

**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:                      February 12, 2010
	)	Deputy:                  Holly McLelland
	)	Court Reporter:      Ron Moen
	)	Time Commenced:      1:20 p.m.
Defendant.	)	Time Concluded:      2:23 p.m.
	)	Time in Court:          1 Hour and 3 Minutes

Hearing on: **Status Conference**

The Court held a formal status conference in In re Levaquin Products Liability Litigation on February 12, 2009. Appearing on behalf of plaintiffs were Ronald Goldser, Lewis Saul, Kevin Fitzgerald, Robert Binstock, Yvonne Flaherty, and Caia Johnson in person, and Kristian Rasmussen and Michael Goetz by telephone. Appearing on behalf of defendants were John Dames, William Robinson, and Tracy Van Steenburgh. The topics for the status conference included (1) the number of cases pending and anticipated in the MDL and state courts; (2) the status of the New Jersey litigation and litigation in other jurisdictions; (3) Pretrial Order #6; (4) the status of discovery, including (a) document production, (b) plaintiffs' third-party subpoenas, (c) experts, and (d) fact witness depositions; (5) dispositive and *Daubert* motions; and (6) two pending motions: a motion for reconsideration and a motion to compel.

(1) The parties indicated that there are currently 300 MDL cases, with 11 additional cases awaiting transfer and approximately 4 or 5 that the parties anticipate will be removed and transferred soon. There are also 124 New Jersey state court cases, one state court case in Iowa that will be removed, four state court cases in Illinois, and one state court case in New York. Counsel represented that the California case mentioned in the last status conference has been dismissed with a view to refiling so that it might be removed and transferred. Counsel represented that they were unaware of any actions filed in Canada.

(2) Counsel indicated that the New Jersey state court has scheduled monthly status conferences, the next of which is scheduled for February 25, 2010. Counsel indicated that in the New Jersey state court proceedings, defense counsel has served discovery responses, including answers to interrogatories and responses to requests for production, and the parties are currently discussing the sufficiency of those responses. Counsel also represented to the Court that the New Jersey state court ordered that all discovery taken in this MDL must be produced shared with the New Jersey state court.

(3) The parties confirmed that the Court had filed Pretrial Order #6.

(4)(a) Counsel represented that all of the Levaquin NDA has been produced and the Floxin NDA documents that plaintiffs' counsel tagged on site have been produced. Defense counsel stated that in December they provided initial lists of all of the sales representatives who called on the bellwether plaintiffs' prescribing physicians and that they are in the process of finding and contacting every person on the list. Defense counsel recently served plaintiffs counsel with an update of all of the addresses and the employment status of the relevant sales representatives. There are 15 current sales representatives and 58 former sales representatives. Four of the current representatives have been deposed, and defense counsel has collected documents from five of them. Five of the former representatives have been deposed. Defense counsel represented that they are trying to get the hard drives for 19 of them, and 13 of the former sales representatives do not have hard drives. Ten of the former sales representatives have no call notes and no computers because they only gave out samples. Defense counsel has worked with plaintiffs' counsel

to limit the list of sales representatives to those who may have relevant information. For example, eleven of the former sales representatives did not detail until after the prescriptions. Defense counsel stated that they have made extensive efforts to locate certain sales representatives who have been terminated and to track down their documents and computers but has had limited success. Counsel indicated that thirteen sales representatives called on Dr. Butner. Defense counsel has collected documents for two more of those sales representatives and will produce those documents. Counsel further represented that the patent case documents are under review and will be produced in short order. Defense counsel will review the Court's order on the motion to compel and provide plaintiffs' counsel with a letter indicating the degree of compliance. Plaintiffs' counsel also stated that plaintiffs are seeking discovery based on allegations in a Boston *qui tam* case that recently had been unsealed. Plaintiffs' counsel also stated that they have served some additional discovery requests and that they anticipate that there will be some subpoenas issues and possibly depositions in relation to some third-party marketing consultants and similar entities. Plaintiffs are currently evaluating a substantial document production with respect to the Speakers Bureau and anticipate some additional materials in that regard. Plaintiffs have scheduled a 30(b)(6) deposition on the topic for March, and have recently served some discovery requests on the topic.

(4)(b) Plaintiffs' counsel stated that they had taken the deposition of MediSpan. They stated that FirstDataBank, which is located in the Northern District of California, has accepted service, but plaintiffs' counsel may need to file a motion to compel. Plaintiffs' counsel stated that they would ask FirstDataBank whether it is willing to agree to have it heard in Minnesota. Plaintiffs' counsel is anticipating document production from Aventis but has not yet scheduled its deposition. Defense counsel clarified that MediSpan and FirstDataBank have no relationship or ties with Johnson & Johnson. Daiichi produced a very limited set of documents from Daiichi U.S. but declined to produce any documents from Daiichi Japan. Plaintiffs' counsel will copy the Daiichi documents and provide them to defense counsel. The parties confirmed that defense counsel is entitled to notice of any third-party depositions and subpoenas. Defense counsel did not receive notice of the third-party subpoenas that were served on certain journals. Plaintiffs' counsel confirmed that all of the journals asserted the publisher's privilege and did not produce anything.

(4)(c) Plaintiffs' counsel stated that they have three defense experts remaining to be deposed: Dr. Rodrick, Dr. Segreti, and Dr. Lane. Those depositions are scheduled for February and early March. Counsel stated that the warnings experts are due on March 30, 2010, and depositions will take place thereafter. Counsel also stated that case-specific experts are due on March 30, 2010, and counsel should be able to meet those deadlines.

(4)(d) Bellwether plaintiff Calvin Christensen will be deposed on February 24, 2010, and the remaining bellwether plaintiffs have been deposed. Of the treating physicians, depositions of six orthopedists have been scheduled. Plaintiffs' counsel are waiting for dates for a deposition of a seventh doctor who is a primary care doctor. The 30(b)(6) Speakers Bureau deposition is scheduled for March.

(5) Plaintiffs' counsel suggested that the Court hear live expert testimony in preparation for anticipated *Daubert* motions.

(6) The Court granted plaintiffs' motion to reconsider the Karkoska scheduling order on defendants' motion for summary judgment and ordered that plaintiffs' response will be due on April 30, 2010. The Court will schedule a hearing on the motion for June. With respect to plaintiffs' motion to compel production, the Court ordered the parties to meet and confer within ten days and directed the parties to submit a joint letter to the Court regarding the remaining documents subject to dispute. The Court directed the parties to raise any remaining issues with Magistrate Judge Boylan.

The Court tentatively scheduled the next status conference for April 6, 2010 at 1:30 pm.

## APPEARANCES:

Plaintiff: Ronald Goldser, Lewis Saul, Kevin Fitzgerald, Yvonne Flaherty, Robert Binstock, Caia Johnson  
Defendant: John Dames, William Robinson, Jr. Tracy Van Steenburgh

s/Holly A. McLelland  
Calendar Clerk