

**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: April 27, 2011
	)	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**

1. Federal/State Coordination

Trial date in New Jersey is still set for late Aug/early September. Two cases will be tried together.

2. Schedin post-trial motions

The Court has approved the Schedin post-trial motion schedule and will determine if it needs to have a hearing on the bill of costs after review of the briefs.

3. Christensen trial

The Court will issue Pretrial Order 11 as submitted, rename it Trial Notice and Pretrial order 11, and add in the date for the last pretrial conference of May 26 at 1 pm. The parties discussed whether plaintiffs could take the depositions of district sales managers. Defendants objected on the basis that fact discovery is closed. The Court advised the defense to determine who the sales representatives were at the time Christensen was prescribed Levaquin and suffered injuries such that if there was clearly one person in supervision, the Court would consider allowing the deposition to be taken. Once the employment files of the sales representatives are produced, the district managers involved and the relevance of their potential testimony may be more clear. The admissibility of the employment files of the sales representatives was discussed but further discussion will be held after the contents of the files are examined. Defendants are working on production of the sales aids as well. Parties have agreed to the video depositions of plaintiff, plaintiff's wife and doctor, and one other fact witness.

The parties discussed the applicability of the Court's rulings—e.g. *Daubert* motions, motions in limine, etc.—from the Schedin trial to the Christensen trial. Plaintiff proposes incorporating those rulings by reference unless a specific objection needs reiteration or a new objection arises based on the facts of the case. Defendants argued there may be new law, new arguments, and different facts making that suggestion untenable. The Court deferred the discussion to a later date when the specifics of the motions would be more clear to the parties but noted that if an issue was the same or substantially

similar to one raised in the Schedin trial the Court would likely rule the same way making new motions cumbersome. The Court did agree to hold hearing on the motion to amend for punitive damages if requested by either party.

Plaintiff raised a concern that one expert witness, Martyn Smith, was going to be out of the country and unavailable for trial and requested to be able to read his testimony from the Schedin trial into the record at the Christensen trial. Defense objected on the basis that they had the right to cross examine given the different facts of this case. A determination on the subject was deferred until plaintiff decides if it wants to have a different expert testify on the subject matter of the Smith testimony.

Parties are working on a dismissal of the additional defendants in the case and will present a stipulation to the Court prior to trial. The parties discussed how to sever the Christensen case from the other plaintiffs listed on the case to minimize any potential juror confusion. The parties will confer and the topic will be discussed at the final pretrial conference. The dismissal of additional claims is also under discussion by the parties.

The parties discussed the scope of the independent medical exam (“IME”) of Christensen, scheduled for May 5<sup>th</sup> in Worthington. Plaintiff argued that the doctor should be limited in the types of questions he asks of Christensen so that the IME does not become a deposition. The parties agreed to have the IME audio taped and the Court would address any potential questions beyond the scope of a proper IME as necessary.

Parties agreed to meet and confer regarding stipulated medical bills that were related to Christensen’s taking of Levaquin. Additionally, the parties are working on non-duplication of exhibits for the purposes of the record such that each exhibit has only one official exhibit number at trial.

#### 4. Phase 2 cases

The parties discussed how to proceed on discovery for the Phase 2 cases and those cases that may be subject to a remand motion. Plaintiff proposed a shift of focus to discovery on cases for remand over those for Phase 2, with an eye towards widening the pool of bellwether cases. Currently, there are four or five cases of Minnesota residents who filed in Minnesota in Phase 2. Defendants agreed the pool of potential bellwether cases should be larger, and there were thirteen total cases of Minnesota residents who filed in Minnesota, but did not want to shift the discovery focus at this time. The Court directed the parties to meet and confer so that of the remaining cases, not in Phase 1 or 2, the parties agreed on the pool of potential cases. The Court stated that a group of four is likely too small but thirteen would be too large. The parties agreed to work together to identify a pool of appropriate cases for continued discovery.

#### 5. Remand

Parties stated there was nothing ripe in regards to remand or venue change motions.

#### 6. Next status conference: May 26<sup>th</sup> (Date of Christensen pretrial conference) or sooner by request of the parties.

**APPEARANCES:**

Plaintiff: Ronald Goldser, David Cialkowski, James P. Watts  
Defendant: John Dames, Tracy Van Steenburgh James Irwin  
On phone: Lewis Saul, Caia Johnson, Donald Allen, Kelsey Ciluffo, Kurt Hyzy, Dan  
McMichael, Eric Terry, David Woodruff, Christian Rasmussen, Mark Grew,  
Corey Sullivan, Amber Garrett, Jonathan Mencil, Paul Burns, Mike Miller, Diane  
Price, Michael Khalili, Jean Martin, Thomas Neill

s/Holly A. McLelland  
Calendar Clerk