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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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IN RE: FLUOROQUINOLONE)	File No. 15-md-2642 (JRT)
PRODUCTS LIABILITY LITIGATION)	
)	
)	Courtroom 15 East
)	Minneapolis, Minnesota
)	Tuesday, February 21, 2017
)	2:11 p.m.
)	

BEFORE THE HONORABLE JOHN R. TUNHEIM
CHIEF UNITED STATES DISTRICT COURT JUDGE

(STATUS CONFERENCE)

RENEE A. ROGGE, RMR-CRR
Official Court Reporter - United States District Court
1005 United States Courthouse
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1 And for the defendants here in the courtroom.

2 MS. MILTICH: Good afternoon, Your Honor. Cicely
3 Miltich on behalf of Bayer defendants.

4 THE COURT: Good afternoon.

5 MS. LESKIN: Good afternoon, Your Honor. Lori
6 Leskin on behalf of defendants.

7 MR. SOLOW: Good afternoon, Your Honor. Andrew
8 Solow on behalf of defendants.

9 THE COURT: All right. Good afternoon to each of
10 you.

11 And representing plaintiffs on the phone.

12 MS. VINER: Good afternoon, Your Honor. Olga
13 Viner for the plaintiffs.

14 MS. WATERS: Good afternoon, Your Honor. Tiffany
15 Waters for the plaintiffs.

16 MS. GOLDSTEIN: Good afternoon. Jamie Goldstein
17 for plaintiffs.

18 MS. CORDES: Good afternoon. Lindsay Cordes for
19 the plaintiffs.

20 MS. STEVENS: Good afternoon. Lindsay Stevens for
21 plaintiffs.

22 MS. GRIFFIN: Good afternoon. Katie Griffin for
23 plaintiffs.

24 MS. LEE: This is Kathy Lee on behalf of Dirk
25 Nation, a plaintiff.

1 THE COURT: Anyone else representing plaintiffs on
2 the phone?

3 How about representing defendants?

4 MR. SUFFERN: Good afternoon, Your Honor. Michael
5 Suffern and Kimberly Beck representing Cobalt Laboratories,
6 LLC, and Teva Canada Limited, successor by amalgamation to
7 Actavis Pharma Company.

8 MS. BERNIER: Jan MacLean Bernier from Nilan
9 Johnson on behalf of Janssen defendants.

10 THE COURT: All right. Anyone else?

11 Okay. Very well. Let's turn to our proposed
12 agenda for today, beginning with the status of the
13 litigation.

14 Who is going to do that? Mr. Sims.

15 MR. SIMS: Thank you, Your Honor.

16 The approximate account we have is 165 Bayer-only
17 cases, 85 combination cases where Bayer and Janssen are both
18 named as defendants and then approximately 488 Janssen-only
19 cases, is our current count. I believe there's only one or
20 possibly two cases that are currently en route from the
21 JPML.

22 In Pennsylvania, focusing on Bayer cases, we have
23 14 pending cases, in Pennsylvania where Bayer is named as
24 the only set of defendants or they are named in combination
25 with Janssen.

1 With respect to the Pennsylvania litigation, Your
2 Honor, Bayer and plaintiffs involved in the Pennsylvania
3 state cases are currently meeting and conferring to discuss
4 the outline of a bellwether proposal to submit to the court
5 in Pennsylvania. I'd say we are fairly well along in those,
6 but haven't reached a final agreement.

7 In addition to limiting the plaintiffs to a number
8 of bellwethers, the goal would also be to amend the schedule
9 to more closely track the discovery schedule set place here
10 in the MDL. Of course, this is dependent on Judge Younger
11 agreeing to accept any proposed schedule from the parties,
12 but it is our goal to better track the schedule here in the
13 MDL. If we are able to reach an agreement over the coming
14 week or two, we are going to potentially propose that Your
15 Honor reach out to Judge Younger.

16 THE COURT: Okay.

17 MR. SIMS: And perhaps help further that process
18 along.

19 THE COURT: I would be happy to do that.

20 MR. SIMS: Thank you.

21 THE COURT: Mr. Solow.

22 MR. SOLOW: Your Honor, I would just add on to
23 that I agree with everything Mr. Sims said.

24 Just for Your Honor's own edification, generally,
25 in Philadelphia, in the state courts in Pennsylvania, there

1 is an approach of cooperation, but not coordination, is the
2 phrase we have heard a lot from Pennsylvania judges. In the
3 past we have in different litigations had the assistance of
4 an MDL judge calling a state court judge. In fact, I have
5 had that situation with Judge Younge. Hopefully, he would
6 be receptive to the call. The issue there is he certainly
7 has his own docket control issues, and he had previously
8 mentioned to us that he needed to start moving cases off his
9 docket by the end of 2017, which we don't think under the
10 current schedule is feasible. Both sides agree to that. So
11 as Mr. Sims said, we are trying to just iron out that
12 proposal. We just think it would be helpful if His Honor in
13 Philadelphia heard from Your Honor and we could maybe get
14 some assistance with that.

15 THE COURT: What would be the correct timing, do
16 you think?

17 MR. SOLOW: We would hope to have something worked
18 out in short order, and then we could possibly send you a
19 joint communication with his contact information. So that's
20 why I just want to take the opportunity now just to let you
21 know what we are asking you to jump into. And, again, if
22 you wanted to speak to us again before you spoke to Judge
23 Younge, I am sure we can get on a phone conference, whatever
24 Your Honor would prefer.

25 THE COURT: All I would need to know is what you

1 are proposing in Philadelphia. And it's possible that I
2 could go spend a half day with him. I have done that in
3 other cases in the past, and that usually works out pretty
4 well.

5 MR. SOLOW: Okay. And I will remind Your Honor
6 that when we were last in front of Judge Younger he had
7 indicated that it was certainly his intent to follow the MDL
8 discovery, so hopefully this should be a plan that works for
9 him.

10 THE COURT: All right.

11 MR. SOLOW: Thank you, Your Honor.

12 THE COURT: Sounds good. Thanks.

13 Okay. Who is next?

14 MR. SOLOW: Your Honor, consistent with past
15 practice in this court, we have sent over to the PSC a list
16 of deficient short form complaints and plaintiff fact
17 sheets. Mr. Sims on behalf of the PSC is working with
18 plaintiffs' counsel to try to narrow that list down. And we
19 have an agreement that if there are still things outstanding
20 at the end of this month, we will submit it to Your Honor as
21 a draft order to show cause consistent with what we have
22 done in the past.

23 THE COURT: All right. That would be fine. Do
24 you know how many, roughly, are deficient at this point?

25 MR. SIMS: I believe it's approximately eight

1 plaintiff fact sheets and three short form complaints.

2 THE COURT: All right. Good.

3 MR. SOLOW: Thank you, Your Honor.

4 THE COURT: Okay. Great.

5 Okay. Discovery. Where are we at?

6 MR. SIMS: I meant to get an exact number, Your
7 Honor, but I am going to ball park. I think we have about 6
8 million pages that have been produced by the Bayer and Merck
9 entities so far. Those began arriving en masse kind of at
10 the end of December. There was some earlier productions,
11 but not too voluminous. So the plaintiffs are well along in
12 looking at those.

13 In the process of reviewing those and particularly
14 getting those uploaded to our document review platform, we
15 came across a number of issues with respect to the manner of
16 formatting that we felt weren't in compliance with the ESI
17 order, but we have been working in good faith with Bayer and
18 they have been working with us to try to work through those
19 issues. Unfortunately, it has caused a little bit of delay
20 in our ability to really attack the documents, but I think
21 over the next seven to ten days we hope to iron out the
22 remaining ESI issues and get to work on reviewing those
23 pages. It has caused a little bit of a delay in our ability
24 to get started on the written -- I am sorry -- on the
25 depositions, but Mr. Budd will cover that in the next item.

1 THE COURT: All right. Great. Thank you.

2 Mr. Budd.

3 MR. BUDD: Your Honor, yes. As Mr. Sims said, we
4 got a little bit of a slow start on the depositions because
5 of the ESI issues, but we have taken one 30(b)(6) deposition
6 and have given Bayer six more names of custodians we would
7 like to take of Bayer and Merck employees, three of whom are
8 no longer with the companies, and so we are trying to get
9 that worked out. I think we are shooting for dates in March
10 and April for those depositions.

11 THE COURT: All right. Good.

12 Okay. Bellwether. Mr. Robins.

13 MR. ROBINS: Good afternoon, Your Honor.

14 We had put on the agenda we -- we have a
15 correction -- a couple of corrections we need to submit to
16 you on the Pretrial Order No. 13. We just discovered a
17 couple of typos that were in the order. And we will be
18 sending you just an amended order to address them.

19 Just to let you know what they are, on page 2,
20 which is under I(A)(3), yeah, I(A)(3), there's a date toward
21 the end in terms of when rebuttal -- plaintiffs' rebuttal
22 experts should be done. And it's supposed to be between
23 December 18, 2017, and December 22nd, 2017. It says 2018,
24 and it just needs to be fixed in the order.

25 And then on page 5 under Expert Witnesses, D(1),

1 dealing with plaintiffs' expert depositions to take place,
2 it should be between January 22nd and February 2nd, 2018,
3 instead of '17.

4 So we just need to fix those two things in the
5 order. And we will submit another order to you, if --

6 THE COURT: We can probably handle it. It's just
7 those two?

8 MR. ROBINS: Yeah, it's just those two.

9 THE COURT: Yeah, we can file a revised order.

10 MR. ROBINS: Okay. All right. That would be
11 great.

12 And then we just want to give you an update on the
13 bellwether selection process. The parties have gone through
14 that and have selected four picks for the plaintiff and four
15 picks for the defense on the Avelox cases. We actually
16 double selected on the Cipro cases. Both sides picked the
17 exact same two cases. And we were originally going to have
18 four bellwethers for Cipro, but we would suggest, Your
19 Honor, that by agreement we would just work up those two
20 cases, since there was a double selection by the parties,
21 rather than go back into the pool to pick two more.

22 THE COURT: I think that's a great idea.

23 MR. ROBINS: Okay.

24 THE COURT: Go ahead with that. In the Avelox
25 cases there were no double selections, I take it?

1 MR. ROBINS: No double selections for those. So
2 it will be a total of ten cases that we would be working up,
3 eight for Avelox and then two for Cipro.

4 THE COURT: All right. Good. Excellent.

5 Mr. Sims.

6 MR. SIMS: This is with respect to the pending
7 motion to dismiss based on Statute of Repose. When that
8 motion was originally filed, it was brought on behalf of
9 both the Bayer and Janssen entities and it concerned 21
10 plaintiffs. Janssen has subsequently issued a notice
11 withdrawing the motion with respect to Levaquin-only
12 plaintiffs. There remain eight cases that are still named
13 in the motion to dismiss. Two of those have already been
14 dismissed by the plaintiff voluntarily. One of those
15 plaintiffs did not oppose the motion. And then that leaves
16 five where there is a substantive dispute among the parties.

17 THE COURT: Okay.

18 MR. SIMS: What we would suggest, Your Honor, is
19 just submit a joint letter from the parties that identifies
20 these cases and references the states to which their Statute
21 of Repose purportedly applies, so the court can hone in on
22 it that way, or, if you prefer, I can simply go through the
23 list here.

24 THE COURT: Why don't you just go through the
25 list --

1 MR. SIMS: Sure.

2 THE COURT: -- since we have them.

3 MR. SIMS: So I will mention the two that have
4 been dismissed so far. It's the Conley case. That matter
5 number is -- or case number is 16-cv-1374.

6 THE COURT: Betty Conley?

7 MR. SIMS: Correct, Your Honor.

8 THE COURT: That's dismissed? Okay.

9 MR. SIMS: It has been dismissed already, Your
10 Honor, yes.

11 And then the Slusser case. And as I look at my
12 notes, Your Honor, I apologize, I didn't take down the case
13 numbers for the last four cases, so I do not have them in
14 front of me. But it's S-l-u-s-s-e-r.

15 THE COURT: And that one is also dismissed?

16 MR. SIMS: Has been dismissed already. Correct,
17 Your Honor.

18 The Wilson plaintiff, W-i-l-s-o-n, did not oppose
19 the motion, and so there is no dispute remaining among the
20 parties with respect to her case.

21 THE COURT: Okay.

22 MR. SIMS: Then we have three plaintiffs, Your
23 Honor, and the issue with respect to these plaintiffs is the
24 application of Illinois' Statute of Repose law. And the
25 parties agree that Illinois law applies, but disagree as to

1 the significance of that. Those three plaintiffs are
2 Cepuran, C-e-p-u-r-a-n, and the case number is 15-cv-3595.
3 The second plaintiff is Cervantes, C-e-r-v-a-n-t-e-s, Case
4 No. 16-cv-1443. And then the last plaintiff is Haney,
5 H-a-n-e-y, Case No. 16-cv-1501. And so those are the three
6 Illinois plaintiffs.

7 THE COURT: The motions are still pending for
8 those?

9 MR. SIMS: Correct, Your Honor.

10 And then the motion remains live as to plaintiff
11 Rendon, R-e-n-d-o-n. I don't have the case number for that
12 plaintiff, but this involves the application of Oregon law.
13 The parties agree that Oregon law applies, but disagree as
14 to the significance of that.

15 And then the final plaintiff, Your Honor, is
16 Henness, H-e-n-n-e-s-s, and there is a second plaintiff in
17 that case. It's a loss of consortium plaintiff.

18 Unfortunately, I don't have that case number. This is a
19 plaintiff whose case was filed in Pennsylvania, but who
20 resided in Texas at the time of the exposure. And the
21 plaintiffs assert that under Pennsylvania Choice of Law
22 rules Pennsylvania law applies, whereas defendants believe
23 that under Pennsylvania Choice of Law rules Texas law
24 applies.

25 THE COURT: Okay. So those five, well, six, if

1 you count the two cases in Henness --

2 MR. SIMS: Correct.

3 THE COURT: -- are the ones that you would like
4 the motion to be considered for, correct?

5 MR. SIMS: Yes, Your Honor. And then with respect
6 to Wilson, any order will just have to address the fact that
7 the motion is granted, since it was not opposed.

8 THE COURT: All right. Got it. We can take care
9 of that.

10 MR. SIMS: Thank you, Your Honor.

11 THE COURT: I think we are almost ready to go. We
12 just need to do a little adjustment on it.

13 MR. SIMS: Thank you.

14 THE COURT: All right. Okay. Yes, Mr. Robins.

15 MR. ROBINS: Just the last topic is just
16 scheduling the March status, Your Honor. And I think the
17 parties were going to suggest March 28th, which is I believe
18 available on your calendar.

19 THE COURT: I think that works.

20 (Court having discussion with clerk.)

21 THE COURT: 1:00 work that day?

22 MR. ROBINS: On the 28th?

23 THE COURT: Yeah.

24 MR. ROBINS: Is there any possibility of doing it
25 a little later in the day or is that --

1 THE COURT: We can. The chief judges' meeting is
2 the next day starting early in Washington, so I have to fly
3 out that day. But what time are you thinking about?

4 MR. ROBINS: Just I have got a conflict in San
5 Francisco the day before, so I was just hoping to be able to
6 try to get in that morning, so --

7 THE COURT: 2:00?

8 MR. ROBINS: Two would probably work, yeah.

9 THE COURT: Let's try 2:00. We will move the
10 Marshall. All right.

11 MR. ROBINS: Okay. Thank you.

12 THE COURT: All right. Anything else we need to
13 discuss today?

14 MR. ROBINS: I don't think so, Your Honor.

15 THE COURT: Anything else?

16 MR. SOLOW: Nothing, Your Honor. Thank you.

17 THE COURT: All right. Very well.

18 We will be in recess and will be continued until
19 next -- or March 28th. Thanks, everyone.

20 THE CLERK: All rise.

21 (Court adjourned at 2:30 p.m., 2-21-2017.)

22 * * *

23
24 I, Renee A. Rogge, certify that the foregoing is a
25 correct transcript from the record of proceedings in the
above-entitled matter.

Certified by: /s/Renee A. Rogge
Renee A. Rogge, RMR-CRR