

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

In Re:)
)
AREDIA and ZOMETA PRODUCTS) No. 3:06-MDL-01760
LIABILITY LITIGATION) Judge Campbell/Brown
(MDL No. 1760))
)
This Document Relates to)
All Cases)

O R D E R

A telephone conference was held with the parties in this matter on July 21, 2008. As an initial matter, the next telephone conference is set for 1:30 p.m., August 21, 2008, to be initiated by the Plaintiffs' Steering Committee.

As will be discussed below, a number of issues were raised and the Plaintiffs' Steering Committee believes that an in-Court hearing may be necessary to resolve some of the issues. In the event that an in-Court hearing is necessary, it is set for September 4, 2008, at 10:00 a.m., in Courtroom 783.

The parties have jointly requested a two-week extension of all Wave 1 deadlines set by the Court's July 17, 2008 order (Docket Entry 1471). The parties advised that they were continuing to schedule depositions, and these depositions ranged from Europe to possibly Japan. While the Magistrate Judge has some reluctance to continue to extend deadlines, in this case the depositions do involve in some cases nonparties, and the nonparties are represented by counsel apart from Novartis' present counsel. This factor plus the inherent difficulties of scheduling matters with a number of attorneys justifies this brief extension. However, the

Magistrate Judge is concerned that a number of small extensions may combine into one rather large extension.

The deadline for completing these depositions was originally at the end of July. In view of the difficulties pointed out by counsel, the deadline for completing depositions is extended until **August 30, 2008**. Even with this extension, counsel indicated that there might be a very small number of depositions that would have to be scheduled later, particularly the witness in Japan. The Magistrate Judge would be willing to extend this amended deadline for a very limited number of named depositions, but would be unwilling to extend the deposition deadline again generally.

Novartis has indicated that there may be an error in the request for substitution in the *Beard* case (Docket Entries 1456 and 1461). Novartis believes that the controlling law in the *Beard* case is Illinois, rather than Washington. Counsel for *Beard* advised that he would double-check this and, if necessary, file a motion to correct.

The parties advised that at the present time they did not need any decisions on the remaining issues in Docket Entries 1438 and 1442. The Court will keep these two docket entries open until the August telephone conference. At that point the Magistrate Judge will likely terminate these motions unless there is a need to continue them.

The Clerk's office has pointed out that in some cases counsel are using old numbers or numbers assigned by the original filing district when filing pleadings in this matter. Counsel should carefully check to insure that in their pleadings they are

using the current case number for their cases, and where motions apply to a number of cases, that they specifically and accurately indicate the cases that their motions pertain to. This will greatly assist the Clerk's office in spreading the massive number of documents in the master case when these cases are remanded.

The Plaintiffs' Steering Committee was due to file with the Court a list of the home judicial districts of the various Plaintiffs in the Wave 1 cases. Due to the untimely death of the father of Plaintiffs' counsel who was preparing this report, it has understandably been delayed. Plaintiffs' counsel is requested to furnish this list to defense counsel by **Monday, July 28, 2008**, and Novartis is requested to make any comments it has and furnish the completed report to the Magistrate Judge by **July 30, 2008**.

The Magistrate Judge next discussed with the parties the proposed common benefit fund order (Docket Entry 1448). Novartis advised that their complaint about this dealt with the paragraph that required future notification. Novartis was concerned that this notification could potentially involve cases in the future that they might not be aware of. The Plaintiffs' Steering Committee pointed out that the Defendant would not be in violation of an order unless there was a willful violation. The Magistrate Judge will review this matter and issue a separate order concerning the common benefit fund request (Docket Entry 1448).

Next there was a lengthy discussion concerning the Defendants' request for an order setting a deadline for completion of general discovery (Docket Entry 1419). The Defendants filed a

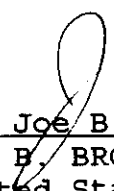
draft order shortly before the telephone conference (Docket Entry 1472-1).

The Plaintiffs' Steering Committee believes that this issue is also connected with their request for the production of emails and electronic databases.

The Magistrate Judge had thought that the electronic databases issues had been resolved sometime ago. The Plaintiffs' Steering Committee, however, believes that there are databases that they are entitled to and that Novartis has not provided. Novartis stated that they thought they had provided the information that the Plaintiffs had requested and that the Plaintiffs were not entitled to any other databases. They also argued that if they were required to produce all of the emails of individuals beyond the core employee group, production for each additional individual would involve approximately one quarter of a million documents.

The Magistrate Judge concludes from this discussion that this matter cannot be resolved in a telephone conference. Plaintiffs should promptly file a motion stating what information they seek, why they need it, and what witnesses, if any, they think would be necessary at an in-court hearing. Novartis may have the time provided by the rules to respond to the Plaintiffs' motion. If a hearing is necessary, it will be conducted on **September 4, 2008**, as previously stated. The Magistrate Judge did comment during the hearing that he was concerned that issues concerning electronic discovery were being raised at what appears to be a fairly late date in the proceedings.

It is so ORDERED.


/s/ Joe B. Brown

JOE B. BROWN

United States Magistrate Judge