

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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

TELEPHONE STATUS CONFERENCE
BEFORE THE HONORABLE RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE
JUNE 10, 2011

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(PROCEEDINGS STARTED AT 2:15 PM.)

THE COURT: Good afternoon. We're here this afternoon in a telephone conference in the *In Re: NuvaRing Products Liability Litigation*, my Cause No. 4:08-MD-1964. Would the counsel on the telephone please make their appearances known, please?

MS. KRAFT: Kristine Kraft, counsel for plaintiffs.

MS. GEIST: Melissa Geist for the defendants, Your Honor.

THE COURT: And that's everybody?

MR. SHKOLNIK: Hunter Shkolnik for the plaintiffs.

MR. YOO: Thomas Yoo is on as well. Good afternoon, Your Honor.

THE COURT: Anyone else? Okay.

MR. SHKOLNIK: I'm not sure if I got stepped on, Your Honor. This is Hunter Shkolnik for the plaintiffs. Good afternoon.

THE COURT: You and Ms. Kraft for the plaintiffs, Ms. Geist and Mr. Yoo for the defendant. Is that everybody?

MR. SHKOLNIK: Hunter Shkolnik for the plaintiffs also.

THE COURT: That's what I meant by when I said "you," but I didn't mean Mr. Yoo. I meant you, you. So read that one back later to, you know, whomever.

Anyway, we're together today as a follow-up to the

1 discussion about Dr. Mulders' 1997 to 1999 e-mails. Who wants
2 to bring me current on what's transpired in the last two
3 weeks?

4 MS. GEIST: Your Honor, this is Melissa Geist for the
5 defendants. I'm happy to report to the Court. At the last
6 case management conference, we were asked to go back and take
7 a look and actually see how many e-mails we had produced from
8 Dr. Mulders from the 1997 to 1999 time period, and the reason
9 for this, I think, as Your Honor indicated, is we wanted to
10 ensure that there was not this gap, if you will, of
11 information for that time period for Dr. Mulders.

12 Unfortunately, Roger Denton and I did not have an
13 opportunity to confer prior to the conference with Your Honor
14 today I think simply just based on a miscommunication, nothing
15 more, but I'm happy to let Your Honor and plaintiffs' counsel
16 know that there is indeed not this missing gap of information
17 for Dr. Mulders from 1997 to 1999.

18 From the metadata we went back and looked at our
19 produced documents, and we produced 123 e-mails with Dr.
20 Mulders either as the "to" or "from" or "cc" on the e-mail and
21 for the 1997-1999 time period. In that same time period, we
22 also produced 100 faxes to or from Dr. Mulders and 70
23 interoffice memoranda to or from Dr. Mulders.

24 And based on our analysis, Your Honor, it appears
25 that obviously there is -- there is not a gap in information

1 for this person from that time period, and while she's still
2 primarily communicated by fax and interoffice e-mail, those
3 types of communications definitely phased out as her e-mails
4 became more prevalent over the years.

5 So that is our report. I hope that satisfies the
6 plaintiffs' counsel and the Court, and I don't have anything
7 else to report at this time.

8 MS. KRAFT: Yeah, Your Honor. This is Kristine
9 Kraft. As a follow-up to that, a couple of things. Well,
10 first of all, in terms of communicating back and forth, I
11 don't know the exact communications back and forth, but I know
12 Roger sent an e-mail in an effort to follow up with Melissa on
13 Wednesday, and I don't know if there was a response or not,
14 but we did attempt to follow up before today's conference
15 because we had not heard what the results were of the search,
16 but it was our understanding that we have this disk for this
17 CD of documents that Dr. Mulders testified about in her
18 deposition that she had provided to defense counsel for
19 purposes of production.

20 And as to that particular disk, we, at the outset,
21 want to be assured that e-mails or any other documents falling
22 within the time frame of 1997 to 1999 have been produced. I
23 hear what Melissa is saying in that she ran a search
24 throughout the entire database to see if such e-mails in fact
25 are responsive to that search, but I guess we have no way of

1 knowing whether or not those e-mails or those faxes in fact
2 overlap with the CDs that Dr. Mulders testified about, so we
3 would like to determine that.

4 MS. GEIST: My response to Your Honor on the CD and
5 to Ms. Kraft is as it was at the last case management
6 conference, we did take that -- take possession of that CD
7 from Mr. Mulders. She indicated to us that she had done a
8 download of certain information back in 2000. We had taken
9 the possession of that CD and we had processed it according to
10 our agreed upon search terms, and we did produce to plaintiffs
11 whatever was responsive from that CD.

12 MS. KRAFT: Right. And I think part of our motion in
13 terms of the discovery-related issues focused on coming up
14 with a way in which to do searches that were not limited by
15 search terms. Through a process of a lot of back and forth,
16 trying to narrow the scope of documents applicable, we had
17 come up with this proposal of looking at the e-mails or any
18 sort of written communication in the custodian file of Dr.
19 Mulders for the period of 1997 to 1999 without any search term
20 resurgence at all, so that's where we're at, what our
21 understanding is, and that would make presumably the results
22 more broad than what they may be.

23 MR. YOO: I would like to focus the discussion back
24 to what was actually ordered by Your Honor. I think the issue
25 of Dr. Mulders' CD was resolved at the hearing. We made a

1 representation, an accurate one, that Dr. Mulders' CD was put
2 in the hopper, if you will, along with other documents and so
3 there was no exclusion of that CD from the agreed-upon
4 document search protocol, and I thought that issue was
5 resolved. The issue for today's call was Mr. Denton made a
6 representation that he still believed that he had no e-mails
7 from '97 to '99.

8 THE COURT: And I don't know if it was none, but it
9 was a small number.

10 MR. YOO: Right. So we disputed his understanding at
11 the hearing, but we agree to go back and check and give a
12 specific report on what we found in terms of e-mails from '97
13 to '99. We've done that. Per Ms. Geist's description a few
14 minutes ago, it looks like we've got close to 300 pieces of
15 correspondence, e-mail and otherwise, from that period. So I
16 think the only issue that we were dealing with for today's
17 call has been resolved.

18 MS. KRAFT: Well, I disagree.

19 THE COURT: Well, all I set for for today was to
20 determine if there really was a gap in the e-mails with Dr.
21 Mulder, and that's all that was really on the agenda.

22 The question, Mr. Yoo, is when you say there's 300
23 pieces of correspondence, have those previously been produced
24 and you've just now, in essence, cataloging to explain why
25 there really isn't a gap, or is this new information?

1 MR. YOO: The former, Your Honor.

2 MS. GEIST: These have all been produced, Your Honor.

3 THE COURT: All right.

4 MS. GEIST: And that is what I understood Your
5 Honor's question and concern to be: Do we have a gap --

6 THE COURT: Right.

7 MS. GEIST: -- for information for this person, and
8 the answer to that is clearly no.

9 THE COURT: Right.

10 Ms. Kraft, to the extent there's other issues, you're
11 going to have to file a new motion, because the only thing I
12 teed up for today was to determine if there was a gap in the
13 exchange of information in this case. The folks on your side
14 identified what they thought was a problem in that there were
15 so few e-mails moving in that time period from Dr. Mulders, so
16 I said, like in any other case, we're going to go back and we
17 need to take a look and see if we're missing something.

18 It's been reported to us, as officers of the court,
19 that we're not, and that's the issue that was on the agenda
20 for today. To the extent that there are other issues you want
21 to resolve -- and I agree with Mr. Yoo. We resolved the issue
22 of the CD that she created. It wasn't unlike any other person
23 being asked to gather up a banker's box. They deliver it,
24 it's searched, and what's relevant under the search terms or
25 otherwise is produced. So there's really no reason to revisit

1 that as something new or different.

2 So I mean, that concludes today. If there's new --
3 are there new motions? I'll take the new motions.

4 MS. KRAFT: Okay, yeah. We will consider that and
5 file a motion if we deem appropriate.

6 THE COURT: Okay.

7 MS. KRAFT: Because I think where we were at was in
8 terms of the discovery motion pending before the Court
9 previously on the search term issue, we were focusing on the
10 production of that CD by Dr. Mulders without search terms and
11 further parceling that down --

12 THE COURT: That would be like telling me that if
13 your client brought you every document in their desk, once
14 they decided to bring you all those documents, you have to
15 produce them. That's my reaction to it, but you'll reach your
16 own conclusion and file whatever motions you think are
17 appropriate.

18 MS. KRAFT: Okay.

19 MR. DENTON: Thank you, Your Honor.

20 MR. YOO: Thank you, Your Honor.

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

22 **(PROCEEDINGS CONCLUDED AT 2:25 PM)**

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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 9 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 13th day of June, 2011.

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