

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In Re: Levaquin Products
Liability Litigation

File No. 08-md-1943
(JRT/AJB)

Minneapolis, Minnesota
December 13, 2013
4:25 P.M.

BEFORE THE **HONORABLE JOHN R. TUNHEIM**
UNITED STATES DISTRICT COURT JUDGE
(STATUS CONFERENCE)

APPEARANCES

For the Plaintiffs: **RONALD S. GOLDSER, ESQ.**

Via Telephone: **THOMAS KNIGHT, ESQ.**

For the Defendants: **TRACY J. VAN STEENBURGH, ESQ.**

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4:25 P.M.

(In open court.)

THE COURT: You may be seated. Good afternoon.
This is multi district number 08-1943, In Re: Levaquin
Products Liability Litigation.

Counsel, note appearances?

MR. GOLDSER: Ron Goldser for plaintiffs, Your
Honor.

THE COURT: Mr. Goldser, good afternoon.

MR. GOLDSER: Good afternoon.

MS. VAN STEENBURGH: Tracy Van Steenburgh on
behalf of defendants, Your Honor.

THE COURT: Ms. Van Steenburgh, good afternoon to
you, and on the phone?

MR. KNIGHT: Thomas Knight in Alabama.

THE COURT: Very well. Good afternoon,
Mr. Knight. Thank you for waiting for us.

MR. KNIGHT: Certainly.

THE COURT: All right. We have a status
conference today. Do we have an accurate count on the
cases, reasonably accurate count?

MS. VAN STEENBURGH: Well, funny you should ask
that question. In fact, I left number one on the agenda
only because out of nostalgia. I have no idea what the

1 accurate count on the cases is. I am in much better shape
2 to tell you what is left in terms -- because things have
3 not all been dismissed. There are a lot of cases that are
4 still sitting out there that have not been dismissed or
5 orders have not been entered.

6 So I think maybe the better way to go, Your
7 Honor, would be to tell you what is in the remand bucket,
8 the transfer bucket, the pro se bucket and the Carey Danis
9 bucket, and then if we add all those up together, that
10 probably is what is left of the litigation.

11 THE COURT: All right. That's fine.

12 MS. VAN STEENBURGH: With respect to the status
13 of the cases for remand, there are 73 cases that are in the
14 remand bucket. I say that, but I don't suggest that they
15 all be remanded at this point in time, and I'll tell you
16 the reason.

17 There are, of the 73, 9 are stipulated for
18 transfer. There has been a consent and a stipulation,
19 either been filed or about to be filed. 35 of them are
20 involving plaintiffs who have rejected offers, so those
21 will clearly be ones that should go on a list to be
22 remanded or order to show cause why they shouldn't be
23 remanded.

24 28 of those are ones that are outstanding where
25 we have made offers, and we have heard nothing, and we have

1 followed up. Some of these offers have been out since last
2 May. We have followed up, and we have not heard anything.
3 In fact, we most recently sent an e-mail saying, the status
4 conference is on the 13th, please let us know if you're
5 going to do anything, and we still haven't heard.

6 I took a look at the list today, and of the 28,
7 approximately half of them are represented by six firms
8 where there are two to five plaintiffs, and so it seems to
9 me that there have been offers made to these firms, and
10 they just have never responded for any of their plaintiffs.

11 So there are a couple of things that we could
12 possibly do, it seems to me, at this point. Send out some
13 kind of notice, another order to show cause, or else they
14 get put on the list for order to show cause to be dismissed
15 if they don't respond by a certain date.

16 We just can't, at some point even though there
17 are offers outstanding and we haven't withdrawn those
18 offers, we are just getting no response from those firms.

19 THE COURT: And you haven't heard from the law
20 firms, either?

21 MS. VAN STEENBURGH: Not from the law firms at
22 all, and these are people who are all represented. So the
23 28 are all represented. We just haven't heard from the law
24 firms at all, and we have sent e-mails to the attorneys who
25 represent those plaintiffs.

1 So it is a little odd, and just in case you are
2 interested, of the 35 who have rejected offers, 25 of those
3 are represented by four law firms. So essentially the
4 rejections have been in whole heart, not one plaintiff at a
5 time. It's just the whole group of them have been
6 rejected, and they're going to apparently take their
7 chances when they get remanded.

8 So that gives you a little bit of a flavor as to
9 what is in the remand bucket. I'm going to kind of get
10 ahead of myself. The end of the MDL day, what we're hoping
11 is that we can still whittle down the number of remands.
12 I'm not sure what the mechanism is, but with these 28 that
13 are outstanding, those are the ones that are really left.

14 Otherwise you would have less than 50, these 40
15 some, to have to remand.

16 THE COURT: To send back.

17 MS. VAN STEENBURGH: A fairly good number, yeah.
18 With respect to cases for transfer under a forum non
19 conveniens, there are 16. Seven of those are ones where
20 there have been stipulations either filed or to be filed,
21 consent to transfer.

22 Two of them were rejected offers again, so that
23 really is a total of nine, and so the remaining seven are
24 again three firms. And strangely enough, two of those
25 firms are in the no response on the remands, too. Three

1 firms that have the remaining seven for which we have heard
2 nothing when we have offered to try to resolve the cases,
3 so, again, we have a little bit of a holdup with respect to
4 not hearing from any of those firms on those.

5 So those are the remaining, and so if those were
6 taken care of, there would really only be nine cases that
7 would end up being subject to transfer pursuant to 1404.

8 I'll let Mr. Goldser talk about the pro se cases,
9 but before I sit down, I wanted to let the Court know that
10 Carey & Danis cases, I'm very happy to report that we have
11 really shrunk the inventory.

12 We are in the process of evaluating and looking
13 more closely at the last 75 cases that they have, and we
14 hope to have some kind of resolution, at least as to half
15 of them, by next week. And we have a few more to review,
16 but I'm hoping by the time we see you next time, we will
17 have a resolution to every single one of the Carey & Danis
18 cases.

19 THE COURT: That's good.

20 MS. VAN STEENBURGH: The only other category that
21 I didn't put on here that I think is worth mentioning is,
22 we have what my paralegal who sometimes comes here refers
23 to as the stragglers or odd ball cases that somehow got
24 lost in the mix, and we looked at the entire inventory, and
25 there are 21 of those.

1 So we're reviewing those. We will make our
2 overtures to any attorneys that might be involved with
3 those, and we'll have a report on those by the time we're
4 here next time. So I think that we are really, aside from
5 the Carey & Danis cases, we are under 100 cases here that
6 we really have to deal with overall.

7 Other than the pro se, and I will let
8 Mr. Goldser, and I do have a comment about one of the pro
9 se cases once you are done.

10 MR. GOLDSER: Judge, we e-mailed over to you a
11 spread sheet of the cases and the responses. There were
12 three tabs on the bottom. Sometimes when I get those
13 spread sheets, I miss those different tabs, but three
14 categories: Those which responded saying they do want to
15 go forward. There are I think 33 of those, if my count is
16 correct.

17 Cases that said they would be willing to dismiss,
18 there are 49 of those, and then the vast majority is cases
19 with no response, and I can't count that high. I think the
20 number is over 150.

21 I would recommend that the ones that agreed to
22 dismiss or the ones for which there is no response that the
23 Court can go forward with a dismissal order because that's
24 what the order to show cause said.

25 THE COURT: What was the date by which they had

1 to respond?

2 MR. GOLDSER: The 10th.

3 THE COURT: December 10th?

4 MR. GOLDSER: Yes. I waited to see if there
5 would be any new or I would have reported on new ones that
6 came in since that time. I have not heard of any, that
7 came to me. I know that Heather has been getting lots of
8 phone calls from them, apparently.

9 I don't know if there is anything she has told
10 you about those that you would like to report back to us so
11 that we can address them if we need to. In any event, the
12 ones for dismissal, the ones with no response, I would say
13 that you can issue a dismissal order.

14 I would request that it be without prejudice in
15 the event that any of these folks suddenly wake up one day
16 and decide they want to try to come back. Time is
17 awasting, of course, so I'm sure the statutes will run on
18 those quickly, if they haven't already.

19 The cases that have indicated they want to go
20 forward, I think we started this whole process with motions
21 to withdraw, and so those 33 or so I think now are ripe for
22 motions to withdraw where counsel wants to withdraw. I
23 know I've got something like a dozen out of those 33 where
24 there are motions to withdraw already filed.

25 I can send the Court a note identifying which

1 those cases are, saying we're ready for you to rule on
2 those, if you would. I've got one on the list where a
3 gentleman, we had difficulty reaching him. He just turned
4 up. Apparently, he has been in prison for a while and
5 remains there. Heard from his son.

6 Told Ms. Van Steenburgh about it beforehand.
7 We're going to see if we can settle that case, but of those
8 then that do want to go forward, they I think do tend to be
9 pro ses. There is another one I know there will be a
10 substitution of counsel. I believe Ms. Van Steenburgh is
11 talking to that one.

12 I heard from another lawyer on another one is
13 considering what to do, but most of them will be
14 withdrawals, and unfortunately, they will be your pleasure
15 to deal with. There will be a couple dozen, maybe a little
16 more.

17 THE COURT: What's, what has happened with
18 respect to potential settlement of these 33 cases? Have
19 they all gone through the analysis process?

20 MR. GOLDSER: I don't know the answer to that.
21 No. Actually I do know the answer to that to a great
22 extent. At least in my cases, they have gone through the
23 settlement analysis, and in my view, they did not meet the
24 criteria for the settlement that the Phase I group was
25 doing, but I don't think that most of them are Phase I

1 people, maybe a third. I don't know about the rest.

2 MS. VAN STEENBURGH: I don't have the list
3 committed to memory. I do know, I see one here where the
4 fellow is now going to be represented, and I have made an
5 offer on that one. I do know that one of the pro ses
6 called me and, as I was telling Kristine, from his trailer
7 in Mexico, and we had a lovely conversation. We settled
8 his case. So we have been able to settle some of the pro
9 se cases after they have talked with Mr. Goldser.

10 But I don't think, because there were so many,
11 I'm not sure that we vetted these in terms of reviewing
12 them for possible resolution.

13 THE COURT: Mm-hmm.

14 MS. VAN STEENBURGH: It actually makes sense that
15 we might want to do that if we have the records for them.

16 THE COURT: Yeah.

17 MS. VAN STEENBURGH: And we're happy to reach out
18 to them now that the number has whittled down and see if
19 there is some way to resolve the cases.

20 THE COURT: Yeah. I think that would be helpful,
21 and the question is whether the Court should grant motions
22 to withdraw first, if that would be helpful, or not.

23 MS. VAN STEENBURGH: What we have done with the
24 other ones, and I actually see Mr. Lubeck is on here, and I
25 have settled his case, so we have done a couple of these.

1 What we have done with the ones where we have settled them
2 is, we have either contacted the attorney saying do you
3 represent them? No. Do we have your permission to talk to
4 the person, or the person is represented, that that's the
5 case, and we have confirmed that either with Mr. Goldser or
6 someone.

7 I'm not sure it really matters one way or the
8 other. As long as we feel comfortable that they are not
9 represented, we are happy to try to negotiate something
10 with them.

11 THE COURT: All right. I think it would be worth
12 an effort to look at those.

13 MS. VAN STEENBURGH: Okay. One thing I did want
14 to mention. There was a peculiar instance when we were
15 here I believe last. As you recall, there was an attorney
16 who was disbarred down in Texas, and there was a law firm
17 that had inherited three of his cases.

18 I did speak with Ms. Rudman, the attorney, today.
19 She wanted me to report to the Court that with respect to
20 two of the three, she represents one, and we have resolved
21 that case.

22 The other two, they never represented them, but
23 they successfully delivered notice and the order to show
24 cause. So they got the receipts. They have heard nothing
25 from these individuals, so we're putting them on the pro se

1 list, but they may go on the list of people who have never
2 responded.

3 But I told her I would let the Court know that
4 they have made that effort and that those people have been
5 notified, so they have been advised of the situation.
6 Other than that, I think that's really all I have, and
7 we're happy to look at these and see if there is something
8 we can do with those, Your Honor.

9 MR. GOLDSER: I think that's right, Your Honor.

10 MS. VAN STEENBURGH: So with that, these 33, it
11 would be the Carey & Danis cases, and then the real issue
12 is what to do with the cases where we have made an offer
13 but not getting any kind of response.

14 THE COURT: Yeah.

15 MS. VAN STEENBURGH: Whether they go into a
16 separate bucket and there is an order to show cause. They
17 have to respond by a certain date or their case gets
18 dismissed.

19 THE COURT: That's probably where we should put
20 those.

21 MS. VAN STEENBURGH: Okay.

22 THE COURT: I assume the offers haven't just gone
23 out?

24 MS. VAN STEENBURGH: No. They have been out for
25 a long time.

1 THE COURT: Why don't we set them up with a
2 30-day order to show cause, that they need to respond to
3 the offer or the case will be dismissed.

4 MS. VAN STEENBURGH: Okay. Sounds good.

5 THE COURT: And there is 35 in that category?

6 MS. VAN STEENBURGH: There are, no, 28 and 7.
7 Yes, there are 35. Correct.

8 THE COURT: 35 in that category.

9 MS. VAN STEENBURGH: You're correct.

10 THE COURT: And the ones where there have been
11 stipulations for remand or transfer are, some of those
12 stipulations are in or all of them are in?

13 MS. VAN STEENBURGH: I have the list, and some
14 are in. Some are waiting for plaintiff approval, so
15 they're not all filed with the Court yet.

16 THE COURT: Okay. Well, as soon as they're all
17 in, we will issue those orders quickly.

18 MS. VAN STEENBURGH: Okay.

19 THE COURT: And get those taken care of.

20 MS. VAN STEENBURGH: Sure. Okay.

21 THE COURT: And the people in the pro se category
22 where we have the 49 who indicated a willingness to have
23 their case dismissed and then the larger bucket of no
24 response cases, let's wait one more week on that in case
25 there is a few stragglers, Mr. Goldser, but I think that we

1 can go ahead and dismiss those cases without prejudice.

2 MR. GOLDSER: That would be fine.

3 THE COURT: And as to the other 33, we will put
4 those in the category of, the defendant can take a look at
5 those to see if there is any that can be resolved, and we
6 can whittle that down before we go through the withdrawal
7 process.

8 MS. VAN STEENBURGH: Okay. What we're hoping,
9 Your Honor, is that when we see you next, if we actually
10 are here in January, that we will be pretty close to the
11 end, and so our goal is -- Kristine was kidding me about
12 this, too. We said this last time this year, we will be
13 done in June.

14 Hopefully we will be done in February is what we
15 are kind of shooting for at this point so that you can get
16 the orders out for remand and transfer and we can be done.

17 THE COURT: All right. Sounds good. Anything
18 else, Mr. Goldser?

19 MR. GOLDSER: I don't have anything else.

20 THE COURT: All right. Did you have anything,
21 Mr. Knight?

22 MR. KNIGHT: No, Your Honor. Just checking in to
23 be sure I was on top of it.

24 THE COURT: All right. Appreciate that very
25 much. Again, sorry we made you wait a little bit.

1 MR. KNIGHT: No problem.

2 THE COURT: All right. We will be in recess for
3 this hearing, and let's talk about a date. Sometime in
4 mid-January sound okay?

5 MS. VAN STEENBURGH: That's fine.

6 THE COURT: The week of the 13th, is that a week
7 that works or --

8 MR. GOLDSER: Thursday is the best for me, the
9 16th.

10 THE COURT: The 16th in the, say, eleven o'clock
11 in the morning would work?

12 MS. VAN STEENBURGH: That's fine.

13 MR. GOLDSER: Great.

14 THE COURT: Okay. We will set it for 11:00 a.m.
15 Central Time, Central Standard Time, on Thursday, January
16 16th.

17 All right. Very well. If there is nothing else,
18 we will be in recess. Thank you very much.

19 MR. KNIGHT: Thank you.

20 MR. GOLDSER: Thank you.

21 THE CLERK: All rise.

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I, Kristine Mousseau, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: s/ Kristine Mousseau, CRR-RPR
Kristine Mousseau, CRR-RPR