

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

STATUS CONFERENCE

In Re: Levaquin Products Liability	)	COURT MINUTES
Litigation,	)	BEFORE: John R. Tunheim
	)	U.S. District Judge
Plaintiff,)	
	)	Case No: 08-1943 JRT
v.	)	Date: August 10, 2011
	)	Deputy: Holly McLelland
	)	Court Reporter: Kristine Mousseau
	)	Time Commenced: 11:10 a.m.
Defendant.	)	Time Concluded: 11:45 p.m.
	)	Time in Court: 35 Minutes

Hearing on: **Status Conference**

1. Number of case pending and anticipated in the MDL and state courts

MDL 1314; NJ: 1831; 45 other state court cases, 39 in Illinois (in discovery).

2. Federal/State Coordination

The New Jersey trial is still scheduled to start on August 29, 2011 and is anticipated to last through September or October. The parties believe the trial will be timed, with plaintiffs given 45 hours. This Court has not sent out to NJ copies of the orders issued here, but the NJ Court has been advised of the website and the orders available there.

3. 1404 fact discovery motion

Defendants brought a motion to move forward with fact discovery on cases subject to transfer after negotiations between counsel failed. Defendants are not making a motion to transfer, they simply want to do discovery. Three are partially discovered, 10 all have no discovery, 6 are deceased plaintiffs. Defendants want to do discovery early so as to complete by the end of the year. Plaintiffs argue the defendants should have one opportunity to depose the prescribing doctors. They argue discovery is premature due to the MDL order and they argue interrogatories would be a better manner to get the information necessary for § 1404. The Court **DENIES** the motion, due to time considerations. At the close of third bellwether trial, defendants may refile the motion if Counsel can not agree to a plan to complete the discovery.

4. Third Bellwether Trial date – November 14, 2011

The trial date has now been moved from November 7, 2011 to November 14, 2011. Five cases exist in Phase 1: Mraz, Martinka, Straka, Johnson, and Olson. Plaintiffs indicated Martinka will be dismissed and Mraz's counsel has a scheduling conflict. Defense does not want to consolidate the remaining three due to different ages of plaintiffs, different prescription dates, and different indications warranting the prescriptions. Parties will submit letters regarding which plaintiff they believe is appropriate after defendants have been able to depose Straka's prescribing physician.

Plaintiffs have requested of defendants and defendants object to discovery on the employment files for all the personnel who have testified in the previous trials. Plaintiffs desire the files for the purposes of cross-examination on job performance. Defendants argue that for those who are testifying via video, the files are not useful for cross examination. Some of the other personnel were not in sales and so the files are not relevant for the expressed purpose (to address the manner in which Levaquin was marketed). Counsel agrees to discuss further and see if they can reach a compromise related to live witnesses. The Court believes those sales representatives in the particular case chosen for the next trial may be relevant. Counsel will meet and confer.

5. Phase 3 Discovery, MN filed, MN resident cases

Counsel will discuss Phase 3 discovery in conjunction with discovery for 1404 (as discussed above).

6. Remand/mediation

No action taken.

Next status conference: August 30, 2011 at 9AM.

APPEARANCES:

Plaintiff: Ronald Goldser

Defendant: Tracy Van Steenburgh, Scott Smith

On phone: Lewis Saul, Kevin Fitzgerald, John Dames, Bill Essig, James Irwin, Eric Terry,
Kristian Rasmussen, Brenda Fullmer

s/Holly A. McLelland
Calendar Clerk