

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

**In re: MIRAPEX PRODUCTS
LIABILITY LITIGATION**

MDL No. 07-1836 (JMR/FLN)

This Document Relates To:

Pamela J. Brann,
Plaintiff,

Case No.: 09-CV-3162 (JMR/FLN)

v.

Boehringer Ingelheim Pharmaceuticals, Inc.,
Defendant.

DEFENDANT'S RESPONSE TO ORDER TO SHOW CAUSE

Defendant Boehringer Ingelheim Pharmaceuticals submits this Response to the Order to Show Cause issued on July 28, 2010, and state as follows:

I. INTRODUCTION

Defendant believes this Court should retain jurisdiction over this MDL and that coordinated pretrial proceedings will continue to benefit the parties in the MDL and those who continue to join it. The Judicial Panel on Multidistrict Litigation ("JPML") created the Mirapex MDL in June 2007 by issuing a Transfer Order covering 58 Mirapex-related civil actions. Those 58 actions were in five different federal districts and involved plaintiffs from 28 different states. Over the past three years, more than 500 Mirapex cases have been filed in or transferred to the MDL. This Court has effectively managed the MDL cases through comprehensive discovery, bellwether trials, and an informal resolution process that has led to resolution of hundreds of cases.

These processes have gone a long way toward fulfilling the objectives of multidistrict litigation, but there is still much more that can be accomplished. Notably, although the Court has characterized the remaining number of cases as few, there are in fact more claims pending in the MDL now than there were when the JPML issued its initial Transfer Order—66 total claimants either pending or awaiting transfer, compared to the original 58. To be sure, 66 Mirapex claimants (45 of whom have combined their claims into four “group” complaints¹) is many fewer than the hundreds over which this Court once presided. But they are numerous enough that coordinated pretrial proceedings remain essential. Indeed, new Mirapex cases continue to be filed, including one since the Court issued its Order to Show Cause.

This MDL will continue to be productive because of the groundwork that this Court and the parties have laid over the last three years. Established discovery devices such as Plaintiffs’ Fact Sheets and the standard production of documents make relevant information consistently available with minimal court involvement. This Court also has addressed legal issues that may recur. For example, the time of drug usage is a key issue because of the Mirapex label changes in 2004 and 2005. The Court addressed the impact

¹ Forty-five plaintiffs represented by the Bahe Cook Cantley & Jones firm in Louisville have combined their claims into four civil actions, which has artificially deflated the number of cases appearing on the Court’s docket. The four civil actions are *Ankrum et al. v. BIPI, et al.*, No. 10-cv-02551, *Edwards et al. v. BIPI et al.*, No. 10-cv-00972, *Scholler et al. v. BIPI et al.*, No. 10-cv-02214, and *Russell et al. v. BIPI et al.*, No. 3:10-CV-441 (W.D. Ky) (awaiting transfer). The parties have stipulated and the Court has agreed that the various plaintiffs’ claims in these four cases should be severed, but the severance has been delayed while the parties determine whether the cases can be resolved without Court intervention.

of those changes in the *Scelta* case, and based on discussions with counsel, Defendant expects variations on the issue to reappear in other actions. Although no two claims are alike, continuing with the MDL ensures consistent treatment of core legal issues like these.

Perhaps the most productive aspect of this MDL has been the informal resolution process. Under Magistrate Judge Noel's jurisdiction, Defendant has settled hundreds of cases, and they continue to follow the Court's resolution template—limited case-specific discovery followed by court-supervised settlement conferences. There are settlement conferences set for early October in 13 cases, and pretrial schedules have just been issued for another group. This progress makes now a particularly inopportune time to consider terminating the proceedings.

Finally, 13 of the cases in this MDL were filed directly in this District, which means that no matter what the Court decides with regard to the transferred cases, Defendant will be here litigating these cases and trying to resolve them with Magistrate Judge Noel's assistance. From every perspective—efficiency, cost-effectiveness, the tribunal's experience and knowledge, consistency of results, proven progress toward resolution, etc.—Defendant would strongly prefer to have *all* the federal cases coordinated in this District, as they have been for the duration of this MDL.

Dissolving the MDL now would set the parties back, in many cases to square one. The time will come when this MDL has run its course, and Defendant themselves may at some point in the future ask this Court to suggest remand to the JPML. Because that time

has not yet arrived, Defendant requests that the Court continue the MDL and defer on making any suggestion of remand.

II. ARGUMENT

A. THIS COURT'S COORDINATED CASE MANAGEMENT HAS STREAMLINED PRETRIAL PROCEEDINGS AND RESOLVED HUNDREDS OF CASES

In creating the Mirapex MDL, the JPML determined that the pending actions “involve[d] common question of fact, and that centralization under Section 1407 in the District of Minnesota will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation.” *JPML Transfer Order, June 22, 2007*.

The purpose of centralization was “to eliminate duplicative discovery, prevent inconsistent pretrial rulings, and conserve the resources of the parties, their counsel and the judiciary.” *Id.*

Since 2007, over 500 Mirapex-related actions have been filed in or transferred to this District for coordinated pretrial proceedings. Importantly, the coordinated case management process has ensured that each case has either resolved informally or has moved forward with streamlined discovery efforts, which embodies the purpose for which the MDL was created—to promote efficiency, conserve resources, and to eliminate duplicative discovery. Indeed, all but the claims of 66 plaintiffs, have been resolved.

B. THE MDL SHOULD CONTINUE BECAUSE THIS COURT'S ESTABLISHED PRACTICES WILL CONTINUE TO GUIDE THE REMAINING MIRAPEX CLAIMS TOWARD RESOLUTION

1. There are a significant number of cases currently pending in the MDL that warrant continued consolidation.

There is no substitute for the organizational benefits the parties will continue to derive from participating in this coordinated program. Simply put, the process is working and should be maintained to reduce delay and promote the just and efficient conduct of these actions. Currently, there are 23 actions pending in, or awaiting transfer to, the Mirapex MDL.² Those actions comprise the claims of 66 unique claimants³ (excluding loss of consortium claimants), which is more than the 58 cases originally transferred to the MDL in 2007. As mentioned above, 13 cases were filed directly in the District of Minnesota and would be subject to this Court's jurisdiction even in the absence of an MDL.

Plaintiffs uniformly allege pathological gambling and other compulsive behaviors attributed to their ingestion of Mirapex, and the focus remains on the complex questions regarding the safety of Mirapex and the adequacy of the warnings related to compulsive behavior at various points in time. There are more than enough claimants in this MDL to make coordinated pretrial proceedings worthwhile, and the currently pending cases will continue to benefit from this Court's guidance and significant efforts. Indeed, centralized

² This does not include the case of plaintiff Anthony Scelta whose appeal of the dismissal of his case is awaiting a ruling from the Eighth Circuit.

³ In total, the pending actions originate from at least six different districts, encompassing plaintiffs from 27 different states.

case management has resulted in almost all of the current MDL cases having pretrial schedules already set, with 13 actions scheduled for settlement conferences in October.

2. There are legal issues for which the parties will benefit from guidance and consistent treatment from the Court.

Despite three years of coordinated proceedings, there are still legal issues on which this Court can provide consistency and guidance. For example, since the bellwether trials two years ago, newer cases have been filed that present potential novel bellwether issues regarding plaintiffs who used Mirapex mainly or exclusively after the 2004 and 2005 label changes. At least one late-usage case involving the defendants' duty to warn of compulsive behaviors after the labeling changes, the *Burd* case, is in the midst of formal discovery.⁴ Because the parties will explore and likely seek to brief the issues such as late-usage in *Burd* or other cases, continued coordination of the proceedings is imperative to create uniformity and consistency.

3. Remand of the cases would disrupt their orderly and efficient management and could lead to expensive duplicative discovery.

Despite the fact that **all** parties would benefit greatly from continued consolidated proceedings, transferring the remaining cases back to numerous districts will result in having varied discovery tracks and pretrial rulings before judges unfamiliar with the issues germane to the litigation. Indeed, coordinated rulings and scheduling firmly established in the MDL would be undermined by disparate rulings in numerous other

⁴ Plaintiff *Burd* is represented by the Bahe Cook firm, which has the largest number of cases currently pending in the MDL (five cases totaling 46 plaintiffs).

federal district courts. Such varying determinations could significantly affect this litigation.

In addition, disparate scheduling could force the parties to engage in the duplicative and costly discovery which this Court has successfully circumvented by setting up a coordinated discovery process. At this stage of the MDL, the Court has structured a coordinated process which allows the parties reasonable time to try to resolve the cases informally before bearing the expenses associated with formal discovery. Continued consolidation of these cases is necessary to facilitate resolution of the claims, prevent duplicative and potentially inconsistent pretrial rulings, and avoid unnecessary repetitive discovery.

III. CONCLUSION

The MDL is conserving the resources of the parties and the judiciary, preventing inconsistent pretrial rulings, and promoting the just and efficient conduct of these actions.

Coordinated pretrial proceedings should continue in this District.

Dated: August 4, 2010

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