

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

**STATUS CONFERENCE**

In Re: Levaquin Products Liability	)	<b>COURT MINUTES</b>
Litigation,	)	BEFORE: John R. Tunheim
	)	U.S. District Judge
Plaintiff,	)	
	)	Case No: 08-1943 JRT
v.	)	Date: August 3, 2010
	)	Deputy: Holly McLelland
,	)	Court Reporter: Kristine Mousseau
	)	Time Commenced: 2:20 p.m.
Defendant.	)	Time Concluded: 3:15 p.m.
	)	Time in Court: 55 Minutes

Hearing on: **Status Conference**

The Court held a formal status conference in *In re Levaquin Products Liability Litigation*, No. 08-md-1943, on August 3, 2010. The topics for the status conference included: (1) the number of cases pending and anticipated in the MDL and state courts; (2) federal/state coordination; (3) motions relating to the privilege log; (4) bellwether case status; and (5) the status of discovery.

(1) Counsel reported that there are 770 pending cases in federal court, most before this Court, and 573 state cases. Counsel reported that 551 cases are in state court in New Jersey. Of the remaining 22, at least one is in California, one is in Texas, and many are in the Southern District of Illinois.

(2) The New Jersey court has selected some cases for the bellwether trials, and scheduling for case specific discovery is underway. Generic depositions will begin in September, and the depositions will be cross-noticed with this litigation. Counsel reported that the trial is still on track for January.

(3) Counsel reported that the documents ordered released by Judge Boylan have been turned over to opposing counsel and an appeal from that order has been filed. Counsel reported that Plaintiffs would file no further responses on the issue.

(4) Counsel addressed the bellwether cases to discuss trial scheduling. Counsel addressed a variety of pending motions, including Daubert motions, motions for judgment on the pleadings, a motion to amend to add punitive damages, and motions to dismiss various claims. The Court informed counsel that evidentiary hearings would likely not be scheduled unless requested (though if requested, would likely be granted). The Court stated that it would be prudent to hear the Daubert motions all at once since many raise similar issues. Counsel reported that Holmes would be the only outlier, otherwise all motions and depositions would be completed by the end of September. The Court scheduled the hearing for October 6th. The Court scheduled a hearing on the motion to amend the complaint to add punitive damages, and for judgment on the pleadings for September 28th.

Counsel addressed the timing for the start of the trial, suggesting November 8th, the date the Court provided to begin voir dire and opening statements. The Court asked for written jury questionnaires and stated that the Court would accept proposed questions for jurors, but would likely conduct voir dire itself. Counsel stated that they expected the trial to last approximately 12 days and to conclude before Thanksgiving.

Counsel reported that there are three depositions scheduled for August 26th. Defense counsel reported that they have 2-3 depositions scheduled in September in the New Jersey litigation, and they anticipate more.

Defense counsel stated that after the initial bellwether trial they would like the New Jersey state court trials to proceed next. Counsel reported that they expect a trial date in February or later in the New Jersey

cases.

(5) Counsel reported on the status of production of documents which were compelled to be produced by the Court. Plaintiff's counsel indicated that the only issue remaining re: compelled discovery was in the West v. McNeill case.

Counsel further reported on the status of plaintiff's third party subpoenas, stating that all Aventis documents have been produced. Counsel reported that they are still negotiating with CommonHealth about how many documents they have and will search, and they expect that will be resolved by the end of the week. DesignWrite will provide 75 boxes of documents, the review of which will begin next week. Counsel are still waiting for a response from the Falk Group.

Plaintiff's counsel sought to prevent defense counsel from taking the deposition of Mr. Keith Altman, which the Court will allow despite Plaintiff's argument that Altman was consulted only as a non-testifying expert for consultative purposes. Counsel also indicated that Daubert motions relating to Dr. Zizic have already been filed.

Counsel reported that they will speak amongst themselves to determine who has submitted a Fact Sheet and will ensure that they each receive each others Fact Sheets.

The next status conference is scheduled for September 10, 2010, at 10:00 A.M.

#### APPEARANCES:

Plaintiff: Ronald Goldser, Bucky Zimmerman, Lewis Saul, Kevin Fitzgerald, Robert Binstock,  
Brian McCormick, Jordan Torry, John Carey, Mikal Watts  
Defendant: John Dames, Bill Essig, William Robinson, Jr, Steve Wood

s/Holly A. McLelland  
Calendar Clerk