

**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: August 10, 2017
	)	Deputy: Heather Arent-Zachary
	)	Court Reporter: Renee Rogge
	)	Time Commenced: 2:14 pm
Defendant.	)	Time Concluded: 2:51 pm
	)	Time in Court: 37 Minutes

Hearing on: Status Conference

**1. Status of Litigation**

Counsel reported that there are approximately 265 pending in the MDL that involve Bayer or Merck as defendants. Of those cases, approximately 180 are Bayer-only cases and 85 are combination cases.

Counsel reported that all but two of the related cases filed in 2015 in Pennsylvania state court have been dismissed. Of those two cases, one is expected to be dismissed and the other is currently scheduled for trial in June 2018.

**2. Update on Plaintiffs with PFS Deficiencies**

Counsel reported that they have resolved all but one or two disagreements regarding deficiencies, and they hope to resolve the remaining issues shortly.

**3. Discovery Update**

Plaintiffs reported that they continue to receive a large volume of documents from Defendants. Plaintiffs have completed seven depositions of Bayer or Merck employees, and have requested twelve additional Bayer employee depositions, most of which are scheduled for September. Plaintiffs also intend to depose Bayer Pharma AG (the German entity) employees in October. The parties are in the process of scheduling depositions for prescribing and treating physicians with regard to bellwether cases.

Plaintiffs served discovery on Bayer and Merck seeking custodial files regarding sales representatives and district managers, with production anticipated to begin early next month and to continue on a rolling basis. The parties will meet and confer regarding disputes about this production, and if they cannot resolve the dispute, Plaintiffs will file a motion to compel to be heard at the next status conference.

**4. Plaintiffs' Motion to Limit Treater Depositions**

The Court heard argument on Plaintiffs' motion to limit the number of treating-physician depositions. Plaintiffs argued for a limit of three treating-physician depositions per bellwether case, but agreed to Defendants' request that Defendants be allowed to depose any additional treating physicians whom Plaintiffs intend to call at trial. Defendants argued against limiting the number of treating-physician depositions, but also stated that they

would be amenable to a limit of four treating physicians per bellwether case if they were also allowed to depose any additional treating physicians whom Plaintiffs intend to call at trial.

The Court **GRANTED** Plaintiffs' motion and set a limit of one prescribing-physician deposition and four treating-physician depositions per bellwether case, with the understanding that Plaintiffs, in a reasonable period of time, would identify any additional treating physicians whom Plaintiffs would likely call at trial and that Defendants could depose those additional treating physicians without regard to the limit.

#### **5. Plaintiffs' Motion to Amend Protective Order**

Plaintiffs reported that they had reached an agreement with Defendants under which Defendants would provide some additional information regarding their privilege logs. Accordingly, Plaintiffs withdrew their motion to amend the protective order.

#### **6. Agreed Order Regarding Common Benefit Account**

The parties noted that they had submitted a proposed order to establish a common benefit account. The parties confirmed that neither side opposed the order, and the Court stated that it would enter the order shortly.

#### **7. Scheduling of September Status Conference**

#### **Upcoming Status Conference:**

**Tuesday, September 12, 2017, at 2:00 p.m.**

#### **APPEARANCES:**

Plaintiffs: Bill Robins, III, Russell Budd, Thomas Sims, Yvonne Flaherty, R. Jason Richards, David Wool, Andrea Hirsch, Devona Wells

Defendants: Andrew Solow, Lori Leskin, Debra Schreck, Joe Price

On the phone: Dae Lee, Lindsay Stevens, Michael Suffern, Lindsay Cordes, Katie Griffin, Dan Corley, Jamie Goldstein, Olga Viner, Greg Malush, Barbara Nevin, Kedar Bhasker, Kathy Lee, Chris Nidel

s/Heather Arent-Zachary  
Courtroom Deputy Clerk