

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

In re: LEVAQUIN PRODUCTS
LIABILITY LITIGATION

MDL No. 08-1943 (JRT)

**PRETRIAL ORDER #4
ON BELLWETHER TRIALS AND
DISCOVERY**

This Document Relates to All Actions

INTRODUCTION

The Court finds that the parties have met and conferred to address the selection of certain cases for case-specific fact discovery (“Phase I Cases”) and to address the selection of bellwether cases from the Phase I Cases for expert discovery and trial.

Pursuant to this Court’s jurisdiction over these actions, and the parties’ agreement, the Court hereby enters the following order:

I. PHASE I CASES

The following cases are selected to begin case-specific fact discovery:

| | |
|---------------------|-----------|
| Anne Beardsley | (07-1661) |
| Calvin Christiansen | (07-3960) |
| William Cottle | (08-0277) |
| Burton Griner | (07-1584) |
| Sharon Johnson | (06-3728) |
| Edward Karkoska | (07-3960) |
| Richard Kirkes | (07-1862) |
| Eugene Martinka | (08-5754) |
| Basil Mroz | (08-4362) |
| Douglas Olson | (08-5744) |
| Victoria Parr | (07-2999) |
| John Scheidin | (08-5743) |
| Aline Shaffer | (07-4617) |
| Clifford Straka | (08-5742) |
| Harold Wampler | (06-3728) |

II. FACT DISCOVERY OF PHASE I CASES

A. Plaintiffs' Fact Sheets: Plaintiffs shall complete and serve Plaintiffs' Fact Sheets no later than February 15, 2009.

B. Defendants' Fact Sheets: Defendants shall complete and serve a Defendants' Fact Sheet in each case no later than 30 days following the receipt of a Plaintiffs' Fact Sheet in each case.

C. Case-Specific Discovery Deadline: Case-specific fact discovery, including the depositions of each Plaintiff, their treating physician(s), and fact witnesses, shall be completed no later than September 1, 2009. This deadline does not apply to generic discovery which is applicable to all cases transferred to this MDL. Defendants may not initiate direct communication with Plaintiffs' prescribing or treating physicians absent consent from Plaintiffs.

D. Bellwether Case Selection: Following the completion of case-specific fact discovery in each of the Phase I Cases, counsel for Plaintiffs and Defendants shall meet and confer to discuss the scope of the bellwether trials and the cases to be selected for such from the 15 Phase I Cases. Counsel shall meet and confer no later than September 15, 2009, with a report to the Court forthwith thereafter.

E. Expert Witnesses: For the bellwether cases selected for trial, disclosure of the identity of each expert witness under Rule 26(a)(2)(A) and the full disclosures required by Rule 26(a)(2)(B), accompanied by written reports prepared and signed by each expert witness, shall be made as follows:

- (1) Plaintiffs' expert disclosures due on or before October 15, 2009;
- (2) Defendants' expert disclosures due on or before November 15, 2009;

- (3) Depositions of Plaintiffs' experts to be completed on or before December 15, 2009;
- (4) Depositions of Defendants' experts to be completed on or before January 31, 2010; and
- (5) Rebuttal experts and reports shall be disclosed no later than February 15, 2010, and each rebuttal expert shall be deposed no later than March 31, 2010.

F. Dispositive Motions: All dispositive and Daubert motions in any of the bellwether cases shall be filed and served as follows:

- (1) Motion papers shall be filed and served on or before by April 15, 2010;
- (2) Any response shall be filed on or before May 15, 2010;
- (3) Any reply shall be filed on or before May 29, 2010; and
- (4) The parties shall confer with the Court and the Court's Calendar Clerk as to the date for a hearing on any of the motions.

G. Trial: The first bellwether case for trial shall be selected by the Court and the parties after a hearing on the dispositive motions.

- (1) Subject to the Court's calendar, trial shall begin on or about August 2, 2010;
- (2) No later than thirty (30) days prior to trial, the parties shall meet and confer to discuss stipulations as to all uncontested facts and

uncontroverted matters and as to which exhibits may be received in evidence without objection prior to trial; and

- (3) The Court shall set deadlines for other trial submissions closer to the dates for trial.

H. Remaining Phase I Cases: After the completion of discovery in the bellwether cases selected for trial, the parties and the Court shall confer and enter a scheduling order for expert discovery and trial in the remaining Phase I cases.

III. PHASE II CASES

For other Levaquin® tendon injury cases currently assigned to MDL No. 1943 in which Defendants have appeared as of December 15, 2008 (“Phase II Cases”), only fact sheet discovery and medical records collection shall occur until further order of the Court. With respect to fact sheets, the following deadlines apply:

A. Plaintiffs’ Fact Sheets: Plaintiffs shall complete and serve Plaintiffs’ Fact Sheets no later than March 16, 2009.

B. Defendants’ Fact Sheets: Defendants shall complete and serve a Defendants’ Fact Sheet no later than 60 days following receipt of a Plaintiff’s Fact Sheet in each case.

IV. FUTURE CASES

For future Levaquin® tendon rupture cases filed in the District of Minnesota or transferred to MDL No. 1943 (“Phase III Cases”), only fact sheet discovery and medical records collection shall occur until further order of the Court. For these cases, Plaintiffs shall complete and serve Plaintiffs’ Fact Sheets no later than 90 days after Defendants

have filed responsive pleadings to the Complaint. Defendants shall complete and serve a Defendants' Fact Sheet no later than 90 days following the receipt of a Plaintiffs' Fact Sheet in each case.

DATED: February 20, 2009.
at Minneapolis, Minnesota

s/John R. Tunheim
JOHN R. TUNHEIM
United States District Judge