that the Court call Judge Younge again or that the parties set up a conference with him. Counsel for Plaintiffs noted that, as of now, the parties are barreling toward a June date. They indicated that they are willing to do whatever is best for the courts.

2. Discovery update

a. Bayer/Merck depositions

Counsel reported that three Bayer A.G. depositions remain and are scheduled for January in Amsterdam. Two U.S. Bayer depositions remain. One is scheduled for January, and the other is scheduled by agreement of the parties in early February, just after the discovery cutoff date.

b. Treater depositions

The parties are working together regarding case-specific discovery. Counsel reports that 43 treater depositions have already been completed, and the parties are working to schedule three more. Counsel for Plaintiffs stated that scheduling the last three has been challenging because some of the doctors have been unwilling to give them a date and another has asked for a subpoena. Counsel for Defendants noted that they would like to reach out

and contact the three remaining treaters, solely for the purpose of scheduling dates, because they are concerned about completing everything by the January discovery deadline. However, Plaintiffs have not allowed them to reach out to the treaters at all. Counsel for Plaintiffs opposed Defendants' request that the Court grant them permission to reach out to the treaters solely for scheduling purposes and preferred that the Court issue subpoenas.

The Court agreed to allow Defendants to reach out to the remaining three treaters solely for the purposes of scheduling until the end of next week. At that point, if no progress has been made, the Court will issue subpoenas.

c. Sales representatives

Counsel for Plaintiffs have requested dates for twelve sales representatives and have scheduled five depositions.

3. Order to Show Cause regarding Plaintiffs who have not submitted Plaintiff Fact Sheets

The parties agreed that an Order to Show Cause was appropriate at this time in the four cases where plaintiffs have not submitted Plaintiff Fact Sheets. Counsel for Plaintiffs noted that they had been unable to make contact with plaintiffs in three of the cases. The Court agreed to issue the order.

4. Dispute regarding deposition of additional treating physician

Counsel reports that this dispute has been resolved.

5. Parties' proposed amendment to case-specific discovery deadline

Counsel jointly requested a slight extension of the case-specific discovery deadline from January 9 to January 26, 2017, which would align with the deadline for liability discovery.

6. Additional Issues

Counsel for Defendants noted that their briefing regarding bellwether case selection is due on February 2, 2017, and they would like to set out a parallel briefing schedule for three cases (*Richardson*, *Kirkwood*, and *Quinley*) that they want removed from bellwether selection because they anticipate them being disposed of on statute of limitations grounds. Counsel for Plaintiffs were not aware of this issue prior to the status conference and wanted an opportunity to meet and confer. They are concerned that there may be fact issues for the jury, thus the cases should remain in the pool. Counsel for Defendants noted that they are happy to meet and confer but wanted to put the issue on the table. They recommend treating the cases the same way they were treated in the *Xarelto* case in front of Judge Fallon, where the parties created two tracks (trial and non-trial). The idea was to avoid having either party spend money on experts for cases that may not go to trial and to avoid wasting trial slots.

The Court asked that the parties meet and confer. If a dispute remains, the Court will hold a phone call with the parties to discuss the matter further.

Upcoming Status Conference:

Wednesday, January 17, 2018, at 4:30 p.m.

APPEARANCES:

Plaintiffs: Bill Robins III, David Wool

Defendants: Lori Leskin, Andrew Solow, Michelle Tessier

On the phone: Barbara Nevin, Kathy Lee, Juliana Remuszka for Wendy Fleischman, Chris Nidel, Olga Viner, Michael Suffern, Katie Griffith

s/Heather Arent-Zachary
Courtroom Deputy Clerk