

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

**In re: MIRAPEX PRODUCTS
LIABILITY LITIGATION**

07-MDL-1836 (JMR/FLN)

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**LEAD AND LIAISON COUNSEL'S RESPONSE TO COURT'S ORDER
TO SHOW CAUSE**

Lead and Liaison Counsel, Tara D. Sutton and Robins, Kaplan, Miller & Ciresi L.L.P., submit this Memorandum as directed by the Court in its July 28, 2010 Order to Show Cause. Lead and Liaison Counsel currently have no pending cases in the Mirapex MDL. Under Pretrial Order No. 1 ("PTO 1"), one of Lead Counsel's tasks is to "determine and present to the Court and opposing parties the position of plaintiffs on all matters arising during the pretrial proceedings." PTO, ¶ 5(a). Thus, Lead Counsel Robins, Kaplan Miller & Ciresi L.L.P. has surveyed most counsel with cases pending in the Mirapex MDL.

There is no unanimity among counsel as to whether remaining cases should be remanded and MDL 1836 dissolved. Rather, counsel take a variety of positions, from strong opposition to remand, to a more neutral position of not opposing remand, to a desire for immediate remand. Lead Counsel has thus urged plaintiffs' counsel to submit memorandum in order to make their disparate views available to the Court. In addition, Lead Counsel provide the following authorities on if and when remand is appropriate.

I. This Court Has Completed Many Common Pretrial Proceedings

This Court must be congratulated on its efficient handling of its duties under 28 U.S.C. § 1407. Some MDL's drag on for years, but not this one. Since the Judicial Panel on Multi-District Litigation ("the Panel") assigned MDL 1836 to this Court in June 2007, many necessary pretrial proceedings have been completed.

Lead Counsel filed an initial wave of Mirapex cases in this Court in February 2006. Though not yet a part of a Multi-District Litigation, pre-trial work was consolidated as Lead Counsel represented almost all of the early cases filed. In October 2006, pursuant to a stipulation between the parties and the Court's authority under Fed. R. Civ. P. 42(a), this Court consolidated the thirty-one cases then on file for administrative and filing purposes. (Civil No. 06-0873, Dkt. No. 59.)

Between September 2006 and June 2007, this Court issued orders on many discovery disputes, including six motions to compel and a motion for enforcement of a prior motion to compel. (Civil No. 06-0873, Dkt. Nos. 52, 81, 84, 101, 145, 169, 179, 225). After the Panel, on motion by the Defendants, created MDL 1836 and ordered all cases to be transferred to this Court in June 2007, coordinated discovery continued. Defendants produced more than nine million pages of documents, all of which were reviewed by Robins, Kaplan, Miller & Ciresi L.L.P. Lead counsel made available to counsel for other MDL plaintiffs the "key documents" from this mass, those that were ultimately used as exhibits in depositions or in trial.

During 2007, more than thirty depositions were taken of defendants' employees and experts, in addition to the two to three depositions taken in each of the fifteen cases

which the Court designated as an initial trial pool. This Court continued issuing discovery rulings, and decided many dispositive and other significant motions, including *Daubert* motions, motions to dismiss and summary judgment motions, including those challenging general causation. (Civil No. 06-0873, Dkt. Nos. 266, 292; Civil No. 07-1836, Dkt. Nos. 257, 391, 393, 441, 522.)

The Court held two bellwether trials in July 2008. The first case went to verdict, with the jury finding in favor of plaintiffs Gary and Cindy Charbonneau. The second bellwether trial case was settled in the middle of trial in August 2008. These results promoted the parties to begin comprehensive settlement negotiations, and by January 2009, approximately 250 cases had been resolved and dismissed. (Civil No. 07-1836, Dkt. No. 807.) Approximately another 100 cases were resolved and dismissed in May 2009. (Civil. No. 07-1836, Dkt. No. 978.) In the year since, other cases have also been resolved. The Court has listed twenty-two cases that remain, though some of those cases may involve multiple plaintiffs. While most remaining issues have probably been addressed by the Court, some plaintiffs' counsel believe there remain common generic issues, such as those involving the impact of later label changes by defendants.

II. The Standard for a Suggestion of Remand to the MDL Panel.

MDL procedure anticipates that individual cases will ultimately be returned to their original districts for trial. *Lexicon v. Milberg, Weiss, Bershad, Himes, Lerach, et al.*, 523 U.S. 26, 33-35 (1997). The power to remand a case to the transferor court lies with the Judicial Panel on Multidistrict Litigation. See 28 U.S.C. § 1407(a). The Panel will, however, likely respect this Court's suggestion with respect to remand, given the

Court's special vantage point over this litigation. Manual for Complex Litigation (Fourth), § 20.133 (Federal Judicial Center 2004).

Remand is appropriate if pretrial proceedings have "run their course." *Lexicon*, 523 U.S. at 34-35. If plaintiffs' common discovery and other common pretrial proceedings are complete and the remaining unresolved cases will no longer benefit from centralized proceedings, remand is appropriate. It is not necessary, for remand, that the transferee court conduct every conceivable pretrial proceeding. Rather, under Section 1407, this Court's duty is to conduct common pretrial proceedings. *In re Evergreen Valley Project Litigation*, 435 F. Supp. 923, 924 (J.P.M.L. 1977). Remand may be appropriate when the only remaining discovery and motion practice and negotiation is case-specific. *In re Aircrash Disaster at Tenerife, Canary Islands*, 461 F. Supp. 671, 673 (J.P.M.L. 1978) (when remaining issues are unique to particular plaintiff, remand is appropriate.). On the other hand, the Panel does have the discretion to refuse remand if individual settlement negotiations will be more efficiently conducted within the confines of the MDL. *In Re: Joann Patenaude, et al.*, 210 F.3d 135, 144-45 (3rd. Cir. 2000).

Dated: August 3, 2010

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

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