

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

**STATUS CONFERENCE**

In Re: Fluoroquinolone Products Liability	)	<b>COURT MINUTES</b>
Litigation,	)	BEFORE: John R. Tunheim
	)	U.S. District Judge
Plaintiff,	)	
	)	Case No: 15-2642 JRT
v.	)	Date: September 23, 2016
	)	Deputy: Heather Arent-Zachary
	)	Court Reporter: Kristine Mousseau
	)	Time Commenced: 10:25 am
Defendant.	)	Time Concluded: 12:22 pm
	)	Time in Court: 1 Hour & 47Minutes

Hearing on: Status Conference

**1. Status of Litigation**

Counsel reported that there are currently 542 cases pending in the MDL, with another 100 to be added soon. There are also 30 cases pending in Pennsylvania state court against Janssen Defendants and 19 against Bayer Defendants. There is one case pending in California state court against Janssen Defendants. The parties reported that there were no significant developments in the Pennsylvania cases, but the anticipated trial date remains in December 2017, and some discovery has started.

**2. Remand Motions**

Counsel discussed the motions to remand, on which the Court recently deferred ruling. One of the motions has been withdrawn because Defendants provided evidence ruling out McKesson as a distributor for the particular drug and pharmacy at issue. The parties discussed their preferred next steps on the remaining motions: Plaintiffs' counsel argued that the Court should grant the motions to remand because Defendants have not been able to rule out that McKesson was the distributor in those cases; Defendants' counsel argued that it was Plaintiffs' burden to show McKesson was the distributor, and also suggested that they could seek discovery to clarify the issue from the pharmacies themselves. The Court deferred ruling on the remaining three motions, and directed Defendants to contact the pertinent pharmacies and determine if McKesson was in fact the distributor of those plaintiffs' drugs within the next 60 days. If doubt remains at that time over whether McKesson was the distributor of Plaintiffs' drugs, the Court noted that it would likely remand.

**3. PTO-3 Deficiencies Update**

The parties reported that they had submitted a proposed order to show cause to deal with some deficiencies in the PTO-3-required documents, and the Court stated that it would issue the order promptly. The parties reported that they are meeting and conferring over additional deficiencies in PTO-3 information.

**4. PFS & DFS Status Update**

The parties reported that the vast majority of Plaintiff Fact Sheets that should have been served were served, and the first approximately 100 DFS's from Janssen recently were sent out. The parties are meeting and conferring to resolve deficiencies in the Plaintiff Fact Sheets.

**5. Defendants' Motion to Dismiss [Docket No. 235]**

The Court heard argument on Defendants' pending motion to dismiss based on statutes of repose, and took the motion under advisement. A written order will issue promptly.

**6. Corporate Structure 30(b)(6) Deposition Notices**

The parties reported that they have been meeting and conferring about a Rule 30(b)(6) deposition notice that was filed, and almost all issues have been resolved. They anticipate a Rule 30(b)(6) deposition to occur in November.

**7. McKesson Discovery Plan**

The parties discussed their disagreement over whether there should be discovery relating to McKesson in the MDL. Defendants contend that there should not be discovery regarding McKesson until it is established that there are cases in the MDL in which distributor liability would be allowed and that such liability is not preempted by federal law. Plaintiffs argue that McKesson remains a named defendant and cases against it should be worked up at the same pace as the other defendants. Defendants stated that they would like to bring a motion to dismiss regarding McKesson cases. The Court stated that the parties should submit competing discovery plans prior to the next status conference, and be prepared to discuss when motions would be filed, because the Court plans to set a discovery schedule at the next status conference.

**8. Plaintiffs' Proposed Common Benefit Order**

Defendants reported that they had recently proposed changes to Plaintiffs' proposed common benefit order. The Court directed the parties to provide an agreement or competing proposals to the Court in two weeks, and any remaining issues could be discussed at the next status conference.

**9. Master Answer Update**

Defendants agreed to submit their master answer on September 30.

**10. Scheduling the October Case Management Conference**

The court set the next status conference for Monday, October 24 at 2:00 p.m.

**11. Scheduling and Format of Science Day**

The parties reported that they reached an agreement over the proposed protocol for science day. The parties' scientists will give powerpoint presentations about fluoroquinolones and peripheral neuropathy for two hours each, with a lunch break in between. The powerpoints will be submitted to the Court prior to science day, but not to the opposing party. The parties proposed that there would be no court reporter, cross examination, or questioning. The Court stated that it would be helpful to have a court reporter create a transcript for the Court's use, to allow for continuity among different law clerks, but that the transcript would not be an official transcript and could not be ordered. The Court set a tentative date for science day for Tuesday, January 17.

**12. Plaintiffs' and Defendants' Case-Specific Discovery Submissions**

The parties discussed their case-specific discovery proposals. Defendants noted that there was a *Lexicon* issue in considering bellwethers because there are few Minnesota plaintiffs in the MDL. Plaintiffs noted their preference for discovery on a smaller pool of cases, and subsequent bellwethers either in Minnesota or possibly travelling to other courts or seeking agreement from other courts. The Court directed the parties to meet and confer and submit briefs over any remaining issues by Friday, October 21, which would then be discussed at the next status conference. The Court also noted that a small group of cases would likely be more manageable in selecting bellwethers, and that travelling to hear bellwether cases is not necessarily a problem.

**Next Status Conference: Monday, October 24, 2016, at 2:00 p.m.**

**APPEARANCES:**

Plaintiffs: Bill Robins, Russell Budd, Yvonne Flaherty, Thomas Sims, R. Jason Richards, David Wool, Andrea Hirsch, Christopher Nidel, Tad Thomas

Defendants: Tracy Van Steenburgh, Cort Sylvester, Cicely Miltich, Andrew Solow, Lori Leskin, James Murdica, John Winter

On the phone: Ericka Downie, Kathy Lee, Katie Griffin, Charles Riegs, Vance Andrus, Jamie Goldstein, Olga Viner, Ahmed Diab, Jenay Moshkovich,

s/Heather Arent-Zachary  
Courtroom Deputy Clerk