

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Baycol Products Liability Litigation

MDL No. 1431

Pretrial Order No. 35
And Memorandum Opinion

Richard A. Lockridge, Hugh V. Plunkett, Robert K. Shelquist, Joseph F. Henderson and Yvonne Flaherty, Lockridge Grindal Nauen P.L.L.P. and Charles S. Zimmerman and Ronald S. Goldser, Zimmerman Reed, P.L.L.P. for and on behalf of Plaintiffs.

Peter Sipkins, Dorsey & Whitney, Philip S. Beck, Adam L. Hoeflich and Tarek Ismail, Bartlit Beck Herman Palenchar & Scott, Susan A. Weber, Sidley Austin Brown & Wood, and Richard K. Dandrea, Eckert Seamans Cherin & Mellon, LLC for and on behalf of Bayer Corporation.

Scott A. Smith and Tracy J. Van Steenburgh, Halleland Lewis Nilan Sipkins & Johnson, P.A. and Fred T. Magaziner, Dechert Price & Rhoads, for and on behalf of SmithKline Beecham Corp. d/b/a GlaxoSmithKline.

Plaintiffs move the Court to administratively stay and close the individual Baycol cases transferred to the District of Minnesota by the Judicial Panel on Multidistrict Litigation ("JPML") and those cases originally filed in the District of Minnesota. Plaintiffs assert that administratively closing the individual cases advances judicial efficiency by eliminating the burden incurred in litigating hundreds of individual cases, while allowing common issues of liability, causation and class certification to proceed. Plaintiffs further assert this relief will minimize the risks and conflicts inherent in multiple cases proceeding simultaneously in courts throughout the country.

Defendants oppose the motion because administratively closing the individual cases does not do what Plaintiffs purport it will do. This Court has jurisdiction over

pretrial matters in all Baycol cases transferred or filed in this District. Pretrial Order No. 4 provides that with respect to cases transferred to this Court by the JPML, any discovery orders issued in the transferor courts are vacated and replaced by discovery orders issued by this Court. Therefore, there is no threat of conflicting rulings.

Defendants also oppose the motion because administratively closing the individual cases would essentially relieve Plaintiffs from complying with the discovery orders currently in place. For example, Plaintiffs would be relieved of their obligation to file "Fact Sheets", preventing Defendants from analyzing the merits of the individual cases.

Plaintiffs cite to the opinion In re Upjohn Company Antibiotic Cleocin Products Liability Litigation, 81 F.R.D. 482 (E.D. Mich. 1979) aff'd 664 F.2d 114 (6th Cir. 1981) as an example of conflicting pretrial orders entered by the transferor court, and to emphasize that it is the duty of the transferee court to control pretrial proceedings in consolidated cases. In Upjohn one of the transferor courts had entered a protective order that conflicted with orders in the MDL. The issue in Upjohn was whether the MDL court had the authority to vacate the conflicting protective order after that particular case had been transferred to the MDL court. Id. at 486-487. The court concluded that given the unique nature of MDL litigation, and the duty of the MDL court to control pretrial procedures, it had the authority to vacate the protective order. Id.

This Court believes the reasoning of the court in Upjohn is sound, and correctly describes the duties of the transferee court in MDL proceedings. However, Upjohn in no ways supports a motion to administratively close individual cases already existing in

this MDL proceedings. It also does not stand for the proposition that this Court can control the actions of transferor courts before the case before it is transferred by the JPML. Because this Court controls all pretrial proceedings with regard to all cases involved in this MDL proceeding, there is no threat of conflicting rulings.

The Court further finds that Plaintiffs have failed to demonstrate that this case is hampered by duplicative discovery and motion practice, warranting administrative closure of the individual cases. Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion for an Order to Stay and Administratively Close Individual Federal Cases Pending Final Resolution of Consolidated Pretrial Proceedings is hereby DENIED.

Date:

Michael J. Davis
United States District Court