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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, October 10, 2017
	)	4:41 p.m.
	)	

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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 have everyone who is on the phone state their appearances.  
2 Just let's try to go through this -- begin with Ms. Nevin.

3 MS. NEVIN: Ms. Nevin for the plaintiff. Milavetz  
4 Gallop & Milavetz.

5 THE COURT: Who else is on the phone?

6 MR. SUFFERN: Good afternoon, Your Honor. My name  
7 is Michael Suffern. I represent Teva Canada and Cobalt,  
8 LLC, in the Akman case.

9 THE COURT: Okay.

10 MS. LEE: This is Kathy Lee, Your Honor. I  
11 represent Dirk Nation, the plaintiff.

12 MR. RICHARDS: Good afternoon, Your Honor. This  
13 is Jason Richards representing the plaintiffs.

14 MR. NIDEL: Good afternoon, Your Honor. This is  
15 Chris Nidel on behalf of the plaintiffs.

16 MR. SEARS: Good afternoon, Your Honor. This is  
17 Bradley Sears on behalf of the plaintiffs.

18 MS. BARTON: Good afternoon, Your Honor. Kristen  
19 Barton also on behalf of plaintiffs.

20 THE COURT: All right. Anyone else join the phone  
21 call?

22 All right. Thank you for sitting through a little  
23 bit of a lesson on patent law or maybe it wasn't a lesson.  
24 All right. Let's go to the proposed agenda. We'll start  
25 with Mr. Sims.

1 MR. SIMS: Thank you, Your Honor.

2 The filings haven't really changed since we were  
3 here last. We are right around 270, 280 cases on file here  
4 in the MDL that name at least one Bayer defendant. Of  
5 those, approximately a third involve a combination of Bayer  
6 and the Janssen defendants.

7 With respect to Philadelphia, there's now -- there  
8 remains just two cases pending in Philadelphia state court.  
9 One is the Bryant case that is currently set for June, early  
10 June, I believe. And the other name -- the other case name  
11 escapes me, but it's a case where the plaintiff's lawyers  
12 have withdrawn and the motion to withdraw was granted, and I  
13 believe ultimately that case is going to be dismissed for  
14 failure to prosecute.

15 I believe Mr. Solow -- or if you want to do it now  
16 or not -- wanted to discuss with the court a possible  
17 strategy with respect to the Bryant case and trying to line  
18 up the calendaring a little bit more.

19 THE COURT: All right. Good.

20 Mr. Solow.

21 MR. SOLOW: Your Honor, just to clarify, the  
22 second case is the Turner case, T-u-r-n-e-r.

23 THE COURT: That's where the lawyers have  
24 withdrawn?

25 MR. SOLOW: Yes. And the plaintiff is pro se. We

1 have served the plaintiff directly via certified mail or  
2 trying to move forward with her deposition, and we'll let  
3 Your Honor knows what happens with that case.

4 THE COURT: Okay.

5 MR. SOLOW: Your Honor, I'm happy to discuss the  
6 Bryant case now. I think it also kind of comes into one of  
7 the items lower on the agenda.

8 The parties have submitted to the court a proposed  
9 Third Amended Pretrial Order 13, which the parties have  
10 agreed to, subject to Your Honor's approval and any  
11 questions you may have, extending the deadlines for the  
12 bellwether process, as well as the generic fact discovery,  
13 and then expert discovery and also moving some of the trials  
14 back based on those moves. That, if Your Honor is okay with  
15 that, that would then put the Bryant case in direct conflict  
16 with the MDL schedule. And as I recall Your Honor saying  
17 from the beginning, since your hope was that the MDL would  
18 go first before the state court, the parties have already  
19 agreed that the discovery obtained here in the MDL, in terms  
20 of generic and general discovery, would be the discovery  
21 that's used in Pennsylvania. So it's our hope, Your Honor,  
22 that now with just those two cases remaining in the  
23 Philadelphia Court of Common Pleas that perhaps another call  
24 from Your Honor to Judge Younge, who was feeling some  
25 administrative pressure previously, would help us move that

1 schedule back so that, once again, the MDL trial will go  
2 first.

3 Your Honor, the Third Amended Pretrial Order also  
4 includes deadlines for expert discovery. And, certainly, it  
5 is the intent, as I understand it, for the parties to use  
6 some of the same general causation experts both in  
7 Philadelphia and the MDL. And without the assistance of  
8 Judge Younge, you would clearly wind up in a situation of  
9 the tail wagging the dog, where those expert deadlines would  
10 occur first in the Bryant case before here in the MDL, which  
11 obviously has a greater implication on the  
12 200-maybe-some-odd cases that Mr. Sims mentioned.

13 THE COURT: What would be ideal in terms of the  
14 Bryant case if it went to trial, timing-wise?

15 MR. SIMS: Most likely I think in December, Your  
16 Honor, of next year. I know the calendar year is important  
17 in the PCCP in terms of administrative assessments. And so  
18 I think, under our submitted amended PTO 13, our first  
19 Avelox trial is November.

20 THE COURT: November 5th.

21 MR. SIMS: So a month later that might appease  
22 Judge Younge.

23 THE COURT: Okay. I would be happy to try to  
24 reach him.

25 MR. SOLOW: Thank you, Your Honor.

1           And then our view is at some point we will need to  
2 go in and see Judge Younge, but we thought probably best to  
3 see if Your Honor was able to make contact. If you let us  
4 know, then we will schedule something with Judge Younge  
5 after that.

6           THE COURT: I will have Heather let you know once  
7 I reach him.

8           MR. SOLOW: Great. Appreciate it, Your Honor.

9           MR. SIMS: And just as Mr. Solow already  
10 mentioned, the significant change since the last time the  
11 court spoke with Judge Younge is we have gone from something  
12 like 16 cases to 2 cases now. So hopefully that makes an  
13 extension more palatable.

14           Turning to the next agenda item, discovery update.  
15 We are at approximately 14 and a half million pages of  
16 documents that have been produced by all defendants, the  
17 majority of those coming from Bayer HealthCare, the  
18 U.S.-based entity, but about 5 million coming from BPAG, the  
19 German-based -- their entity.

20           We are well along in our depositions of Bayer and  
21 Merck witnesses. There's been nine that have been taken so  
22 far. An additional four are scheduled over the coming  
23 weeks. And then we have two witnesses we have requested and  
24 we're still waiting on dates on those two, but anticipate  
25 completing them this year.

1 THE COURT: All right.

2 MR. SIMS: On the depositions of the treating and  
3 prescribing physicians, there have been 17 that have been  
4 completed so far. We have another 16 that are scheduled.  
5 And then I believe there are 9 left where we are still  
6 attempting to schedule the physicians for deposition. Our  
7 goal was to try and complete those by the end of October,  
8 but it looks like we will probably push into November for at  
9 least some of them, but, again, the goal being to wrap those  
10 up here in the next six weeks.

11 Finally, with respect to discovery of sales  
12 representatives, we did serve written discovery asking for  
13 the custodial file of sales representatives. Bayer and  
14 Merck collectively have identified 24 sales representatives  
15 and an additional 9 district managers, whose custodial files  
16 they are going to search for and produce. They have already  
17 started to produce some of those. We are waiting on  
18 additional custodians. The anticipation is once we receive  
19 those, we will evaluate them and then identify those sales  
20 representatives or district managers we would like to  
21 depose.

22 THE COURT: How many do you anticipate?

23 MR. SIMS: It's actually addressed in the amended  
24 PTO we submitted. There's an agreement that we can depose  
25 up to two either sales rep or district managers in each

1 individual bellwether case, subject to either a good cause  
2 exception or an agreement by the parties.

3 THE COURT: Okay.

4 MR. SIMS: And that is the information we have  
5 with respect to an update on current discovery efforts, Your  
6 Honor.

7 THE COURT: All right. All right. And the PTO  
8 13, amended PTO 13 --

9 MR. SIMS: Correct, Your Honor. Essentially, we  
10 just bumped everything by three months.

11 THE COURT: Three months?

12 MS. SIMS: Everything got moved three months.

13 THE COURT: Nothing else has changed?

14 MR. SIMS: Well, we did add the limitation on both  
15 sales reps and treating/prescribing physicians. I believe  
16 that was the only substantive change that was made in  
17 addition to the dates themselves.

18 THE COURT: Okay.

19 MR. SOLOW: The only other item, Your Honor, and  
20 it's minor, is we collapsed the schedule for doing Avelox  
21 cases separate and apart from the Cipro cases. So they will  
22 now be on the same deadline, but we have put into the  
23 pretrial order, consistent with the way it originally was in  
24 the second amended version, of identifying the Avelox cases  
25 proceeding before the Cipro cases, but at least the

1 deadlines have been collapsed for those purposes.

2 THE COURT: All right. Good. Okay. It looks to  
3 be in order. I assume --

4 Anyone on the phone have any objection or anything  
5 that you would like to say? All right.

6 MR. SIMS: And then, finally, with respect to the  
7 last item, Your Honor, the parties had conferred before we  
8 got started and we identified November 14th as the date that  
9 seemed to work for all counsel. So we wanted to run that by  
10 the court.

11 THE COURT: Let's see. Do you have that up,  
12 Heather?

13 THE CLERK: I do, Your Honor. We will be in the  
14 second day of trial for our next patent trial.

15 THE COURT: That's fine. We might have to do  
16 later in the afternoon again, or we can conceivably do  
17 around the lunch hour, but sometimes it's better to do late  
18 afternoon.

19 MR. SIMS: I think late afternoon is probably  
20 better for everyone, in terms of being able to get here on  
21 the same day.

22 MS. LESKIN: That's fine, Your Honor. There's a  
23 late flight out, so.

24 THE COURT: Ah, okay. Thank God for those late  
25 flights out.

1           Okay. We will set that. Let's set it at 4:00  
2           again. It might be at 4:30, but we will set it at 4:00.  
3           All right?

4           MR. SIMS: Thank you, Your Honor.

5           THE COURT: Yes.

6           MS. LESKIN: One last item, Your Honor.

7           MS. MILTICH: Just one brief housekeeping item,  
8           Your Honor. I am actually moving to the Chicago office for  
9           Faegre Baker Daniels. So from here on out primarily at the  
10          status conferences my colleague Michelle Tessier, who is a  
11          member of our products liability group, will be appearing.  
12          We just didn't want you to think that anything at this  
13          status conference had caused me to not come to future ones,  
14          patent trial notwithstanding.

15          THE COURT: You are leaving just when things are  
16          going to start getting exciting, I think.

17          MS. LESKIN: We are not releasing her from the  
18          litigation, Your Honor. She will be --

19          MS. MILTICH: That's correct.

20          THE COURT: Okay. Well, maybe we will move a  
21          hearing to Chicago in your honor and Mr. Solow's honor. All  
22          right. That's fine. Thank you for introducing --

23          Ms. Tessier, is it?

24          MS. TESSIER: Yes.

25          THE COURT: Well, welcome.

1 MS. TESSIER: Thank you, Your Honor.

2 THE COURT: All right. Anything else we need to  
3 discuss today?

4 MR. SIMS: No, Your Honor.

5 MR. SOLOW: No, Your Honor.

6 THE COURT: All right. Thank you for progress on  
7 everything, and we will see you on the 14th.

8 Court's in recess.

9 THE CLERK: All rise.

10 (Court adjourned at 4:53 p.m., 10-10-2017.)

11 \* \* \*

12 I, Renee A. Rogge, certify that the foregoing is a  
13 correct transcript from the record of proceedings in the  
14 above-entitled matter.

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

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