

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE: NUVARING PRODUCTS)
LIABILITY LITIGATION)
) Case No. 4:08-MD-01964 RWS
)

STATUS CONFERENCE
BEFORE THE HONORABLE RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE
JULY 25, 2014

APPEARANCES: Honorable Judge Brian R. Martinotti

Honorable Judge Daniel J. Stack, Special
Master

For Plaintiffs: Kristine Kraft, Esq.
Roger Denton, Esq.
SCHLICHTER AND BOGARD
100 S. Fourth Street, Suite 900
St. Louis, MO 63101

For Defendants: Stephen Strauss, Esq.
Dan Ball, Esq.
BRYAN CAVE, LLP
211 N. Broadway, Suite 3600
St. Louis, MO 63102

(Appearances continued on Page 2)

REPORTED BY: SHANNON L. WHITE, RMR, CRR, CSR, CCR
Official Court Reporter
United States District Court
111 South Tenth Street, Third Floor
St. Louis, MO 63102
(314) 244-7966

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Appearances Continued:

By telephone:

For Plaintiffs: Hunter Shkolnik, Esq.
NAPOLI AND BERN
350 Fifth Avenue
New York, NY 10118

For Defendants: Melissa A. Geist, Esq.
REED SMITH, LLP
136 Main Street, Suite 250
Princeton Forrestal Village
Princeton, NJ 08540

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(PROCEEDINGS STARTED AT 10:05 AM.)

THE COURT: Morning. We're here today in the case styled *In Re: NuvaRing Products Liability Litigation*, Cause No. 4:08-MD-1964. Would counsel here in St. Louis make their appearances, please?

MR. DENTON: Your Honor, good morning. Roger Denton and Kristine Kraft on behalf of the Plaintiffs' Steering Committee. Also present in court is our Special Master, Judge Stack.

MR. STRAUSS: Good morning, Your Honor. Steve Strauss and Dan Ball of Bryan Cave for defendants.

THE COURT: If you would mute your phones, please. We're getting feedback, or if anyone has their phone on speaker, take it off speaker.

Judge Martinotti, do you want to call the style of your case, please?

JUDGE MARTINOTTI: Thank you, Judge. We are in court in Bergen County, New Jersey, on *In re: NuvaRing*, Case No. 284(MT).

Counsel, your appearances for the record, please?

MR. SHKOLNIK: Hunter Shkolnik, Napoli Bern. Hunter Shkolnik on behalf of plaintiffs.

MS. GEIST: Melissa Geist from Reed Smith for the defendants.

JUDGE MARTINOTTI: That's what we have here, Your

1 Honor.

2 THE COURT: Thank you. Mr. Denton, we're here today
3 to talk about the status of the proposed settlement in the
4 consolidated NuvaRing cases. Why don't you just give us a
5 brief history to this moment. It's my understanding that the
6 threshold participation numbers have been met and that we are
7 going to take some further action then today as a result.

8 MR. DENTON: Yes, Your Honor. Thank you. Roger
9 Denton on behalf of the plaintiffs.

10 Judge, we entered into a Master Settlement Agreement
11 back in February of this year with the defendants. As part of
12 that process, plaintiffs were given an opportunity to opt in
13 to the settlement program. We can tell you that the
14 thresholds have been met and exceeded, and as a result, the
15 settlement program will be funded. The funding date is on or
16 about August 13 of this year, a few weeks from now.

17 So the program will go forward, which is, we think,
18 very good news, a lot of hard work by a number of firms and a
19 lot of cooperation between the parties to get everybody that
20 wanted to be in, in.

21 What has now happened within that program, this
22 Monday or last Monday, July 21, was the final deadline for
23 claims packages to be submitted to the claims administrator,
24 Brown Greer. Based on the information we have from Brown
25 Greer, only 32 folks who had opted in to the program failed to

1 submit claim packages. So -- and we believe that a lot of
2 those folks may not be found, or whatever, but the bottom line
3 is, is most, if not everyone, has submitted a claim package.

4 What's going on now is, Brown Greer has a period of
5 time to evaluate the quality of the claims packages to see if
6 they're deficient or not. They will issue deficiency notices,
7 and then there is a 30-day cure period. At the end of that
8 period if a package is deemed sufficient and complete and that
9 it's an eligible claim, those cases would then be transferred
10 to the Plaintiffs' Review Committee for allocation pursuant to
11 the terms of the settlement agreement.

12 If there are claimants that do not or did not provide
13 timely claim packages or failed to appropriately and timely
14 cure any deficiency, those claimants, or filed plaintiffs,
15 will be subject to a dismissal with prejudice.

16 It is our hope and belief that we'll get just about
17 everyone in and there would be very few cases remaining on
18 your docket. After that process, if there are any remaining
19 in the implementation orders that you've previously approved
20 and entered, will go into effect, and then those individual
21 remaining few cases will have to comply with those orders and
22 any other procedures set forth therein.

23 And that's where we're at on the settlement program.
24 At a thirty-thousand-foot view, it's going very well. The
25 cooperation between the parties, the cooperation with the

1 claims administrator has been very good. It's taken a lot of
2 effort, but it's going well, and it's going as anticipated.

3 Thank you.

4 THE COURT: Mr. Ball or Mr. Strauss, anything to add
5 before I --

6 MR. STRAUSS: Nothing to add. Thank you, Your Honor.

7 THE COURT: Thank you. Obviously, there's a lot of
8 work left to be done. It's encouraging that the thresholds
9 have been met. That obviously triggers a number of other
10 activities that were just described or a number of deadlines
11 that were just described by Mr. Denton, but it also brings
12 into focus those who have not elected to participate have --
13 are going to have some additional and new burdens going
14 forward, and it's important to me that all those parties fully
15 understand and are on notice about what's expected of them
16 both within the settlement and outside of settlement.

17 As everyone knows, the stay was entered in this
18 litigation on January 9 of this year. That stay will expire
19 and will no longer be in effect as of July 31. That's next
20 Thursday. As a result, compliance with all applicable orders
21 and deadlines previously set by this Court -- and I'm sure
22 Judge Martinotti will have some things to add in a minute --
23 will begin to run as of that date for cases that are not
24 participating in the resolution program.

25 For reference, you can go to this court's website or

1 certainly the multidistrict case pending here. So anyone not
2 participating in the resolution program you should refer to
3 the order regarding preservation of records and prima facie
4 evidence of usage, injury and causation requirements for
5 pending cases, and that order was entered on February 7, 2014.
6 It's Docket No. 1680 in the overarching case pending here.

7 That order does contain important deadlines including
8 deadlines regarding experts and proof required for any case
9 proceeding outside of the NuvaRing resolution program.

10 As you know, this court hearing is being held in
11 conjunction with Judge Martinotti in the state court of New
12 Jersey, and I know that Judge Martinotti has entered similar
13 orders in the New Jersey NuvaRing litigation. Any cases or
14 parties proceeding in that court should be aware of the
15 deadlines that are affected there.

16 Judge Martinotti, would you like to address that?

17 JUDGE MARTINOTTI: Briefly, Your Honor. First, I
18 would be remiss if I didn't thank you and Judge Andersen and
19 all those who participated in the mediation program which
20 resulted in a settlement, and I'd like to also commend and
21 thank the lawyers for their participation in the program which
22 enabled us to reach our threshold.

23 I am a firm believer of coordination between state
24 and federal and multicounty and multidistrict litigation, and,
25 Your Honor, it's been an absolute privilege and pleasure to

1 work with you and your staff in this particular matter.

2 In New Jersey we did enter similar orders. On
3 October 18, 2013, I entered an order staying litigation until
4 December 31, 2013. That's CMO No. 30. January of 2014, I
5 extended that stay until May of 2014. That's CMO No. 32.

6 January 29, 2014, I entered an order announcing a
7 supplemental census of claims which is believed to be
8 necessary in the management of this coordinated litigation.
9 That's CMO No. 33.

10 On February 7, 2014, this court, along with the other
11 courts handling this litigation, specifically the MDL,
12 announced a Master Settlement Agreement, No. 35. Further
13 entered an order formalizing the previous appointments made in
14 cooperation with the MDL of each of the co-lead counsel's
15 members of the Plaintiffs' Negotiating Committee, CMO No. 36.

16 Coordination with the MDL, we entered an order as to
17 the preservation of records, prima facie evidence -- CMO No.
18 37 -- as well as an order governing procedures to notices to
19 third parties regarding records preservation. CMO No. 38.

20 On May 30, 2014, I entered an order, CMO No. 40,
21 extended the stay of this litigation until July 30, 2014. The
22 stay entered by this court and during litigation will expire
23 on July 30, 2014. Therefore, as of that date, the time for
24 compliance with all pretrial deadlines set forth in CMO No. 37
25 will begin to run for all cases now participating in the

1 NuvaRing resolution program.

2 Similar to Judge Sippel, I'm referring all parties
3 not participating in the resolution program to CMO No. 37,
4 preservation of records and prima facie evidence of usage,
5 injury and causation requirements for pending cases not
6 participating in the NuvaRing resolution program, and newly
7 filed or transferred cases entered on February 7, 2014.

8 CMO No. 37 contains important deadlines including
9 ones relating to experts and proof required for any case
10 proceeding outside of this program. The court will direct all
11 parties to the judicial website, specifically the multicounty
12 litigation section, and within that section you can see all
13 the orders entered in this particular matter addressing the
14 settlement program as well as the requirements for anyone who
15 opts out of the program.

16 Again, Judge, I thank you for the opportunity to work
17 with you on this matter. I commend all counsel for a job well
18 done and well representing their clients' interests.

19 THE COURT: I would like to take this moment as well
20 to thank Judge Martinotti. I can't think of a better state
21 court colleague to have coordinated this case with. It's been
22 not always easy, sometimes driven by outside forces, but one
23 constant has always been the incredible judicial demeanor and
24 efforts of Judge Martinotti throughout this litigation. As a
25 result -- and, of course, I need to thank the parties for

1 their efforts.

2 I'm going enter an order later today outlining what
3 we've covered. It is fundamentally important to those parties
4 not participating in the resolution program that they make
5 themselves aware of the deadlines that will begin next week.

6 Whatever happens here, I know even the counsel that
7 have elected to settle do not wish to see any nonparticipating
8 parties left out; that everyone has the opportunity to
9 participate as appropriate, and if they elect not to
10 participate, that their claims are not denied simply because
11 they failed to meet the deadlines as posted.

12 So please familiarize yourself with those and file
13 them as directed because there are some very serious
14 consequences. As Mr. Denton alluded to, dismissal with
15 prejudice doesn't -- that's pretty fundamental.

16 So I will send out an order later today. I expect
17 Judge Martinotti will do the same. And we'll also set a
18 status conference for this litigation for approximately 90
19 days to monitor the progress. And I commend Judge for his
20 efforts in working through these. Perhaps in some ways the
21 hard work has only just begun.

22 So anything further on behalf of the parties?

23 MR. DENTON: No, Your Honor.

24 JUDGE MARTINOTTI: Your Honor?

25 THE COURT: Yes, Judge.

1 JUDGE MARTINOTTI: When the MDL is concluded, counsel
2 wishes to be heard in New Jersey, I believe.

3 THE COURT: Very good.

4 JUDGE MARTINOTTI: Okay. No one wishes to be heard
5 on the MDL, I assume? Mr. Shkolnik?

6 THE COURT: The incredible power of the federal
7 government muted those in New Jersey. But, Ms. Geist -- we
8 always want to hear from Ms. Geist. She's always been the
9 voice of reason in this case, along with Ms. Kraft.

10 MS. KRAFT: Thank you.

11 MS. GEIST: I look forward to seeing you again in the
12 future at some point, Your Honor. Thank you. It's been a
13 real pleasure.

14 MR. SHKOLNIK: Judge Sippel, Judge Martinotti, this
15 is Hunter Shkolnik on behalf of the plaintiffs. I also wanted
16 to just say thank you for all of the courts' help,
17 intervention throughout these years bringing this case to
18 resolution.

19 I'd also like to report that although in California
20 there is a JCCP, a consolidated litigation, that was not
21 consolidated with the MDL in New Jersey, but I'm happy to
22 report that all of the cases there except for one was allowed
23 the opportunity to join -- I think all were allowed the
24 opportunity to join -- to all join save for one case. So
25 thanks to the efforts of Judge Martinotti and yourself, Judge

1 Sippel, the litigation in California has been resolved almost
2 completely save for that one case. And thank you very much.

3 THE COURT: See, now you're shaming Mr. Ball into
4 saying nice things about everybody. He's sitting there
5 feeling terribly left out. He says he has nothing left to
6 say. He doesn't want to interrupt the goodwill that Ms. Geist
7 has created.

8 Anything further at this time? All right. Thank you
9 all very much.

10 (PROCEEDINGS CONCLUDED AT 10:25 AM.)

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CERTIFICATE

I, Shannon L. White, Registered Merit Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 13 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated at St. Louis, Missouri, this 15th day of August, 2014.

/s/Shannon L. White
Shannon L. White, RMR, CRR, CCR, CSR
Official Court Reporter