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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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In Re: Fluoroquinolone)	File No. 15MD2642
Products Liability Litigation)	(JRT)
)	
)	
)	Minneapolis, Minnesota
)	May 31, 2017
)	2:40 P.M.
)	
)	
)	

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

Court Reporter: KRISTINE MOUSSEAU, CRR-RPR
1005 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 For the Plaintiffs: Lockridge Grindal Nauen PLLP
2 YVONNE FLAHERTY, ESQ.
3 100 Washington Avenue South
4 Suite 2200
5 Minneapolis, MN 55401

6
7 Baron & Budd, P.C.
8 RUSSELL BUDD, ESQ.
9 THOMAS M. SIMS, ESQ.
10 3102 Oak Lawn Avenue
11 Suite 1100
12 Dallas, TX 75219

13 Andrus Wagstaff, P.C.
14 DAVID J. WOOL, ESQ. (PHONE)
15 7171 W. Alaska Drive
16 Lakewood, CO 80226

17 Nidel Law, PLLC
18 CHRISTOPHER NIDEL, ESQ.
19 (PHONE)
20 2002 Massachusetts Ave, NW
21 Washington, DC 20036

22 Aylstock, Witkin, Kreis &
23 Overholtz
24 R. JASON RICHARDS, ESQ.
25 (PHONE)
17 East Main Street
Suite 200
Pensacola, FL 32502-5998

Thomas Law Offices
JOHN ABARAY, ESQ. (PHONE)
239 South Fifth Street
Louisville, KY 40202

Herman Gerel, LLP
ANDREA S. HIRSCH, ESQ. (PHONE)
230 Peachtree Street NW
Suite 2260
Atlanta, GA 30303

1 For the Plaintiffs: Sanders Phillips Grossman, LLC
2 RANDI KASSAN, ESQ. (PHONE)
3 2860 Michelle Drive
Suite 220
Irvine, CA 92606

4 Sill Law Group, PLLC
5 MATTHEW J. SILL, ESQ.
6 KATIE EIDSON GRIFFIN, ESQ.
14005 North Eastern Avenue
Edmond, OK 73013

7 Gomez Trial Attorneys
8 KRISTEN BARTON, ESQ. (PHONE)
LINDSEY R. STEVENS, ESQ.
9 (PHONE)
655 West Broadway
10 Suite 1700
San Diego, CA 92101

11 Cline, Farrell, Christie & Lee
12 KATHY ANN LEE, ESQ. (PHONE)
951 North Delaware Street
Indianapolis, IN 46202

13 MARK DIAO, ESQ. (PHONE)

14 BARBARA NEVIN, ESQ. (PHONE)

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For Defts Bayer and Merck: Arnold Porter Kaye Scholer LLP
ANDREW K. SOLOW, ESQ.
LORI B. LESKIN, ESQ.
250 West 55th Street
New York, NY 10019

Faegre Baker Daniels LLP
CICELY R. MILTICH, ESQ.
90 South Seventh Street
Suite 2200
Minneapolis, MN 55402

For Defts Teva and Cobalt: Ulmer & Berne
MICHAEL SUFFERN, ESQ. (PHONE)
600 Vine Street
Suite 2800
Cincinnati, OH 45202

1 2:40 P.M.

2
3 (In open court.)

4 THE COURT: You may be seated. Good afternoon.
5 I apologize for the delay getting started here. Too many
6 things on the schedule today.

7 This is multi district litigation 15-2642, In Re:
8 Fluoroquinolone Products Liability Litigation.

9 Let's have plaintiffs' counsel present note their
10 appearances.

11 MS. FLAHERTY: Good afternoon, Your Honor.
12 Yvonne Flaherty for plaintiffs.

13 THE COURT: Ms. Flaherty.

14 MR. BUDD: Good afternoon. Russell Budd for
15 plaintiffs.

16 THE COURT: Mr. Budd.

17 MS. NEVIN: Barbara Nevin.

18 MR. SIMS: Good afternoon. Thomas Sims for
19 plaintiffs.

20 THE COURT: All right. And on the phone I heard
21 Ms. Nevin.

22 Who else is on the phone for the plaintiff?

23 MR. WOOL: This is David Wool from Andrus
24 Wagstaff.

25 MS. KASSAN: Randi Kassan from Sanders Phillips

1 Grossman.

2 MS. HIRSCH: Andrea Hirsch, Herman Gerel, for the
3 plaintiffs.

4 MS. GRIFFIN: Katie Griffin.

5 THE COURT: Ms. Griffin, go ahead.

6 MS. GRIFFIN: Katie Griffin with the Sill Law
7 Firm for plaintiffs.

8 MS. STEVENS: Lindsey Stevens from Gomez Trial
9 Attorneys for plaintiffs.

10 MR. NIDEL: Chris Nidel on behalf of the
11 plaintiffs.

12 THE COURT: Say that again, please.

13 MR. NIDEL: It is Chris Nidel on behalf of
14 plaintiffs.

15 THE COURT: Okay.

16 MR. ABARAY: John Abaray from Thomas Law Offices
17 on behalf of plaintiffs.

18 MS. BARTON: Kristen Barton on behalf of the
19 plaintiffs.

20 MS. LEE: This is Kathy Lee on behalf of Dirk
21 Nation for plaintiffs.

22 MR. RICHARDS: Jason Richards for the plaintiffs.

23 THE COURT: All right. Anyone else?

24 MR. SUFFERN: Good afternoon, Your Honor.

25 Michael Suffern on behalf of Teva Canada Limited and Cobalt

1 Laboratories LLC. I represent them in one member action.

2 The name of the case is Achman.

3 THE COURT: All right. Anybody else on the
4 phone?

5 All right. Defendants here in the courtroom?

6 MS. MILTICH: Good afternoon, Your Honor. Cicely
7 Miltich on behalf of Bayer.

8 MS. LESKIN: Good afternoon, Your Honor. Lori
9 Leskin on behalf of Bayer.

10 MR. SOLOW: Good afternoon, Your Honor. Andrew
11 Solow on behalf of the Bayer defendants.

12 THE COURT: All right. Good afternoon to all
13 three of you.

14 Okay. We have a relatively short agenda today,
15 it looks like. The Court did receive the proposed order
16 for dismissal of three cases that were part of the April
17 4th order to show cause, and I'm presuming there is no
18 objection from the plaintiffs on that?

19 MR. SIMS: Correct, Your Honor. No objection.

20 THE COURT: Okay. The Court will file that this
21 afternoon.

22 MS. LESKIN: Thank you, Your Honor.

23 THE COURT: All right. So status of litigation.
24 Mr. Sims?

25 MR. SIMS: Thank you, Your Honor. We have

1 approximately 260 cases involving Bayer or a combination of
2 Bayer and Johnson & Johnson. That includes around four
3 that are making their way here from the JPML.

4 THE COURT: Four?

5 MR. SIMS: Correct, Your Honor. That's our
6 latest count. With respect to the Philadelphia state court
7 litigation, I understand the Court had a chance to speak
8 with Judge Younger.

9 THE COURT: I did.

10 MR. SIMS: The parties have not had a chance to
11 talk to Judge Younger directly, but we have been
12 communicating with his clerk, and he has indicated that
13 Judge Younger has kindly agreed to give us some more time,
14 but due to constraints on Judge Younger's schedule, that
15 additional amount of time will still put us going to trial
16 before the MDL trial is currently set.

17 So because we understand the goal, of course, is
18 for the MDL trials to proceed first, what I have done and
19 what Mr. Solow and I have done together, is work on a
20 proposal to essentially reset those Philadelphia state
21 court cases, and there is a couple of ways we're going to
22 go about doing that, depending on whether or not they are a
23 Philadelphia resident or a New Jersey resident.

24 But at the end of the day, the goal is to
25 essentially dismiss and re-file those cases, either in

1 state court or potentially in federal court. Because of a
2 recent change in principal address on behalf of one of the
3 Bayer entities, we believe federal court may be a viable
4 option now for some of these folks.

5 THE COURT: All right.

6 MR. SIMS: However, we are in the process of
7 reaching out to the various plaintiffs. My firm represents
8 a number of them, and some of the others are represented by
9 other PSC firms to get their consent. We have reached the
10 vast majority of these folks, and we obtained consent from
11 the vast majority of these folks, but there is one
12 plaintiff who wishes to stay in state court and not dismiss
13 her case. So it looks like that particular plaintiff will
14 proceed to trial.

15 There is another plaintiff who has told me that
16 she is leaning towards agreeing to the dismissal, but I
17 just haven't gotten final authority from her. I believe
18 the rest will all agree to this approach, and that would
19 essentially reset the clock on those and take the burden
20 off of Judge Young's docket, but we will, it looks like,
21 have one case that will proceed to trial, most likely in
22 the spring of next year under the schedule we're
23 anticipating.

24 THE COURT: Yeah, I understood from Judge Young
25 a desire to work real closely with the MDL in terms of

1 timing on everything. His major problem was the need to
2 get matters completed in time for the end of his segment,
3 whatever they call it in Philadelphia, so he doesn't pass
4 it along to the next judge was his concern.

5 MR. SIMS: Right.

6 THE COURT: Which I believe was the end of next
7 year, I believe, if I'm correct about that.

8 MR. SIMS: Okay.

9 THE COURT: Mr. Solow?

10 MR. SOLOW: Your Honor, I just want to clarify
11 two things. One, Mr. Sims, I think, just misspoke. To be
12 clear, Bayer Corporation, the Pennsylvania resident, has
13 changed its principal place of business under the removal
14 standard and statute. So we believe those cases could now
15 be removed, not as Mr. Sims incorrectly stated about the
16 address.

17 And then the last thing is, everything Mr. Sims
18 has stated is correct. We still have not yet been in front
19 of Judge Younger. We will move to get the additional time
20 that Judge Younger has signaled that he would provide to us,
21 but I think both sides have agreed to disagree for now and
22 see how things play out.

23 And hopefully maybe Judge Younger, from our
24 perspective, will reconsider with a smaller docket. We'll
25 see where things stand as we move forward on the schedule

1 and whether in fact that first maybe one or two trials
2 proceed before the August trial in 2018 before Your Honor,
3 but we have agreed to see how that plays out.

4 THE COURT: All right.

5 MR. SOLOW: Thank you.

6 THE COURT: All right. Sounds good. Excellent.
7 That's good.

8 Okay. We have talked about the order to show
9 cause. Anything else on the order that we need to talk
10 about? I mean, we will file the order of dismissal as
11 requested, but anything else about the order to show cause?

12 MS. LESKIN: No, Your Honor.

13 MR. SIMS: No, Your Honor.

14 THE COURT: All right. Discovery? I guess we've
15 got service of Bayer Pharma AG.

16 MR. SOLOW: Your Honor, just this afternoon we
17 have reached an agreement with the PSC on a proposed order
18 for the waiver of service for the foreign entity that is
19 named in the case, Bayer Pharma AG. Plaintiffs have gone
20 ahead and proceeded through the Hague Convention for
21 service, and our client has now agreed to, consistent with
22 what that draft is, we will get that submitted to the Court
23 hopefully by the end of the week, now that we have just
24 reached an agreement on it.

25 THE COURT: All right. Excellent. Okay,

1 Mr. Budd?

2 Okay. Discovery, how are we coming?

3 MR. SIMS: Your Honor, slowly but well. We have
4 taken four depositions so far of defense witnesses. They
5 in turn have taken four plaintiff bellwether depositions,
6 and in addition to that, typically the spouse or a
7 significant other.

8 We have two additional defense witnesses set for
9 deposition, one in June and one in July, and then there are
10 four other plaintiff bellwether depositions that are
11 currently scheduled to be completed over the coming month.
12 There is a request for the last two plaintiff bellwether
13 depositions for dates. So we are working on getting those.

14 That's it in terms of what is scheduled. We're
15 going to talk a little bit about the schedule in the next
16 item. We do anticipate taking a number of more, additional
17 defense employee or former employee depositions, and then
18 we believe the next phase in bellwether discovery is to
19 look at the physicians, and so presumably we will start
20 scheduling those.

21 On the document front, we have completed or Bayer
22 has completed the first, we'll call it, the first round of
23 custodial productions, and we are now working on round two,
24 which has two components. U. S. based employees of the
25 U. S. entity, and we submitted that list of additional

1 custodians back in March, and Bayer has agreed to produce
2 those custodial files by July 12th.

3 And then there was a list of non U. S. based
4 custodians, those with the German entity, and that
5 production will begin on June 12th. We don't have a
6 commitment yet for when it will end, but we are told the
7 first round, the first wave, will start on June 12th.

8 We do anticipate a need to depose some of the non
9 U. S. based employees, and we will begin to work with a
10 schedule with Bayer on where and when those can take place.
11 Given the summer schedule in Europe, it will probably be
12 more likely at the end of the summer, beginning of fall,
13 and that's it on discovery, Your Honor.

14 THE COURT: Okay. Mr. Solow, do you have
15 anything on discovery?

16 MR. SOLOW: Nothing to add. That covers
17 everything, Your Honor.

18 THE COURT: All right. Good. Thank you.
19 Okay. Scheduling orders?

20 MR. BUDD: Your Honor, we have an agreed proposal
21 for amending PTO 13 --

22 THE COURT: Okay.

23 MR. BUDD: -- on the bellwether schedule, and it
24 also references an amendment to PTO 5. The most important
25 change is probably on changing the dates for the discovery

1 cutoff. It was the end of July for Avelox, September for
2 Cipro, and it is now in this proposal at the end of
3 October. The proposal doesn't change the trial setting --

4 THE COURT: Okay.

5 MR. BUDD: -- calendar, though. The first trial
6 setting remains August 2018 for Avelox.

7 MS. LESKIN: Yeah, I would just, I would just
8 add, Your Honor, we, we moved the nonexpert discovery
9 deadline as against Bayer and the Bayer defendants. We
10 also moved some of the internal deadlines for the
11 bellwethers, but as you have heard, we are moving forward
12 on both fronts, and I think with the new schedule we will
13 still be able to keep those trial dates.

14 THE COURT: Okay. So are you submitting a draft
15 revised PTO order then?

16 MR. BUDD: Yes.

17 THE COURT: Will we need to revise 5 as well?

18 MS. LESKIN: So the proposal is a second
19 amendment pretrial order number 13, but includes a
20 paragraph that references the two relevant paragraphs from
21 5. So we don't need a separate 5 amendment.

22 THE COURT: All right. Good. We will take care
23 of that as soon as you get it in.

24 MS. LESKIN: Thank you.

25 THE COURT: All right. Anything else beyond

1 scheduling additional status conferences?

2 MR. BUDD: No.

3 THE COURT: Okay. Let's look at July. Is there
4 discovery going on in the Twin Cities where some of you
5 would be here anyway for that or not?

6 MR. SIMS: No, Your Honor, and we are actually
7 thinking of maybe trying to look at that last week in June,
8 skip July and then start back up in the first week of
9 August. I don't know if that works with the Court's
10 schedule.

11 One date we had looked at was June 28th.

12 THE COURT: We have got a trial Monday and
13 Tuesday in Duluth, our Duluth courthouse.

14 MR. SIMS: Maybe the afternoon of the 28th.

15 THE COURT: Wednesday -- we probably can do that.
16 That hearing we might be able to fit into Tuesday or
17 couldn't they do it, the hearing you set on Wednesday
18 morning.

19 THE CLERK: I didn't offer Tuesday because I
20 didn't know if trial was going to continue.

21 THE COURT: Why don't we try to put that in
22 sometime Tuesday? They might have to move around depending
23 on where the trial is at at the time, but let's offer the
24 Tuesday afternoon.

25 THE CLERK: I set another hearing at 11:00 on

1 Wednesday. It's not on there yet. The parties just
2 agreed.

3 THE COURT: Okay.

4 THE CLERK: Changes of plea.

5 THE COURT: Well, later in the day. I will be
6 back for sure that day because I've got to be at a dinner
7 that is at 6:00. So I mean we probably could be back, even
8 if we had the eleven o'clock hearing, we could be back for
9 a three o'clock hearing that afternoon, unless we have a
10 jury deliberating. That's the only issue.

11 MR. SIMS: Okay.

12 THE COURT: It's a criminal case, too, so I have
13 to stay.

14 MR. SIMS: We could always go to Duluth, Your
15 Honor.

16 MS. LESKIN: Since we're flying in anyway, we
17 could travel to Duluth if that would make it easier for
18 Your Honor.

19 THE COURT: We certainly could do that. We could
20 do a one o'clock or 1:30 in Duluth that day.

21 MS. LESKIN: Yeah.

22 THE COURT: It shouldn't be snowing that day,
23 so --

24 MS. MILTICH: I love Duluth.

25 MR. SIMS: We defer, of course, to the Court, but

1 3:00 p.m. here would be the ideal option, but again, we
2 could make Duluth work.

3 THE COURT: The only issue will be if the jury is
4 deliberating. I don't really expect it in this particular
5 case, but let's, let's for now set it for three o'clock
6 here because I do have to come back anyway, you know. If
7 they're not done, we're just going to have to go back.

8 So let's set it for three o'clock on the 28th.
9 Is that okay, Heather?

10 THE CLERK: That should be fine.

11 THE COURT: Okay.

12 MR. SIMS: For August, we were going to propose
13 perhaps August 1st or 2nd.

14 THE COURT: On the 2nd, I will be at an Eighth
15 Circuit chief judges meeting, which is unfortunately not
16 anywhere nearby. It is in Little Rock. The 1st, what do
17 you think? We can try the 1st in the afternoon. Travel is
18 not set yet.

19 MR. SIMS: 2:00 p.m. on the 1st?

20 THE COURT: Let's do 2:00 p.m. on the 1st.

21 MR. SIMS: Thank you, Your Honor.

22 THE COURT: All right. Anything else for today?

23 MR. SOLOW: No, Your Honor.

24 THE COURT: Again. I apologize for the delay,
25 and we will be in recess until our next scheduled

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conference.

Thank you.

THE CLERK: All rise.

(Court was adjourned.)

* * *

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