

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
OCTOBER 23, 2014

APPEARANCES:

For Plaintiffs: Kristine Kraft, Esq.
Roger Denton, Esq.
SCHLICHTER AND BOGARD
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For Defendants: Stephen Strauss, Esq.
Dan Ball, Esq.
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(Appearances continued on Page 2)

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Appearances Continued:

By telephone:

For Defendants: Melissa A. Geist, Esq.
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(PROCEEDINGS STARTED AT 9:43 AM.)

THE COURT: Good morning. We're here this morning in the In re: NuvaRing Products Liability MDL Litigation, my Cause No. 4:08-MD-1964.

Would counsel make their appearances, please?

MR. DENTON: Yes, Your Honor. On behalf of the plaintiffs, Roger Denton and Kristine Kraft.

MR. STRAUSS: Good morning, Your Honor. On behalf of defendants, Steve Strauss and Dan Ball.

THE COURT: Thank you. And for those of you on the phone, if you would go ahead and put your phones on mute so that the feedback doesn't interrupt the proceedings here in court.

We're here today on a status conference. There's a number of items on the agenda. The first is a status on the update of the claims process in the master settlement.

MR. DENTON: Good morning, Your Honor. Roger Denton again. I wanted to give the Court an update of where we're at on the settlement resolution program and the claims process. Claims packages have been received and processed by BrownGreer, the administrator. Approximately 3,500 claim packages have been reviewed and approved for the allocation committee to do their work. There are approximately 140 to 170 claim packages that are still in the review process. There's been requests for extensions of time and

1 reconsideration, but those should be wrapping up in the matter
2 of the next few weeks. The participation has been
3 outstanding, and the program is working.

4 The next step will be for the plaintiffs' claim
5 allocation committee to start reviewing these packages, making
6 the allocations with the blessing of the Special Master, Judge
7 Stack, when we get notices out. But we've been delayed in
8 part with that process because of the folks that have not been
9 getting their claim packages done, but it is coming to a head
10 in that regard, and the program is working as designed and as
11 planned, and I think it's working well.

12 THE COURT: What about those cases that aren't
13 participating in the global settlement? What do we know about
14 those? And that's a universe of around 70 claimants; is that
15 right?

16 MR. STRAUSS: It is, Your Honor. I think that's
17 Number 2 on the agenda, the status of the cases pending in the
18 NuvaRing MDL but not participating in the master settlement.
19 So those would be eligible claimants that are not
20 participating in the master settlement.

21 I think the actual number is 68, so let's just -- if
22 around 70 works, that is true. Those cases are under a duty
23 to comply with the Court's February 7, 2014, order, Document
24 1680. And right now Ms. Geist, who is on the phone but muted
25 in accordance with your instructions --

1 THE COURT: If she needs to weigh in, she certainly
2 can unmute. She is always the voice of reason.

3 MR. STRAUSS: I wanted to make sure she had a chance
4 to say "hi" before she had to remute her phone, but she and I
5 are working together to -- along with the rest of Mr. Yoo and
6 Mr. Ball, we are monitoring and interacting with those cases
7 regarding compliance with the order.

8 There are cure periods set out in your order, and we
9 will be filing appropriate motions on those cases to the
10 extent that they are warranted based on their compliance with
11 the order.

12 That takes us to the next --

13 THE COURT: Ms. Geist, do you disagree with anything
14 he just said?

15 MS. GEIST: Good morning, Your Honor. Thank you for
16 letting me come off mute just a brief moment. No -- and it's
17 a pleasure to hear your voice as well, Judge. I don't have
18 anything really to add to what Mr. Strauss had to say. It's
19 all completely accurate.

20 The total number of cases that are still pending on
21 Your Honor's docket that are not participating in the
22 settlement program are 65, and the vast majority of those
23 cases, about 58, were already pending at the time that the
24 settlement was reached many months ago.

25 So for those cases, Judge, they have already passed

1 the deadline for compliance with Your Honor's order of
2 February 7, 2014, and the cure period has likewise passed and
3 they have not done what they were required to do.

4 We will be seeking relief and an entry of an order to
5 show cause why those cases should not now be dismissed with
6 prejudice. And we wanted to just let Your Honor know that
7 that would be coming once we've had an opportunity to engage
8 in the meet-and-confer process that we need to do now.

9 THE COURT: Okay. So then we have the cases that
10 have been filed since the settlement; is that right?

11 MR. STRAUSS: Yes, sir, Your Honor. Number 3 on the
12 agenda would be the status of the cases pending in the MDL
13 that were subsequently filed or transferred in after February
14 7, 2014. Those cases also must comply with this Court's
15 February 7, 2014, order, and the deadlines of that order begin
16 to run from the time of service of that order upon those
17 cases.

18 There's seven new cases that fall into that category.
19 Currently, those cases have not satisfied the requirements of
20 your court's order. The cure period is not yet passed for
21 four of the seven cases, but it will pass in approximately a
22 month.

23 We will continue to monitor those cases, complete the
24 meet-and-confer process, and we expect to file similar motions
25 regarding those cases before the end of the year.

1 THE COURT: All right. Any additional comments on
2 that?

3 MR. DENTON: If I may, Your Honor. This is Roger
4 Denton again, and I just want to clarify to any of the
5 plaintiffs' claimants or their counsel that are listening to
6 this, that that February 7, 2014, order is a serious order and
7 must be complied with.

8 I also want to make it clear, as the Court has
9 previously acknowledged, that this obligation for the
10 representative -- or represented plaintiffs is on the
11 obligation of their individual attorneys and not co-lead
12 counsel in the MDL; that that is an individual case matter and
13 they must take whatever steps that are necessary to comply
14 with those orders. And any pro se claimants obviously would
15 have to do that on their own as well.

16 I just wanted to make sure that there wasn't anyone
17 out there on the phone thinking that lead counsel had an
18 obligation or would do anything to cure or to attempt to
19 comply with that February 7 order on behalf of these
20 individuals that are not participating in the program.

21 THE COURT: I mean, the order is pretty -- is clear
22 that failure to cure and then failure to show cause why that
23 didn't happen will result in a dismissal with prejudice. So
24 that's the degree to which everyone should pay attention,
25 follow the order, because the opposite end, of course, is then

1 their -- an opportunity to proceed and resolve the claim, but
2 failing that, there will be the exact opposite result.

3 MS. GEIST: Your Honor, this is Melissa Geist again.
4 on behalf of defendants on the telephone, and if I could just
5 add one comment to that, Judge?

6 THE COURT: Yes.

7 MS. GEIST: Thank you, Your Honor. Of course, that
8 order has been on Your Honor's docket in the MDL for quite
9 some time since it was entered by the Court back on February
10 7, 2014, but I just did want to add that for every new filed
11 case -- and as Mr. Strauss said, there are seven in total --
12 we do take Your Honor's order and send it specifically
13 directly to counsel with correspondence just to ensure that
14 everybody is on notice of the serious requirements set forth
15 in that order.

16 THE COURT: Okay. Mr. Denton, are the rest of these
17 more plaintiff?

18 MR. DENTON: Yes, Your Honor. And I think Ms. Kraft
19 is going to handle them.

20 THE COURT: Ms. Kraft, I'm sorry.

21 MS. KRAFT: Thank you, Your Honor. Kristine Kraft on
22 behalf of the plaintiffs. The fourth item on the agenda or --
23 I'm sorry, yeah. The fourth item on the agenda involves the
24 motion that the negotiating plaintiffs' committee filed
25 seeking an order for the interim distribution of certain

1 expenses from the common benefit expense fund. The document
2 number is 1745.

3 We are asking the Court to enter an order directing
4 the qualified fund administrator, Analytics Consulting, LLC,
5 to make distributions to three separate expenses in connection
6 with the administration of this settlement.

7 The first involves Judge Stack, the Special Master
8 who you appointed for purposes of reviewing and making
9 recommendations for ultimate distribution of common benefit
10 expense funds as well as common benefit attorneys' fees. He
11 has spent substantial time since your appointment, and we
12 would ask that he be paid at this time in the sum of \$57,432.

13 In addition, we're asking the Court to make a
14 distribution to another expert, Professor Lynn Baker, who was
15 retained by the negotiating plaintiffs' counsel committee for
16 the purposes of evaluating and finalizing documents pertaining
17 to the administration of the settlement. She's an ethics
18 expert who is necessary for the final administration of the
19 settlement-related documents. Her outstanding fees are in the
20 sum of \$115,000.

21 And then, finally, Your Honor, we're asking the Court
22 to enter an order allowing the distribution of \$338,990.63 to
23 Crivella West, which is an entity that was retained by lead
24 counsel and the PSC for the purposes of managing the document
25 production in this litigation. Those fees have been

1 outstanding since 2010, and so we would ask the Court to enter
2 the proposed order that we submitted.

3 THE COURT: Have there been any objections by any --

4 MS. KRAFT: I'm not aware of any objections.

5 THE COURT: I haven't seen any.

6 MS. KRAFT: We filed the motion on October 20, and to
7 date, there have been no objections filed.

8 MR. DENTON: If I could, Kris. And one other point,
9 Judge. Our Special Master, Judge Stack, who's reviewing the
10 fees, the common benefit fees and common benefit expenses,
11 reviewed these invoices, and his recommendation also was that
12 they should be paid and paid promptly if the Court would do --

13 THE COURT: Did the ethics expert weigh in on him
14 reviewing his own fees?

15 MR. DENTON: No, but his fees are very reasonable and
16 he spent a lot of time, an awful lot of time, trying to
17 resolve this common benefit issue, which is still not
18 resolved, although he is making progress. It's been an
19 arduous task on his part and continues to go forward, but we
20 believe, just for the record, his fees are very reasonable,
21 have all been necessary, and, frankly, are conservative for
22 the amount of time he's spent.

23 THE COURT: Okay.

24 MS. KRAFT: Yes, Your Honor. And I would point out
25 that we attached his declaration, Special Master Judge Stack's

1 declaration, to our motion. And this would be the first
2 distribution of funds from the total common benefit expense
3 fund of four and a half million dollars. Thank you.

4 THE COURT: Now, the individual qualified settlement
5 fund issue -- we've received some motions to that effect.

6 MR. DENTON: Yes, Judge. The Court has received a
7 few individualized requests by various law firms to establish
8 their own law firm QSF. As the Court is well aware, there was
9 already a global QSF fund created to administer the settlement
10 program, the entire fund. The common benefit money is in
11 there. The claimant money is in there until the claims are
12 allocated and liens are cleared.

13 Some law firms have made an individual request so
14 that money could come from the QSF upon approval and
15 distributed to those firms' sub-QSF account.

16 I've seen that done in some litigations. Some folks
17 have their reasons. And so that's what the request is, and
18 one of the things I would suggest for the Court to consider,
19 if the Court gets those motions, that the Court consider a CMO
20 directing any firms that would wish to pursue that to do it in
21 a standardized way and an appropriate way so the Court is not
22 receiving random and perhaps slightly different motions so it
23 can be done efficiently. So that's what I would recommend.

24 THE COURT: Is that what Judge Herndon did in the
25 Pradaxa case?

1 MR. DENTON: It is, Your Honor. I believe other
2 judges have done it. I believe Judge Herndon did in
3 Yasmin/Yaz MDL as well.

4 The part of the CMO order is simply to define a
5 process that makes it efficient for the court to review these,
6 to make them consistent, to make it streamlined so it becomes
7 simple for the court to make its decision.

8 THE COURT: All right. Anything else before we set
9 another date to get together?

10 MR. DENTON: Nothing from the plaintiffs, Your Honor.

11 THE COURT: Anything on behalf of the defendant?

12 MR. STRAUSS: Nothing from the defendant, Your Honor.

13 THE COURT: How long before you think we should get
14 together again?

15 MR. DENTON: We were whispering at side bar and
16 probably not heard on the record, Judge, but we're thinking
17 maybe right after the first of the year. That would be close
18 to a little over 60 days out, but --

19 MR. STRAUSS: It would allow the cure period and some
20 of these other deadlines to shake out so that we could talk
21 substantively at that time.

22 THE COURT: Okay. Any day of the week work better?
23 I mean, everybody's local except for those on the phone, which
24 alleviates some of the past --

25 MR. DENTON: I don't think there's any particular

1 date that's an issue, Judge. And the status of where we're at
2 now, I think most folks can appear by phone that need to
3 listen in. And Bryan Cave, Dan Ball and Mr. Strauss, and Kris
4 and I are obviously local.

5 THE COURT: Let's let the first week of the new year
6 settle down. How about January 14 at ten o'clock?

7 MR. STRAUSS: Roger does always seem happiest on
8 Thursdays.

9 THE COURT: Happiest on Thursdays?

10 MR. STRAUSS: Tuesdays he's okay, but Thursday he's
11 really peaking.

12 THE COURT: You don't want a piece of my Thursday,
13 the 15th; so we will do January 14 at 10 AM.

14 MR. DENTON: Perfect. Thank you. Very good.

15 MR. STRAUSS: Sounds good.

16 THE COURT: All right. Thank you all very much.

17 **(PROCEEDINGS CONCLUDED AT 9:59 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 14 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 10th day of November, 2014.

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