

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

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

**STATUS HEARING  
BEFORE THE HONORABLE RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE  
NOVEMBER 10, 2015**

**APPEARANCES:**

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(Appearances continued on Page 2)

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**PRODUCED BY COURT REPORTER COMPUTER-AIDED TRANSCRIPTION**

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**(PROCEEDINGS STARTED AT 11:00 AM.)**

THE COURT: Good morning. My apologies for the delay. We're here this morning in the case styled *In re: NuvaRing Products Liability Litigation*, 4:08-MD-1964. Would counsel make their appearances, please? For the plaintiffs.

MR. KRAFT: Kristine Kraft for the MDL plaintiffs.

MR. ALONSO: Andres Alonso for certain of the MDL plaintiffs, Your Honor. Good morning.

MR. VOLPE: Richard Volpe for Cali Longtin, Your Honor.

MR. KRANGLE: Morning. David Krangle for the plaintiffs.

MR. COOK: Morning, Your Honor. James Cook for Plaintiff Christine Law.

MR. LEVITT: Good morning, Your Honor. Gary Levitt for Plaintiff Elyssa Correia.

MR. ZONIES: Morning, Your Honor. Joe Zonies on behalf of Leslie Benyo.

THE COURT: Mr. Zonies, you might want to come to this side of the bar. We've got some business to conduct.

MR. ZONIES: It's always good to hear, Your Honor.

THE COURT: On behalf of the defendant?

MS. GEIST: Your Honor, good morning. Melissa Geist from Reed Smith for the defendant.

MR. YOO: Good morning, Your Honor. Thomas Yoo for

1 defendant.

2 MR. BALL: Dan Ball for the defendants.

3 THE COURT: Good morning. All right. This is a  
4 status conference. The first building block for my benefit is  
5 the status of the transfer of the discovery that's been  
6 completed in the MDL. The lead counsel has settled all their  
7 cases. There are a number of cases that remain and apparently  
8 other pending cases, but before anything else can happen, we  
9 need to make sure we've had a stable transfer of the discovery  
10 materials to the remaining counsel.

11 So, Mr. Zonies, why don't you bring me up to date on  
12 where you are. I couldn't really tell from the pleadings that  
13 had been filed whether it had been accomplished or there were  
14 still some things left to do.

15 MR. ZONIES: Thank you, Your Honor. Both is the  
16 answer to that. The first is that Ms. Kraft has been kind  
17 enough to provide my office with a drive that contains what  
18 we'll call the MDL work product documents, and we received  
19 this, I think, last week.

20 And I've had discussions with the other plaintiffs'  
21 counsel about making that available to them either through --  
22 electronically through our database at our firm or providing  
23 them individually with drives, and we'll take care of  
24 disseminating that information accordingly.

25 The document repository that is at a vendor, Crivella

1 West, we received a -- we have communicated with Crivella West  
2 about transferring that information into our database -- again  
3 at our firm -- and then making that available to plaintiffs'  
4 counsel. It's electronic; so they can dial in even from  
5 Hawaii. And we are in discussions right now with Crivella  
6 about the costs associated with making that transfer, which  
7 are not in the state of this litigation insubstantial costs,  
8 and how we, as plaintiffs, can share those costs in order to  
9 make -- to effectuate that change.

10 We just got those costs, I think, two days ago. I  
11 would anticipate by next week we'll have a very clear path  
12 forward about how to get those documents transferred to  
13 plaintiffs' counsel.

14 THE COURT: And all the -- Ms. Kraft, I mean, is the  
15 committee okay with the state of affairs in terms of the  
16 transfer? Any financial obligations that remain? Are there  
17 any financial obligations that remain to the steering  
18 committee or the lead counsel in this case, or have you  
19 negotiated a new agreement with the remaining plaintiffs to  
20 handle that?

21 MR. KRAFT: Right. Mr. Zonies accurately summarized  
22 the status of the transition. Most of the firms signed on to  
23 the participation agreement although there are a couple that  
24 remain outstanding as of my last check; but, otherwise, the  
25 understanding is that the cost associated with the transition

1 of the document production from Crivella West will be borne by  
2 the firms that represent clients that were not participating  
3 in the original settlement.

4 MR. ZONIES: I believe that's also our understanding,  
5 Your Honor, although I do believe we want to discuss whether  
6 or not how that affects the assessment as to our individual  
7 cases, but that's a discussion that's really not important.  
8 We need to move forward with getting the documents, and that's  
9 our first goal.

10 THE COURT: Do you agree with that, Ms. Kraft?

11 MR. KRAFT: Yes. Yes.

12 THE COURT: Okay. All right. Anything else on  
13 behalf of the plaintiffs as to at least getting everyone  
14 current before we make a decision about how to proceed?

15 MR. ZONIES: I don't believe so, Your Honor. We met  
16 this morning, most of the plaintiffs, and I think we're all on  
17 the same page. And I don't see any heads shaking left to  
18 right in the back.

19 THE COURT: All right. So that gets us to what next?  
20 Who wants to be heard first on that, where we go from here?

21 MR. ZONIES: I'm here. I'm happy to go first, Your  
22 Honor, on that issue.

23 THE COURT: Okay.

24 MR. ZONIES: I continue to have the viewpoint that  
25 this Court has done its excellent work. It's created an

1 excellent settlement program for --

2 THE COURT: I don't know being a sycophant is going  
3 to get you anywhere. We did the best we could.

4 MR. ZONIES: Well, "excellent" is relative, Your  
5 Honor, I understand.

6 THE COURT: I'll accept that, then, all right?

7 MR. ZONIES: And while -- as we put in our papers, we  
8 would prefer that in Ms. Benyo's case that the defendant  
9 simply allow her to enroll in the resolution that was created  
10 and add one more party to that. And I'm confused as to why we  
11 can't get there. Assuming that is not going to happen from  
12 the defendant's point of view, we'd like to go home and try  
13 our case.

14 Now, the additional discovery that was discussed at  
15 the last conference, I'm not sure of the defendant's viewpoint  
16 of the status of that discovery, but in their papers I believe  
17 they said they anticipated making that document production by  
18 year end.

19 And I don't -- since my injury predates the label  
20 change, I don't particularly see a need for that discovery in  
21 my case. I understand some other plaintiffs, Mr. Alonso's  
22 group in particular, feel the need to have that discovery.  
23 I'm happy to allow them to go forward with that in whatever  
24 venue they care to and stipulate that that -- I'll either join  
25 in working on that discovery within the limitations that are

1 agreed to and/or allow it to occur wherever it's going to  
2 occur without doing any additional discovery on my own. So I  
3 don't see a reason to not be back home while that's occurring.

4 THE COURT: I'm all for you going home. I have no  
5 interest in keeping you here longer than necessary, but let's  
6 discuss the practical issue there. I assume you haven't seen  
7 the documents yet if they haven't been transferred.

8 MR. ZONIES: Correct.

9 THE COURT: So are you able to make that  
10 determination that you're done? The big picture question --  
11 if the MDL is to have any value to the defendant -- is we're  
12 not doing the same discovery in multi -- individual discovery  
13 is individual discovery, and that's not the province of the  
14 MDL transferee court. That goes to the transferor court. You  
15 go home, you finish. But if we're going to engage in uniform  
16 discovery, that's the whole purpose of the MDL, and I don't  
17 want to undermine that.

18 So it was hoped -- but, obviously, I understand where  
19 we are and what has or hasn't happened -- that you would be in  
20 a position to tell me "No, I am done; all that is left is the  
21 individual discovery in my client's case," and then the answer  
22 to that question, subject to a little discussion on this side,  
23 the other side of the room, you know what we're going to do.

24 But out of fairness to them, the defendant, I need to  
25 hear that, in fact, you are done and that you're not going to



1 maybe decide, well, it wouldn't hurt for me to conduct the  
2 same discovery there as here, and then we've defeated one  
3 of -- the whole purpose of the MDL.

4 So help me out as to how much time you need to make  
5 that determination. I don't know if two or three months is  
6 going to matter a whole lot, but it could. And that's not for  
7 me to decide, because you've got a client you're worried  
8 about.

9 MR. ZONIES: I appreciate that, Your Honor. And I do  
10 think two or three months makes some sense. What I -- here is  
11 what I mean by that. The documents we do have and the expert  
12 reports that have been created and the experts that have been  
13 worked up, there is a pseudo trial package put together by the  
14 MDL counsel. From my review of those documents that have been  
15 provided, I'm comfortable that I can try the case based on  
16 those documents.

17 Now, the additional discovery about the post-2013, I  
18 don't anticipate that any of that will impact my case, but it  
19 may. I don't know. And so that's my hesitation. I don't  
20 anticipate doing any new discovery related to what's already  
21 been done in the MDL, but --

22 THE COURT: But, comma, I'm not sure because I don't  
23 know.

24 MR. ZONIES: Correct.

25 THE COURT: And that's not based on your quality as

1 an attorney, but --

2 MR. ZONIES: Thank you.

3 THE COURT: -- there's a lot of information here  
4 that --

5 MR. ZONIES: I want to be sure that was taken on the  
6 record, Your Honor.

7 THE COURT: You're an excellent lawyer. We'll trade  
8 *excellents* today. How's that?

9 MR. ZONIES: And I will notice that that's relative.

10 THE COURT: I'm sure the court reporter will be happy  
11 to transcribe just that one sentence.

12 MR. ZONIES: That's the one issue. And it's simply a  
13 function of getting it here.

14 Now, I don't fundamentally -- the concept was that  
15 they'll do the production by the end of December, and I think  
16 that was it, this year. And so the concept of a conference in  
17 March of 2016 to be able to do what we thought we might be  
18 able to do here, I don't fundamentally object to that; but  
19 what I would like to ensure is that that doesn't mean that we  
20 start doing depositions of all my treaters and all of my  
21 prescribers and my client in the interim, because I do think  
22 that I would rather be in Colorado in front of my judge, my  
23 magistrate --

24 THE COURT: Who is your judge?

25 MR. ZONIES: -- when I try the case. I don't know

1 yet.

2 THE COURT: Oh, it wasn't assigned before it came?

3 MR. ZONIES: Well, it was, but that doesn't mean  
4 anything when it comes back.

5 THE COURT: Oh, it doesn't?

6 MR. ZONIES: No.

7 THE COURT: Here it would go back where it came from.

8 MR. ZONIES: So what I mean by that is simply that  
9 that discovery may have its own issues that are not really  
10 part of what this Court's mission was and is, and I would  
11 prefer to have --

12 THE COURT: No. I'm -- okay. I'm with you. Out of  
13 fairness to the defendant, I got to hear them out on that  
14 issue.

15 MR. ZONIES: Sure.

16 THE COURT: But I fully understand what you're  
17 saying.

18 Is there anyone here who has a different viewpoint of  
19 where they are with their individual clients that remain, or  
20 have we heard pretty much -- anyone else? -- from Mr. Zonies?  
21 Is he speaking for everybody?

22 MR. ALONSO: If I may, Your Honor.

23 THE COURT: Yeah. Now is the day to figure it out.

24 MR. ALONSO: Your Honor, I do think in hearing Mr.  
25 Zonies there is just about universal agreement. The only

1 issue that we have for our group of cases is we're  
2 anticipating this relatively small production as it relates to  
3 the label change. And, frankly, it's more than label change.  
4 It's the update from the beginning of '13, I think, up until  
5 where we are today. In speaking with defense counsel, that  
6 sounds like a fairly discrete and small production.

7           The only thing that we're reserving potentially is  
8 the right to propound some additional interrogatories. Based  
9 upon that discovery, Your Honor, and in speaking with defense  
10 counsel, we will certainly be able to do that within 30 days  
11 of the receipt of that discovery. So with the understanding,  
12 Your Honor, that we are apparently getting that new production  
13 by the end of this year, we will certainly by the end of  
14 January be able to propound those new interrogatories if  
15 they're necessary.

16           And, quite frankly, Your Honor, standing here right  
17 now, I don't know whether those interrogatories are going to  
18 be necessary or whether any further depositions are going to  
19 be necessary. I think Mr. Denton's firm, Ms. Kraft's firm,  
20 and all of the members of this steering committee did an  
21 incredible job in putting this case together. We were  
22 involved a little bit tangentially with some of the expert  
23 depositions, Your Honor; so we have a fairly good idea of  
24 where we are today.

25           But even with this additional supplemental

1 production, I think the time line that Mr. Zonies mentioned,  
2 us coming back here in March and being able to have a more  
3 fulsome discussion about where we go from there, makes eminent  
4 sense. We will certainly have had the opportunity of looking  
5 at this new production, and we will immediately go through  
6 that new production, Your Honor, and let the Court know, let  
7 the defendants know whether there's any further discovery that  
8 we even need.

9 My hope is that there isn't and we can take the trial  
10 package as supplemented by this new production and go back  
11 home, but I can't, standing here now, Your Honor, say that  
12 we're ready to go home on these cases.

13 MR. YOO: Morning, Your Honor. I think we've got  
14 some common ground here. It seems that everyone is --

15 THE COURT: Reading the joint response, I haven't  
16 seen anything wander off the reservation yet.

17 MR. YOO: I think a return date of March 1 or  
18 somewhere around then that makes sense for the Court would be  
19 good. I think by then the parties will jointly be able to  
20 report on the status of the general fact discovery, which I  
21 know Your Honor wants to conclude here. We'll either be able  
22 to report that that is substantially done or at least report  
23 on the progress and what remains. So I see that as the  
24 commonality here based on everyone's comments.

25 And in terms of remand, I think most if not all of

1 the plaintiffs seem to at least be reserving their right to  
2 see what more might be produced and what might be in the, you  
3 know, 2 million pages of documents that Ms. Kraft's office has  
4 that they haven't had a chance to look at yet. So I think a  
5 return in the spring makes sense.

6 THE COURT: All right. The joint response suggested  
7 document production by the end of December.

8 Ms. Geist, you've been the document guru. Is that  
9 achievable?

10 MS. GEIST: Yes, Your Honor. And I had already  
11 represented to plaintiffs' counsel -- and it's in our joint  
12 statement to the Court -- that what we will be producing per  
13 our prior comments to the Court and counsel is a narrow,  
14 discrete set of documents, supplemental documents, relating to  
15 the 2013 VTE label change for the product.

16 I anticipate that that will probably be less than a  
17 thousand documents. By the end of the year, we'll be able to  
18 produce those, and I would assume that plaintiffs' counsel can  
19 get through that set fairly quickly and then determine at that  
20 point in time whether or not additional interrogatories,  
21 document requests, and any further depositions would be  
22 warranted based on that production.

23 THE COURT: This joint response suggests to that,  
24 upon the production, I heard 30 days after they would make a  
25 decision whether they would use up to ten new interrogatories

1 although -- and then I'm nervous about two new requests for  
2 production.

3 MS. GEIST: Your Honor, and I think it's --

4 THE COURT: If you all agree to it. You know, I'm  
5 always loath to get involved when someone agrees.

6 MS. GEIST: Well, Your Honor, I don't think we're  
7 necessarily agreeing to ten new requests for production. I  
8 think what the parties have agreed to do is take a look at the  
9 documents, the regulatory documents relating to the 2013 label  
10 change for VTE, make a determination as to that point whether  
11 there are new nonduplicative, noncumulative discovery demands  
12 that are warranted then, and then I think we would go through  
13 the meet-and-confer process depending on what plaintiffs'  
14 counsel proposes.

15 By no means, Your Honor, I think are we agreeing  
16 necessarily to ten new RFPs. I think it will depend on what  
17 we see from plaintiffs' counsel.

18 THE COURT: Let's make sure we leave today with an  
19 understanding of what we're going to do, I mean, because if we  
20 do have a dispute, I'd rather see you in January than find  
21 out in March, you know.

22 MR. ALONSO: Your Honor, given what Ms. Geist has  
23 told us with regard to just how discrete this production is, I  
24 don't think we're going to have an issue of disagreement in  
25 terms of our asking for significant new documents. And,

1 again, Your Honor, we will get through these documents and  
2 obviously share them amongst plaintiffs' counsel, and we'll  
3 all make an effort to make sure that we have reviewed the  
4 documents by the end of January. And to the extent we need  
5 additional production, we will have met and conferred with the  
6 defendants.

7 But sitting here now, standing here now, Your Honor,  
8 having heard that the document production will be  
9 approximately one thousand documents, I think I'd be hard  
10 pressed, frankly, to show the Court the good cause necessary  
11 for the additional production. I could be wrong.

12 THE COURT: We anticipate perhaps interrogatories.  
13 Do we anticipate depositions? I mean, the joint response  
14 suggests the possibility of depositions. I'd like to talk  
15 about that before we depart.

16 MR. ALONSO: I think, Your Honor, we again are  
17 reserving the right to potentially take those depositions or  
18 perhaps a supplemental deposition of some of the custodial  
19 witnesses based upon who has the authorship of those thousand  
20 documents; but, again, we're not here to replot new ground.

21 And to the extent it's a discrete production,  
22 obviously any further deposition of any of those witnesses we  
23 would agree to limit to just what's in the new production,  
24 Your Honor.

25 So I think given the nature of the production that



1 Ms. Geist has described, it's going to be a fairly  
2 self-limiting world. And it is our plan to get this done, and  
3 we do not want to stand in the way of other cases going home,  
4 but we do think we owe it to our clients, Your Honor, to make  
5 sure that we're updated as it relates to the regulatory  
6 changes that took place post the resolution program.

7 THE COURT: Okay. So there seems to be if not a  
8 unanimity but a consensus that the document production will be  
9 done by the end of the year. Plaintiffs will take a look at  
10 it. If they think it's appropriate or necessary -- if they  
11 think it's necessary, there will be interrogatories, perhaps a  
12 deposition. And then by March 1 we'll be done no matter who  
13 we are.

14 MR. ALONSO: I think that's fair to say, Your Honor.

15 THE COURT: Any dissenting view on that?  
16 Everyone's nodding. I guess some nods up and down is yes and  
17 then some looks like, well, whatever.

18 So Mr. Yoo?

19 MR. YOO: We may be done by March 1. It depends. If  
20 Mr. Alonso's office or other plaintiffs' counsel ask for  
21 additional depositions, it may take a little additional time.

22 THE COURT: The goal is to be done by March 1,  
23 though. If you have all the documents by the end of  
24 December -- I know 2 million pages of documents is a lot to go  
25 through, but the goal would be to, sometime in January or

1 February, we'd bring this to some closure. If it's not, it's  
2 not, but we got to have a target date.

3 MR. ALONSO: And, Your Honor, the supplemental  
4 disclosure that we have discussed or the potential further  
5 interrogatories, potential RFPs are only related to this  
6 fairly discrete production that we're getting now.

7 THE COURT: You're not doubling back.

8 MR. ALONSO: No, we're not.

9 THE COURT: We're not going to repeat discovery or  
10 redo discovery. This is only on the new documents that you  
11 receive.

12 MR. ALONSO: That's correct, Your Honor.

13 MR. YOO: We think any new discovery will certainly  
14 have been propounded by March 1. There may not be any new  
15 discovery, in which case we'll be done with general --

16 THE COURT: Okay. It's my goal and hope that on  
17 March 1, when we get together -- I gave both Ms. Kraft and Ms.  
18 Geist a sample order that I did in my Celexa/Lexapro. Out of  
19 those cases, ten went back. And it's important to me that the  
20 judge who gets the case back knows what's been done and what  
21 the state of the case is so that they are able to help you get  
22 to trial sooner rather than later.

23 MR. ALONSO: Certainly. And, Your Honor, we will  
24 certainly work with defense counsel. If we identify the need  
25 for further discovery, we'll hopefully have that.

1 THE COURT: The goal is -- my point is that on March  
2 1, if discovery is done, I also want that proposed order of  
3 remand to include the discussion about what's been  
4 accomplished in the MDL court so when the case is transferred  
5 back to the transferor court they're not trying to figure out  
6 what -- can you imagine getting a case back, as you just did?  
7 Here's 2 million documents. Here's I don't know how many  
8 depositions, what do you want to do? You know. You got to  
9 give the court some direction about how to proceed.

10 MR. ALONSO: That's fair.

11 MS. GEIST: Your Honor, I thank you for the sample  
12 order. I'm happy to work with Ms. Kraft on that so we can  
13 submit something jointly. And I don't mean to throw any sort  
14 of wrinkle in this, Your Honor, the plan --

15 THE COURT: But . . .

16 MS. GEIST: -- which sounds perfectly reasonable.  
17 The only caveat I would hold out is if after counsel has had a  
18 chance to review and evaluate the supplemental regulatory  
19 production, and interrogatories or RFPs are propounded and  
20 there's a request for a Merck employee deposition, based on  
21 scheduling, et cetera, that may take us past the March 1  
22 deadline. And I just want to --

23 THE COURT: I'm not going to borrow trouble. I  
24 assume we'll get it done, but if we don't, obviously, I can't  
25 make it done. Right?

1 MS. GEIST: That's fair, Your Honor. I just wanted  
2 to put that out there because we would obviously --

3 THE COURT: I won't be angry.

4 MS. GEIST: -- be mindful of Your Honor's guidance  
5 and prior protocols and orders put in place in this MDL  
6 concerning company witness depositions.

7 THE COURT: So what time of day on March 1 should we  
8 get back together? What works for everybody?

9 MR. BALL: That's Monday, isn't it?

10 THE COURT: By my look, it's a Wednesday.

11 MR. BALL: Oh, is it?

12 THE COURT: Unless my i-Pad is wrong. No. It looks  
13 like a Tuesday. March 1 is a Tuesday.

14 MR. BALL: Same time? 10:30?

15 THE COURT: Does that work best for everybody?

16 MR. YOO: Ten o'clock okay?

17 THE COURT: Ten o'clock?

18 MR. ZONIES: I'm hearing 10:30 from behind me, Your  
19 Honor. I think some of the longer flights coming in.

20 THE COURT: 10:30 on March 1.

21 MR. ERIKSSON: And, Your Honor, if I may very  
22 briefly?

23 THE COURT: Yes, sir.

24 MR. ERIKSSON: My apologies for the tardiness. I  
25 simply did not want to interrupt. Reed Eriksson from the

1 Oliver Law Group on behalf of Plaintiff Amy Sechrist. I have  
2 no disagreement with any of the discussions between the  
3 parties. I simply wanted to get my appearance on the record  
4 and note for the Court that I agree with Mr. Zonies what he  
5 stated already, and we are in agreement.

6 THE COURT: Okay. Thank you very much. Anything  
7 further on behalf of the plaintiffs?

8 MR. ZONIES: Nothing, Your Honor. Thank you.

9 THE COURT: All right. Anything on behalf of the  
10 defendant?

11 MR. YOO: No, Your Honor.

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

13 **(PROCEEDINGS CONCLUDED AT 11:22 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 21 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 25th day of February, 2016.

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