

**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 28, 2012
	)	Deputy: Holly McLelland
	)	Court Reporter: Kristine Mousseau
	)	Time Commenced: 1:20 p.m.
Defendant.	)	Time Concluded: 2:40 p.m.
	)	Time in Court: 1 Hour and 20 minutes

Hearing on: Status Conference

1. Status of trial case discovery, trial case selection, and trial date

The parties recommended that the Court postpone the October 29th trial date to allow for further trial preparation. The Court ordered a new trial date of March 5, 2013.

The Court entered a summary judgment motion deadline of November 26, 2012, for the remaining cases that were filed in Minnesota and involve Minnesota plaintiffs.

The Court expects to set the hearing(s) for any summary judgment motions regarding these cases in December 2012 or early January 2013. The Court also anticipates deciding by January 1, 2013, which case or cases will be tried on March 5th.

2. Wells *Daubert* motion

Defendants plan to bring a motion under *Daubert* challenging Plaintiffs' expert, Dr. Martin Wells. The Court ordered that, if such a motion is filed, Defendant must file it within 45 days.

3. Punitive damages motions

Plaintiffs have filed motions to amend the complaint for punitive damages in six cases. The Court deferred consideration of these motions to allow for more discovery and anticipates ordering briefing on these motions by late November.

4. Deficient Plaintiff Fact Sheets

Defendants reported that there are numerous cases with deficient plaintiff fact sheets. In 95 of these cases, Defendants have sent two deficiency letters to plaintiffs' counsel. In 49 cases, Defendants have sent one deficiency letter to plaintiffs' counsel. In 89 cases, Defendants very recently sent a deficiency letter to plaintiffs' counsel.

The Court will enter an order to show cause for the 95 cases in which Defendants have sent two deficiency letters.

Prior to the issuance of this order, Defendants will submit a list of the 95 cases, along with the respective plaintiffs' counsel and their addresses, and a draft order to show cause. Plaintiffs may respond to the draft order submitted by Defendants.

5. Production of Dear Doctor Letter mailing list and identity of third party vendor

Plaintiffs requested the name of the third-party vendor that created a database from which Dear Doctor letters were mailed. Plaintiffs also requested that Defendants produce a copy of a November 2008 list from the database; this list includes the names and addresses of approximately 513,629 doctors who received a Dear Doctor letter. The Court ordered Defendants to produce a copy of the November 2008 database within two weeks, at no cost to Plaintiffs. The Court denied Plaintiffs' request for the name of the third-party vendor because Plaintiffs failed to demonstrate the relevance of this information.

6. Conditions Precedent to Remand Order

Defendants have submitted a memorandum in support of an order to show cause for cases potentially subject to transfer under 28 U.S.C. § 1404. The Court ordered that Plaintiffs file a memorandum in response within two weeks.

The parties also discussed their respective positions regarding other conditions precedent to the remand order. A written order on these issues is forthcoming.

7. PTO 3

The parties next discussed the amended Pre-trial Order 3 and, specifically, the manner in which Defendants should pay certain sums to participants in the New Jersey litigation. The Court ordered that any attorney who intends to oppose Plaintiffs' brief on this issue and Plaintiffs' proposed amended Pre-trial Order 3 to file responsive papers by September 27, 2012. Any reply is then due by October 4, 2012. The Court also ordered that Defendants give notice to the Court before money is transferred to plaintiffs in the New Jersey litigation or to their counsel; such notice from Defendants must provide adequate time for the Court to consider the handling of such funds before they are dispersed.

8. Trial issues

Plaintiffs raised issues related to the cost of upcoming trials, such as whether the Court will allow the recording of expert testimony. The Court will address these issues closer to trial, most likely in December 2012.

Next Status Conference: October 1, 2012 at 2:00 PM.

APPEARANCES:

Plaintiff: Ronald Goldser, Charles Zimmerman, Genevieve Zimmerman, Caia Johnson, Jonathan Mencil, Richard Paul, William Bross
Defendant: Tracy Van Steenburgh, John Winter
Phone: Kevin Fitzgerald, James Irwin, Eric Terry, Kristian Rasmussen, Brenda Fulmer, Dan Miller

s/Holly A. McLelland
Calendar Clerk