

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 VIA TELEPHONE
BEFORE THE HONORABLE RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE
OCTOBER 4, 2012

APPEARANCES

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(Appearanced continued on Page 2)

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1 **(PROCEEDINGS STARTED AT 10:38 AM.)**

2 THE COURT: All right. Well, we're here this morning
3 in the multidistrict case styled *In Re: NuvaRing Products*
4 *Liability Litigation*, Cause No. 4:08-MD-1964. Would counsel
5 make their appearances? On behalf of the plaintiffs?

6 MS. KRAFT: Kristine Kraft.

7 MS. BRITTAIN: Ashley Brittain-Landers for plaintiff.

8 THE COURT: Anyone else for plaintiffs?

9 MR. FARNOLO: Nick Farnolo from Napoli Bern, Hunter
10 Shkolnik.

11 THE COURT: Anyone else?

12 MS. KRAFT: No, Your Honor.

13 THE COURT: On behalf of the defendant?

14 MR. BALL: Dan Ball for defendants.

15 MS. GEIST: Melissa Geist from Reed Smith, Your
16 Honor, for defendants. Good morning.

17 MR. YOO: And Thomas Yoo as well.

18 THE COURT: Very good. We're here today on a status
19 conference. The only -- and I could always miss something,
20 but the only agenda item I have received was from Ms. Kraft as
21 to the supplemental document production.

22 MS. KRAFT: Yes, Your Honor. I can certainly address
23 that now if you're ready.

24 THE COURT: Might as well. Go ahead.

25 MS. KRAFT: Yes. With respect to that, actually,

1 Melissa and I have spoken further, and we believe that we will
2 be able to propose to the Court a proposed order with respect
3 to the timing of production.

4 We have talked very generally about a proposal of
5 every 30 days pertaining to regulatory-type communications
6 regarding the recent communications with the FDA on various
7 topics and another timetable yet to be determined with respect
8 to other types of document supplemental production.

9 So we'll continue working together on that and intend
10 to submit a proposal to the Court in short order. So I
11 believe we've worked through that pretty well.

12 THE COURT: All right. Anything else on behalf of
13 the plaintiffs?

14 MS. KRAFT: No, Your Honor.

15 THE COURT: All right. Anything on behalf of the
16 defendant?

17 MS. GEIST: No, Your Honor. This is Melissa Geist.
18 Your Honor is correct, we did not submit an agenda. We did
19 not have any particular items to bring before the Court, and
20 everything Ms. Kraft said is accurate. We are working that
21 out. So we have no additional items to discuss with Your
22 Honor today.

23 THE COURT: All right. Daubert motions are at issue
24 in approximately a month. Case-specific Daubert motions are
25 at issue the first of January, along with summary judgment

1 motions.

2 Any issues with that schedule at this point? I hope
3 not.

4 MR. YOO: Your Honor, this is Thomas Yoo. I think we
5 discussed this at the last case management conference. I
6 don't want to misstate the record, but as I recall, we
7 reported to Your Honor certain developments in the New Jersey
8 litigation, namely, that Judge Martinotti thought it prudent
9 to continue on with the set briefing schedule for the
10 Daubert/Kemp challenges but to hear the summary judgment
11 motions first. And I think Your Honor was in agreement with
12 that sort of flipping of at least the hearings.

13 And so the briefing will be timely completed on the
14 Daubert motions, and the case-specific Daubert motions will be
15 timely filed per the briefing schedule, and we, of course,
16 have a summary judgment briefing schedule in place. It's been
17 our expectation since the last discussion with Your Honor and
18 Judge Martinotti that the two courts would hear the respective
19 summary judgment motions first, and then when attention is
20 turned to the Daubert/Kemp motions as necessary, that we would
21 try to work out some coordination between Your Honor and Judge
22 Martinotti.

23 THE COURT: Logistically -- well, philosophically,
24 unless there's a different view from the plaintiffs, I don't
25 have a problem with that. Logistically, it's my understanding

1 you're appearing in front of Judge Martinotti the second week
2 of December for oral argument on summary judgment motions. Is
3 that right?

4 MS. GEIST: That's correct, Your Honor. This is
5 Melissa Geist again, Your Honor. Judge Martinotti did set
6 December 10 and December 11 for oral argument on the summary
7 judgment motions filed in the nine bellwether cases in New
8 Jersey.

9 THE COURT: And our summary judgment motions aren't
10 at issue until the 7th. And then he still has a trial setting
11 to my understanding in February; is that correct?

12 MS. GEIST: That is correct, Your Honor. That has
13 not yet been moved.

14 THE COURT: So we'll have our backs to the wall. The
15 Daubert motions here aren't at issue until January 7,
16 depending on his ruling on the summary judgment motions, to
17 coordinate a Daubert hearing in probably in his court, at
18 least that's the way he and Judge Herndon did it in Yaz, but
19 we'll cross each bridge when we get to it.

20 But logistically timing-wise, we're putting
21 ourselves -- well, we'll see where it takes us. But you
22 understand what I'm saying without articulating my problem.
23 You guys have your backs to the wall.

24 MR. YOO: Yes, Your Honor. I appreciate where the
25 Court is coming from. I think logistically a couple of pieces

1 of this are going to have to be adjusted in order for
2 everyone's schedule to work, but as Your Honor observed, we
3 can deal with that as we move forward. So we've got future
4 case management conferences coming up where we can have
5 further discussions about --

6 THE COURT: When do you talk to Judge Martinotti
7 again?

8 MS. GEIST: This is Melissa Geist again. Let me just
9 check our calendar and see when we are there. We are not
10 there, Your Honor, again until November 14.

11 THE COURT: Okay. Why don't we set a status
12 conference here for November 19, I assume by telephone, at
13 10:30.

14 MR. YOO: Your Honor, November 19 is the one day that
15 is not available for me.

16 THE COURT: How about November 20?

17 MR. YOO: That works for me.

18 THE COURT: 10:30, November 20, for a status
19 conference.

20 MS. KRAFT: Fine, Your Honor. Thanks.

21 THE COURT: And I still have -- and you all were
22 working through it, but just confirm for me that there are no
23 loose ends with the 30(b)(6) witness issues that arose out of
24 the authentication of documents. That was the plaintiffs'
25 concern. Have we moved past that?

1 MS. KRAFT: Your Honor, this is Kris Kraft. Melissa
2 and I have made significant progress in that regard, and
3 coincidentally, we are scheduled to talk again this afternoon.
4 So at this point we didn't have any further issues on that to
5 bring to your attention.

6 THE COURT: Okay. I'm going to go ahead and term the
7 pending motion on the idea that at a minimum, whatever will be
8 left will be so -- would be a much smaller universe and
9 discrete issues.

10 MS. KRAFT: Yes. I think that's certainly --

11 THE COURT: You can revisit it with me as to the
12 nature and scope of whatever remains after you and Ms. Geist
13 work it out and you tell me that you're done.

14 MS. KRAFT: Okay.

15 MS. GEIST: Thank you, Your Honor.

16 THE COURT: We'll talk to you on November 20. Thank
17 you all.

18 **(PROCEEDINGS CONCLUDED AT 10:48 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 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 9th day of October, 2012.

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