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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
)	February 19, 2020
)	2:18 P.M.
)	
)	
)	

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

Court Reporter: KRISTINE MOUSSEAU, CRR-RPR
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Proceedings recorded by mechanical stenography;
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2:18 P.M.

(In open court.)

THE COURT: You may be seated. Good afternoon. Good afternoon to those on the telephone. We're going to go through a brief identification of everybody for the record here.

First of all, this is Multi District Litigation 15-2642, In Re: Fluoroquinolone Products Liability Litigation.

Okay. We'll first have those in the courtroom identify themselves for the record, please. First for the plaintiffs.

MS. FLAHERTY: Good afternoon, Your Honor. Yvonne Flaherty on behalf of plaintiffs.

MR. BRADLEY: Good afternoon, Your Honor. Patrick Bradley on behalf of David Butkiewicz.

THE COURT: All right. For defendants?

MS. BERNIER: Jan McLean Bernier, Nilan Johnson Lewis, on behalf of the Janssen defendants.

THE COURT: Good afternoon. We have a number of people on the phone. Let's go through. It's always a little bit difficult because you don't know when someone else is talking. Let's try to proceed as quickly as possible through each of you on the phone identifying

1 yourself, please.

2 MR. PLAUCHE: Evan Plauche for Chauvin.

3 THE COURT: Okay. Next?

4 MR. ANDREWS: Robert Andrews for Jay Ahmaz.

5 THE COURT: All right. Go ahead.

6 MS. PONTIOUS: Naomi Pontious for plaintiffs.

7 MR. BUDD: Russell Budd.

8 THE COURT: All right. Who else?

9 MS. LEE: Kathy Lee on behalf of Dirk Nation.

10 MR. ROBINS: Bill Robins for plaintiffs.

11 MR. RICHARDS: Jason Richards for plaintiffs.

12 THE COURT: Okay.

13 MR. SUFFERN: Good afternoon, Your Honor. My
14 name is Michael Suffern. I represent Teva Canada Limited &
15 Cobalt Laboratories LLC in the Achman case.

16 THE COURT: All right.

17 MR. SOLOW: Good afternoon, Your Honor. Andrew
18 Solow for the Bayer and Merck defendants.

19 THE COURT: Anybody else?

20 PLAINTIFF BLANSETTE: Brad Blansette, pro se. No
21 one would represent me in this case.

22 THE COURT: All right. Thank you for calling in,
23 Mr. Blansette. All right. Anybody else?

24 Okay. Let's proceed then. We have a proposed
25 agenda which the Court has in front of it. The first item

1 is an update on settlement. Who is going to be doing that?

2 Ms. Flaherty?

3 MS. FLAHERTY: Yes, Your Honor. As you can see
4 we have a little smaller group here today.

5 THE COURT: We do.

6 MS. FLAHERTY: I think the cold weather is maybe
7 keeping people away, but I am pleased to report that the
8 parties continue to work through the settlements. I think
9 the process is going relatively smoothly. We do have a
10 limited number of cases that remain on the docket, but they
11 are on the radar, and the process is moving forward.

12 There was a motion filed by Mr. Robins' office I
13 believe yesterday with respect to a qualified settlement
14 fund, and I'm not aware of any opposition to that motion,
15 Your Honor.

16 THE COURT: Okay. Do you know the numbers at
17 this point or not?

18 MS. FLAHERTY: I do not, but I suspect my
19 colleagues may have that information.

20 THE COURT: All right.

21 Ms. Bernier?

22 MS. BERNIER: Can I have permission to stay here?

23 THE COURT: You may. Just make sure the
24 microphone is on. That's all.

25 MS. BERNIER: Okay.

1 THE COURT: The green light on.

2 MS. BERNIER: Okay. As far as the Janssen
3 defendants are concerned, we have 20 remaining cases. Nine
4 of those are pro se. I have twelve stipulations I'll send
5 over to the Court later this week for the twelve cases we
6 have managed to get settled in the last couple weeks.

7 THE COURT: All right.

8 MS. BERNIER: We do need some help with the pro
9 se plaintiffs, and we would like to ask the Court if you
10 would help us a little bit. Every time we try to contact a
11 pro se plaintiff, they tell us that they don't want to
12 speak to us, they're not positive it's us, and they have
13 all new injuries.

14 So one of the things we propose is that perhaps
15 you could issue an order that they update their plaintiff
16 fact sheet for us.

17 THE COURT: Okay. And that's in the nine pro se
18 cases?

19 MS. BERNIER: Yes, please.

20 THE COURT: Okay. That's fine.

21 MR. PLAUCHE: Your Honor, we are having a hard
22 time hearing.

23 THE COURT: When you're on the phone when you're
24 speaking, just identify yourself so we have that clear on
25 the record.

1 MR. PLAUCHE: This is Evan Plauche. I'm having a
2 hard time hearing the female speaker who was speaking, who
3 was speaking a minute ago.

4 THE COURT: All right. We'll use a different
5 microphone to make it more clear.

6 MS. BERNIER: Do you want me to repeat that, Your
7 Honor?

8 THE COURT: Why don't you? Yes.

9 MS. BERNIER: As far as the Janssen defendants,
10 we have nine pro se cases remaining at this time. We're
11 having some difficulty getting them to talk to us about
12 their injuries, about what has happened since the last time
13 they communicated with their own attorney.

14 And so we are asking the Court for assistance in
15 providing us an order for them to update their plaintiff
16 fact sheet. We're sending letters. We've tried calling
17 all these people, but we think if the Court made an order,
18 it would help us get up-to-date information on what is
19 going on with these plaintiffs.

20 THE COURT: Okay. Certainly we can do that.

21 MS. BERNIER: Thank you, Your Honor.

22 THE COURT: All right. Ms. Flaherty, did you
23 have anything else?

24 MS. BERNIER: No, Your Honor.

25 THE COURT: Okay.

1 MR. SOLOW: Your Honor, Andrew Solow for the
2 Merck and Bayer defendants. I can give an update.

3 THE COURT: Thank you, Mr. Solow.

4 MR. SOLOW: We have now funded the settlement and
5 filed the dismissals pursuant to the Master Settlement
6 Agreement. Our understanding is the lien administration is
7 still ongoing, and that's why some people may still not
8 have received their settlement funds yet, but from our
9 perspective, we have fully funded.

10 In terms of remaining cases, there are three PTO
11 18 orders to show cause cases pending. They're listed on
12 the agenda. Then there is one case that is, was recently
13 filed and transferred to the MDL. That case would have a
14 May 8th deadline under PTO 18.

15 And then, Your Honor, it was brought to our
16 attention by Mr. Sims just this past week that there is one
17 other case that was originally marked as inactive on the
18 docket that is in fact, may have been improperly marked,
19 and we are working with Mr. Sims to identify that case and
20 determine where that stands and will follow up as
21 necessary.

22 THE COURT: All right. Good. Thank you,
23 Mr. Solow.

24 MR. SOLOW: And I'm sorry, Your Honor. Then
25 there is the Butkiewicz case, which is on the agenda for

1 today which was dismissed without prejudice, and there is a
2 pending motion to vacate.

3 THE COURT: All right. Thank you.

4 Anyone else? All right. Ms. Flaherty, anything
5 else?

6 MS. FLAHERTY: No, Your Honor. That is
7 consistent with plaintiffs' understanding of the status of
8 the settlements.

9 THE COURT: All right. Okay. We have next
10 hearings on three of the orders to show cause: Mr. Reed
11 and Mr. Blansette and Ms. Chauvin. Okay.

12 MS. FLAHERTY: Your Honor, these are Bayer's
13 motions, and I anticipate that Bayer will argue those
14 motions. As liaison counsel, pro se claimant John Reed had
15 contacted me both yesterday and today. It's my
16 understanding he has provided some information to the Court
17 recently, and I believe that information has also been
18 provided to defense counsel.

19 Mr. Reed informed us last night that he was
20 unable to participate via phone in today's status
21 conference because of a recent hospitalization and illness,
22 and I informed him that I would advise the Court of that
23 issue.

24 THE COURT: Okay. And he is not represented,
25 correct?

1 MS. FLAHERTY: That is correct.

2 THE COURT: Okay. And you've not had a chance to
3 review the additional materials that he has provided?

4 MS. FLAHERTY: I have not. I received them just
5 five, ten minutes ago.

6 THE COURT: Right. Okay. All right. So we may,
7 I may continue the hearing on Mr. Reed until our next
8 status conference in light of that.

9 MS. FLAHERTY: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. SOLOW: Your Honor?

12 THE COURT: Yes.

13 MR. SOLOW: If that's Your Honor's ruling, I will
14 not say anything further, but if you will indulge me, I
15 would like to make a record.

16 THE COURT: Who is speaking, please?

17 MR. SOLOW: Sorry, Your Honor. Andrew Solow for
18 the Bayer and Merck defendants.

19 THE COURT: Mr. Solow. Thank you. Go ahead.
20 You can make a record. There is a voluminous amount of
21 material Mr. Reed provided. It may be helpful. It may not
22 be, but I think it should have, we should have the
23 opportunity to go through that.

24 Go ahead, Mr. Solow.

25 MR. SOLOW: Thank you, Your Honor. Your Honor,

1 just to refresh the Court's memory of this case, bottom
2 line -- it's 16CV2059. Mr. Reed has now had over eight and
3 a half months to comply with PTO 18, including two prior
4 extensions by this Court and has still failed to comply.

5 Mr. Reed has continuously sent us copies of his
6 medical records. We have been receiving those to date. As
7 we keep telling Mr. Reed, we've gotten these records
8 already. He doesn't need to keep sending them. He's still
9 not in compliance with PTO 18.

10 He still has not sent any expert reports. He has
11 not sent a records affidavit confirming that he has
12 actually collected all those medical records. He has not
13 sent us an affidavit satisfying the statute of limitations
14 obligations attesting to the date when he first learned of
15 his injury and other related items as required by PTO 18.

16 I will also note for the record, Your Honor, that
17 we have repeatedly offered Mr. Reed an opportunity, despite
18 missing all the prior deadlines, to participate in the
19 Master Settlement Agreement, even up until the date it was
20 funded.

21 Several times Mr. Reed informed us that he
22 changed his mind. He would like to enter the settlement,
23 and then right before it's time to finalize his paper, he
24 backed out and tells us he wants to litigate. So
25 respectfully, Your Honor, while we understand Mr. Reed has

1 a serious medical condition and is unable to appear at this
2 conference, this will now amount to a third extension for
3 Mr. Reed and even further than the eight and a half months
4 on top of the 120 days in PTO 18.

5 Your Honor, respectfully we think at this point
6 in time Mr. Reed just keeps sending the same medical
7 records over and over again and has no intention of
8 complying with PTO 18 or has no ability to comply with PTO
9 18.

10 So we would ask that the case be dismissed with
11 prejudice or if not that this be the third and final
12 extension and it be made clear to Mr. Reed that if his case
13 is in fact carried over that if he is not in full
14 compliance, the Court will dismiss it with prejudice.

15 Thank you, Your Honor.

16 THE COURT: Anything else?

17 MR. SOLOW: Nothing, Your Honor.

18 THE COURT: Okay. Ms. Flaherty?

19 MS. FLAHERTY: No, Your Honor.

20 THE COURT: Okay. We will give him one more
21 chance here because I understand he has some mental health
22 issues as well, but we will note that this is the third and
23 final extension.

24 All right. Let's go to, let's see,
25 Mr. Blansette's case.

1 PLAINTIFF BLANSETTE: I'm here, Your Honor.

2 THE COURT: Okay. Let's hear from Mr. Solow
3 first on this one.

4 MR. SOLOW: Thank you, Your Honor.
5 Mr. Blansette's case, 17CV4127, was originally on an order
6 to show cause docket number 11 in his case that was entered
7 on October 7th, 2019. On October 10th, 2019, the Court
8 granted Mr. Blansette 45 days to retain counsel, and
9 pursuant to the Court's direction we renewed the order to
10 show cause, and that's document number 15.

11 November 26th, 2019, the Court again granted
12 Mr. Blansette an additional 45 days to retain counsel and
13 comply with PTO 18 by January 10th, 2019, and that's docket
14 number 22. Your Honor, on January 13th, we then renewed
15 our order to show cause as Mr. Blansette had still not
16 complied with the additional second 45-day extension, and
17 those are docket numbers 24 and 25.

18 On January 17th, the Court granted the order to
19 show cause and gave Mr. Blansette until February 7th to
20 comply with PTO 18. On January 27th, Mr. Blansette
21 indicated that he was being treated unfairly. He also sent
22 me a personal e-mail with several descriptions, Your Honor,
23 and unless the Court requires me I won't read those into
24 record, but certainly not the way a member of the bar
25 should be treated and also accused myself and my firm of

1 destroying papers that he sent, which I just want to be on
2 the record that's absolutely false, and I will represent
3 that as an officer of the Court.

4 Your Honor, this return date is now due today,
5 February 19th. Mr. Blansette has now had two extensions,
6 has failed to comply with PTO 18. Even in the interim
7 after we served our order to show cause in this past month,
8 we have not received the required paper from him.

9 Your Honor, we think at this point in time the
10 case should be dismissed pursuant to PTO 18 with prejudice.

11 THE COURT: All right.

12 Mr. Blansette, are you on the phone?

13 PLAINTIFF BLANSETTE: Yes, sir, I am.

14 THE COURT: Okay. Can you explain? Have you
15 been attempting to get counsel and not able to, or what is
16 the situation? I understand you want this matter dismissed
17 without prejudice and you would pursue it someplace else,
18 but maybe you could explain what your situation is.

19 PLAINTIFF BLANSETTE: That is correct, sir. I
20 have actually sent certainly documents in to the Court with
21 motions explaining this, but I will explain it again. I
22 have contacted all of the attorneys on the plaintiffs
23 steering committee, and they have all refused to help me.

24 I initially contacted Baron & Budd well over two
25 years ago. They were the first group that I contacted.

1 They led me on for a while, then refused to help me. I
2 have had several attorneys agree to take my case and then
3 muddle around and drop it, including Aylstock, Witkin,
4 Kreis & Overholtz and their other group who took my case
5 initially, signed all the initial paperwork, had me sign a
6 retainer agreement and then dropped my case a week before
7 what would have been my apparent statute of limitations,
8 which then caused me to file this case pro se in order to
9 protect my rights.

10 After that happened, sir, I did file the
11 plaintiff's fact sheet and sent it to the defendant, and
12 that was mysteriously lost somehow. So the defendant, I
13 don't know if they got it or not, but I did send it to
14 them, and they're saying they don't have it.

15 I did not have a second copy of it, nor have I
16 any proof that I mailed it because at that time I was in
17 some sort of mental state and just did what I did and sent
18 it to them thinking that would be all that would be
19 necessary. As I have said before, I'm pro se in this case.
20 I don't understand any of this.

21 I have no legal knowledge. This is way over my
22 head. I have attempted to contact dozens of other
23 attorneys, and they have all refused my case. Because of
24 the status with the defendant, they have offered me the low
25 ball, lowest tier settlement in this case, which is

1 completely unacceptable with the consideration that I am
2 going to be damaged for the rest of my life. I am
3 suffering from mental illness because of their toxic drugs.
4 I am suffering from physical disabilities because of their
5 toxic drugs.

6 I don't know what to do. I should technically be
7 entitled to a tier two settlement level in this, and they
8 have not offered that to me. They have only offered the
9 lowest tier. So since I am not getting what I feel is, I'm
10 entitled to, I've asked to be removed from this without,
11 without prejudice until some time or some other place as I
12 can find someone to represent me properly that understands
13 how to do this properly.

14 THE COURT: All right. Mr. Solow, anything else
15 you would like to say?

16 MR. SOLOW: Yes. Andrew Solow for the Bayer and
17 Merck defendants.

18 Your Honor, to be clear, as the Court knows, the
19 Bayer and Merck defendants funded a Master Settlement
20 Agreement that was negotiated with the plaintiffs'
21 leadership. As part of that agreement, the plaintiff
22 leadership had hired their own independent
23 mediator/arbitrator to determine the value.

24 These are not values that were determined by the
25 Bayer and Merck defendants, so we take no position in that,

1 and there was an internal procedure for plaintiffs to deal
2 with their allocation under the settlement agreement.

3 Second of all, Your Honor, we do understand
4 Mr. Blansette is asking for dismissal without prejudice.
5 As we set forth in our papers, we don't believe a dismissal
6 without prejudice is proper at this point in time. This is
7 the forum for it to be litigated.

8 If in fact Mr. Blansette is going to proceed, he
9 needs to comply with PTO 18. There is no reason this case
10 should be dismissed for him to then potentially file in
11 another forum and us have to incur the costs and expense to
12 then transfer the case back to the MDL and then have PTO 18
13 apply again.

14 THE COURT: All right. Mr. Blansette, anything
15 else you would like to say?

16 PLAINTIFF BLANSETTE: Just as I said, I was only
17 offered the settlement agreement through one of the people
18 of the plaintiffs steering committee. I wasn't given any
19 opportunity to participate in any of that. It was all done
20 behind my back, and then a number was just thrown at me at
21 the end.

22 So I didn't have anyone to represent me and keep
23 me in the proper tier, which once again is tier number two.
24 That's where I should be granted because of my claims and
25 my medical problems, and I feel that if I can't be

1 associated with the proper tier, then I should be allowed
2 to be removed from this case without prejudice.

3 THE COURT: All right. Thank you for the
4 arguments. I will take this matter under advisement and
5 issue a written order shortly.

6 So thank you for participating, Mr. Blansette. I
7 appreciated hearing from you, and the Court will issue a
8 ruling shortly on the two motions.

9 PLAINTIFF BLANSETTE: Thank you.

10 THE COURT: Let's move on to Barbara Chauvin, is
11 it?

12 MR. PLAUCHE: Chauvin, Your Honor.

13 THE COURT: Chauvin. Okay. Mr. Solow?

14 MR. SOLOW: Yes, Your Honor. This is 18CV579.
15 This case also appeared originally on the order to show
16 cause in docket number 19 in that case on October 7th,
17 2019. Counsel was retained by the Chauvins, has been
18 responding to our motion papers and taken the position that
19 they have complied with PTO 18.

20 As Your Honor may recall, we appeared before the
21 Court back in October and November, and at that point in
22 time, we had indicated that there was still no compliance
23 with PTO 18. The main issue, which is still at issue
24 today, is that the plaintiffs have not yet retained a
25 general causation expert and therefore we could not proceed

1 with the case and set a schedule as is required by PTO 18.

2 The Court granted an extension until 12/30/2019.
3 That order came on November 20th. Then on January 14th of
4 this year, docket number 26, we filed our renewed motion
5 for an order to show cause. We again informed the Court
6 that plaintiffs had not complied by serving, amongst other
7 things, the new general causation report.

8 As Your Honor may recall and as seen in the
9 papers, plaintiffs served the PSC prior expert reports that
10 have been used in this case. In response to that, October
11 7th, plaintiffs filed a surreply attaching an ethics
12 opinion taking the position that it's the PSC's obligation
13 to provide generic general causation and liability experts
14 for the plaintiff.

15 Your Honor, the Bayer and Merck defendants take
16 no position on this dispute between the PSC. They can
17 speak for themselves and the plaintiffs' claims, but our
18 position is under PTO 18 these old prior general causation
19 reports do not indicate that these experts have in fact
20 been retained in the Chauvin case, and as such, they are
21 not in compliance with PTO 18.

22 Therefore, Your Honor, we believe it is
23 appropriate for the Court to dismiss this case with
24 prejudice.

25 THE COURT: All right. Counsel for Ms. Chauvin?

1 MR. PLAUCHE: Your Honor, it is Evan Plauche. I
2 would like the Court to note for the record that it appears
3 that Bayer is now taking the position and agrees with the
4 Chauvins that we have complied with every aspect of
5 Pretrial Order Number 18 and every other pretrial order
6 that was issued by this Court with the exception of Bayer's
7 position that they believe that it's our responsibility,
8 that is Barb and Mark Chauvin, to retain and hire and
9 defend all the challenges for the general causation and
10 liability experts.

11 It's our position that we filed a surreply that
12 that is the responsibility, in our opinion and in the
13 opinion of our ethics expert, of the plaintiffs steering
14 committee. Those experts were hired by the plaintiffs
15 steering committee as certain causation and liability
16 experts to benefit all of the plaintiffs in this MDL.

17 Those reports are still valid as to Barb and Mark
18 Chauvin, and it's our position that the reports should be
19 accepted as they are, that the plaintiffs steering
20 committee should be required to come in and defend the
21 *Daubert* challenges and produce the experts for *Daubert*
22 challenges to the extent that Bayer believes that they need
23 to go forward with those *Daubert* challenges.

24 We are not part of the settlement process. We
25 rejected the offers that were made by the PSC as being

1 totally inadequate and frankly not even enough to pay the
2 cost of us copying the records. So it's our position that
3 we have complied with every aspect of every pretrial order
4 that this Court has issued.

5 We have provided affidavits. We provided 6,400
6 pages of records. We have now provided two expert reports,
7 including a specific causation opinion by a doctor, as well
8 as an ethics opinion, which is in the court record, by one
9 of the preeminent ethics experts in Louisiana on the issue
10 of whose responsibility it is to present the general
11 causation and liability experts and to handle the *Daubert*
12 challenges of those experts.

13 And it's our position that the Court should deny
14 Bayer's motion and allow the Chauvins' claim to go forward
15 with the directions to the plaintiffs steering committee to
16 produce the experts and handle the defense of the *Daubert*
17 challenges.

18 THE COURT: Question that I had. Is it
19 Mr. Ciolino the expert, Dane Ciolino?

20 MR. PLAUCHE: Yes, Your Honor.

21 THE COURT: Reacts to an opinion of Professor
22 Baker, Lynn Baker, from the University of Texas Law School.
23 We weren't able to find this opinion from Professor Baker.
24 Is that in the record anywhere? Does anyone know?

25 MR. PLAUCHE: As far as I know, Your Honor, it's

1 not in the record. When we raised this issue with
2 plaintiffs steering committee last year, they responded by
3 providing the opinion from a Texas lawyer. How a Texas
4 lawyer would be able to render an opinion in Louisiana
5 court is beyond my comprehension.

6 But anyway, they provided an opinion from this
7 Texas lawyer that he felt like it was our responsibility to
8 do this and not the plaintiffs steering committee, and as
9 far as I know, that report has never been placed in the
10 record.

11 THE COURT: Ms. Flaherty?

12 MS. FLAHERTY: Thank you, Your Honor. The PSC
13 has obtained an opinion from Professor Baker. As counsel
14 has indicated, it is not part of the record. To the extent
15 that the Court would like us to provide that, we would like
16 an opportunity to either submit that under seal or in a
17 letter brief to the Court, addressing the issues that
18 counsel has raised.

19 Aside from that, we don't take a position on the
20 order to show cause or the motion for the order to show
21 cause and dismissal of the claim. I can say that we have
22 provided counsel with the expert reports that were
23 previously produced in this MDL litigation, as well as the
24 deposition transcripts and briefing.

25 THE COURT: All right. Okay. I think it would

1 be helpful to see it. You can submit the opinion under, in
2 camera, if you wish.

3 MS. FLAHERTY: Thank you.

4 THE COURT: All right. Okay. You know, given
5 what you've received, Mr. Plauche, is it?

6 MR. PLAUCHE: Yes, Your Honor.

7 THE COURT: Yeah. I wanted to make sure I
8 pronounce your name right, Mr. Plauche. Assuming, you
9 know, you have received some materials, if you were
10 required to retain and produce general causation liability
11 experts in this case, how much time would you need? I'm
12 just asking hypothetically at this point.

13 MR. PLAUCHE: Well, considering the complexity of
14 the opinions that are involved with these experts even to
15 find somebody to do it is going to take a significant
16 amount of time. I would expect at least 90 days to do
17 that, if we were even able to do it.

18 THE COURT: All right. Mr. Solow, anything else
19 you would like to say?

20 MR. SOLOW: Your Honor, I think that goes
21 directly to the point. We should not have to proceed in
22 this case if in fact the plaintiff can't generate a general
23 causation and a liability expert, and that's what the
24 purpose of PTO 18 is. So you understand our position.

25 THE COURT: I do. All right.

1 Mr. Plauche, anything else?

2 MR. PLAUCHE: Your Honor, I just want to point
3 the Court to the references that we cited in our surreply,
4 including one of the articles on the exact issue that we're
5 dealing with here, and that is the responsibility of PSC
6 counsel in, fiduciary responsibility of PSC counsel to
7 plaintiffs that they do not actually represent.

8 I think it's important that the Court consider
9 these issues because I think it's an important issue, and
10 the fact that what they are suggesting would essentially
11 pull the experts that were produced by a tremendous amount
12 of work by the PSC and leave Ms. Chauvin essentially
13 incapable of prosecuting her claim without those experts,
14 and I think it's improper, and I think that's unfair.

15 And I think that under the circumstances I think
16 we should be allowed to rely on those reports because
17 frankly there is no surprise to Bayer what's in the
18 reports, and so I think that Bayer's motion to dismiss
19 should be denied.

20 And I do want to point out to the Court that the
21 PSC I believe in papers that were filed in this case also
22 agreed and admitted that we, Barb and Mark Chauvin, had in
23 fact complied with all of Pretrial Order Number 18 and
24 Pretrial Order Number 4 and all the other pretrial orders
25 that were issued by this Court.

1 THE COURT: All right. Thank you. I will take
2 this matter under advisement as well and issue a written
3 order shortly.

4 All right. That's all we have on hearing on
5 orders to show cause, correct, Mr. Solow?

6 MR. SOLOW: Correct, Your Honor. The remaining
7 item is the motion to vacate the dismissal with prejudice
8 in the Butkiewicz case.

9 THE COURT: Okay. Very well. That motion has
10 been brought by Mr. Bradley. Do you wish to be heard?

11 MR. BRADLEY: I do, Your Honor.

12 THE COURT: Okay. Come on up to the lectern.

13 MR. BRADLEY: Good afternoon, Your Honor. On
14 behalf of David Butkiewicz, Patrick Bradley. This is the
15 motion that I filed to vacate the dismissal order that was
16 entered in December of last year, and my motion speaks for
17 itself.

18 The gravamen of the motion is that, and by the
19 way, I'm not making an excuse for this. This is my
20 responsibility, but as stated in the motion, I had two
21 e-mails. I became affiliated with the Clifford Law Firm in
22 Chicago in June of '18, and the next year or 16 months, I
23 was officing there, and I had my e-mail at the Clifford Law
24 Office.

25 I filed this case originally in the Northern

1 District of Illinois under the Clifford name with my e-mail
2 and my assistant's e-mail and the general e-mail. Now how
3 my prior e-mail got attached to that filing when this case
4 was transferred to this Court and this MDL, I have no idea
5 even to this date.

6 But be that as it may, I acknowledge that there
7 were filings made by the defendant after October 22nd that
8 went to my old e-mail that I didn't see for some time.
9 Mr. Solow has stated in his opposition that we had some
10 conversations. I remember two explicitly.

11 The first was with regard to whether Bayer would
12 waive service, and that was sometime in August of 2019. In
13 October I was told in written form that they would.
14 Mr. Solow references a conversation we had about the PTO
15 Order 18 and a motion. I don't remember it. That doesn't
16 mean it didn't happen. I just don't remember it.

17 I do recall sitting down at my computer, looking
18 at the website for this MDL and not being able to find PTO
19 Order 18. That may be the genesis of the conversation he's
20 referring to. I take all responsibility for this, but the
21 bottom line is that I didn't get notice at the office where
22 I am presently practicing of the entry of the orders
23 regarding the dismissal of this case.

24 For the benefit of Mr. Butkiewicz, I would ask
25 that the motion be granted and the order of dismissal be

1 vacated. I have tendered all of the medical records, some
2 1400 pages, to counsel for the defendant. I have tendered
3 all the pharmacy records that have been garnered to counsel
4 for the defendant. I have given an affidavit regarding the
5 statute of limitations issue.

6 I have given an affidavit myself in regard to the
7 motion itself, and I do not yet have a 26(a) expert, and
8 I've just listened to the hearings before, and I realize
9 that may be a problem. I have a general liability or the
10 specific liability physician that I will go to with regard
11 to the plaintiff specifically, but I would need some time.

12 For the benefit of Mr. Butkiewicz, I just ask
13 that the dismissal order be vacated and he be allowed some
14 additional time to comply fully with the Pretrial Order
15 Number 18 and any other requirement.

16 THE COURT: So Pretrial Order Number 18, other
17 than the expert, everything else is complied with right
18 now, do you know?

19 MR. BRADLEY: Apparently not. I filed -- the
20 full complaint was brought to this Court, but I guess I'm
21 going to need a short form, which I think can be completed
22 in short order.

23 THE COURT: Okay.

24 MR. BRADLEY: And there might have been something
25 else that Mr. Solow mentioned in his motion that I don't

1 have.

2 THE COURT: All right. Let's hear from
3 Mr. Solow. Thank you, Mr. Bradley.

4 MR. SOLOW: Andrew Solow for the Bayer and Merck
5 defendants. Two points, Your Honor: First respectfully to
6 counsel, I have a voicemail on my computer that I could
7 play for the Court if the Court wanted to from October
8 22nd, the day we served the PTO 18 order to show cause
9 motion from Mr. Bradley indicating that he had received the
10 motion and asking us for a copy of PTO 18.

11 In response to that -- so first of all, Your
12 Honor, the notion that this is Mr. Bradley's e-mail
13 confusion is belied by the voicemail. Clearly he
14 acknowledges the receipt of the motion when he was
15 originally served, so e-mail issues aside, he had actual
16 knowledge of the motion.

17 In response to that voicemail, my colleague
18 Nanette Decea sent counsel a copy of PTO 18, so certainly
19 they had full actual knowledge of PTO 18 to comply. So not
20 only were they on, required to and had PTO 18 at the time
21 it was issued and understand all obligations, but they
22 actually had actual knowledge of this actual motion. So
23 that is the first point, Your Honor.

24 Secondly, in their motion to vacate on December
25 20, 2019, they did not comply with PTO 18. As Mr. Bradley

1 conceded, he has not served a short form complaint. He has
2 not served a general causation or specific causation or
3 liability expert reports.

4 They failed to serve an affidavit of compliance
5 in terms of the medical record collection, and they have
6 also failed to comply with PTO 3 showing actual proof of
7 usage, which is required as part of the short form
8 complaint obligation as well.

9 So, Your Honor, that opposition was filed, docket
10 20, on January 10th, 2020. Here we are now a month later,
11 and there is deficiencies in PTO 18 that still aren't
12 cured. So respectfully, Your Honor, we don't believe that
13 any further time should be granted because, one, there was
14 actual notice of the original motion; and two, there is no
15 basis to vacate the dismissal without prejudice because
16 they're still not complying.

17 THE COURT: Okay. Mr. Bradley, anything else?

18 MR. BRADLEY: Your Honor, I can readily comply.
19 Obviously incurring the costs to go out and get an expert
20 witness and do all those things in the face of a matter
21 that had been dismissed, I put everything on hold waiting
22 for this resolution.

23 I don't deny that that conversation probably
24 occurred. I don't. I'm taking responsibility for it. All
25 I'm saying is that the notices that I stumbled across were

1 in my old e-mail, and again that's not an excuse, either.
2 I don't even know how to end my old e-mail.

3 Be that as it may, where I was located and the
4 e-mail address that was on the complaint, and I fully
5 expected that to come to my office, and it didn't. That's
6 not a full excuse, but it's mine. I own it.

7 THE COURT: All right. Thank you.

8 Anything else, Mr. Solow?

9 MR. SOLOW: Nothing further, Your Honor.

10 THE COURT: Okay. Okay. I will also take this
11 matter under advisement. We will probably issue a written
12 order in the next day or two. Okay?

13 MR. BRADLEY: Thank you, Your Honor.

14 THE COURT: All right. Anything else before we
15 schedule the next status conference?

16 MS. FLAHERTY: Your Honor, just to clarify with
17 the PSC on the Chauvin matter.

18 THE COURT: Mm-hmm.

19 MS. FLAHERTY: In terms of timing to submit the
20 ethics opinion and our letter to the Court in camera, I
21 would just like to know what date the Court would like that
22 information.

23 THE COURT: Well, I'll hold off on any resolution
24 of that motion until I get it, as soon as you can get it
25 in, but I won't set any kind of deadline.

1 MS. FLAHERTY: Okay. Thank you.

2 THE COURT: All right. Anything else? Okay.
3 Next status conference, do you have a proposal,
4 Ms. Flaherty? A couple of months, maybe?

5 MS. FLAHERTY: Your Honor, I know we're getting
6 close to that time of spring breaks.

7 THE COURT: Right.

8 MS. FLAHERTY: People trying to escape the cold.
9 I have not had an opportunity to confer with Mr. Solow or
10 counsel for J & J, but if the Court is available in
11 mid-April, I think we could work together to find some
12 dates that would work.

13 THE COURT: Why don't we just give a couple of
14 days, Heather, that you can find there in mid-April, and
15 then we can hear back from you if you can agree upon a date
16 and time.

17 THE CLERK: The week of --

18 MR. SOLOW: Andrew Solow. That works, Your
19 Honor. We will coordinate with Heather for a date in
20 April.

21 THE CLERK: I will communicate with counsel.

22 THE COURT: Very well. We will get that set up
23 in the next day or two so you can make arrangements.

24 MS. FLAHERTY: Thank you.

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

1 MS. FLAHERTY: No, Your Honor.

2 THE COURT: All right. The matters that the
3 Court heard today, the disputed matters, the Court will
4 take under advisement and will issue a written order in
5 each of them shortly, and the Court will also issue the
6 order approving the qualified settlement fund as proposed.

7 All right. We will be in recess. Thank you very
8 much.

9 MS. FLAHERTY: Thank you.

10 THE CLERK: All rise.

11 MR. SOLOW: Thank you, Your Honor.

12 **(Court was adjourned.)**

13 * * *

14 I, Kristine Mousseau, certify that the foregoing
15 is a correct transcript from the record of proceedings in
16 the above-entitled matter.

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20 Certified by: s/ Kristine Mousseau, CRR-RPR
21 Kristine Mousseau, CRR-RPR

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