

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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

SETTLEMENT HEARING
BEFORE THE HONORABLE RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE
FEBRUARY 7, 2014

APPEARANCES

For Plaintiffs: Kristine Kraft, Esq.
Roger Denton, Esq.
SCHLICHTER AND BOGARD
100 S. Fourth Street, Suite 900
St. Louis, MO 63101

For Defendants: Stephen Strauss, Esq.
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(Appearances continued on Page 2)

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Official Court Reporter
United States District Court
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Appearances Continued:

By telephone: Gary Casselman, Esq.
Dan Ball, Esq.
Thomas Yoo, Esq.
Paul Stevens, Esq.
Melissa Geist, Esq.
Wendi Frisch, Esq.
Shelly Leonard, Esq.
Gregory McEwen, Esq.
Carmen Scott, Esq.
Melanie Muhlstock, Esq.
Sherry Watts, Esq.
Kelly Hyman, Esq.
Rachal Rojas, Esq.
Jane Joseph, Esq.
Hunter Shkolnik, Esq.

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(PROCEEDINGS STARTED AT 11:30 AM.)

THE COURT: Good morning. We are here today in the multidistrict litigation case assigned to this Court, In Re: NuvaRing Products Liability Litigation, this Court's number 4:08-MD-1964. Would counsel in the courtroom make their appearances, please?

MR. DENTON: Roger Denton and Kristine Kraft on behalf of the plaintiffs.

MR. STRAUSS: Morning, Your Honor. Steve Strauss on behalf of the defendants.

THE COURT: Any other counsel of record on the telephone who wish to enter their appearance at this time?

MR. CASSELMAN: Yes, Your Honor. This is attorney Gary Casselman on behalf of the plaintiffs in Perez versus defendants that -- the local case number --

THE COURT: That's all right. I don't need any cause numbers. That's okay.

Any other counsel?

MR. BALL: Yes, Your Honor. Dan Ball on behalf of the defendants.

MR. YOO: Thomas Yoo for defendants. Good morning, Your Honor.

THE COURT: Good morning, Mr. Yoo.

MR. STEVENS: Your Honor, Paul Stevens on behalf of certain plaintiffs.

1 MS. GEIST: Your Honor, good morning. Melissa Geist
2 for Reed Smith for the defendants.

3 THE COURT: Good morning, Ms. Geist.

4 MS. GEIST: Morning, Judge.

5 MS. FRISCH: Good morning, Your Honor -- (Inaudible)
6 -- on behalf of defendant.

7 THE COURT: Can you state your name again? It was
8 pretty garbled on this end.

9 MS. FRISCH: I'm sorry. Wendi Frisch on behalf of
10 defendant McKesson Corporation.

11 THE COURT: Anyone else?

12 MS. LEONARD: Good morning, Your Honor. Shelly
13 Leonard on behalf of plaintiffs.

14 MR. MCEWEN: Good morning, Your Honor. Greg McEwen
15 for a number of --

16 THE COURT: You cut out there, so if you can redo
17 that. I appreciate the fact that you're all keeping your
18 phones on mute, but just for that one minute if you would go
19 ahead and take it off mute and then enter your appearance.

20 MR. MCEWEN: Yes, Your Honor. This is Gregory
21 McEwen, and I represent a number of plaintiffs for McEwen Law
22 Firm in Minnesota.

23 MS. SCOTT: Good morning, Your Honor. This is Carmen
24 Scott with Motley Rice on behalf of multiple plaintiffs.

25 MS. MUHLSTOCK: Good morning, Your Honor. Melanie

1 Muhlstock on behalf of multiple plaintiffs.

2 MS. WATTS: Good morning, Your Honor. Sherry Watts
3 on behalf of multiple plaintiffs.

4 MS. HYMAN: Good morning, Your Honor. Kelly Hyman
5 from Searcy Denney on behalf of multiple plaintiffs.

6 THE COURT: You're going to have to back off the
7 phone. You came in so strong, it overwhelmed the room.

8 MS. HYMAN: Sorry. Kelly Hyman from Searcy Denney
9 for multiple plaintiffs.

10 THE COURT: Thank you.

11 MS. ROJAS: Rachal Rojas, Matthews & Associates, for
12 multiple plaintiffs.

13 THE COURT: Ms. Kraft, will you help us later with
14 this?

15 MS. JOSEPH: (Inaudible) -- Skikos Crawford, for
16 plaintiff.

17 THE COURT: Who was the last person?

18 MR. SHKOLNIK: Hunter Shkolnik on behalf of
19 plaintiffs. Good morning, Your Honor.

20 THE COURT: Good morning, Mr. Shkolnik.

21 All right. This morning I've been asked to inform
22 all parties an agreement in principle has been reached for the
23 settlement of the NuvaRing litigation nationwide. The
24 agreement is subject to certain contingencies that I will
25 discuss shortly. A Master Settlement Agreement has been

1 signed by the defendants and by lead plaintiffs' counsel.
2 Lead plaintiffs' counsel were appointed by myself and Judge
3 Brian Martinotti, the Superior Court Judge presiding over the
4 New Jersey Coordinated NuvaRing Proceedings. And we appointed
5 those plaintiff counsel to engage in mediation on behalf of
6 the plaintiffs. As you would in any multidistrict litigation,
7 there are obviously appointments made to coordinate the
8 discovery and other aspects of litigation to manage it most
9 efficiently as possible for all the parties.

10 The Master Settlement Agreement is available online.
11 It's been filed in this court. It's my understanding it's
12 been filed in the case pending -- in the cases pending in
13 front of Judge Martinotti. Its terms, of course, govern the
14 settlement agreement, and any description I have today does
15 not replace the express language of the settlement agreement,
16 so that is what you should refer to.

17 Under the proposed agreement, the company will pay
18 \$100 million to resolve the claims, provided that various
19 contingencies and requirements are met, including an overall
20 95 percent participation rate and additional participation
21 thresholds for specific types of claims.

22 This is a nationwide settlement that is available to
23 all qualifying plaintiffs in cases currently on file in the
24 New Jersey proceedings, the multidistrict litigation pending
25 here, and any other federal or state court, as well as all

1 qualifying claimants who have not yet filed a lawsuit. If the
2 participation thresholds are not met, the company can walk
3 away from the settlement and continue to defend the cases in
4 this litigation.

5 The settlement was achieved after extensive
6 negotiations by the defendants and the negotiating plaintiffs'
7 counsel, Roger Denton and Kristine Kraft of the Schlichter
8 Bogard & Denton firm and Hunter Shkolnik of Napoli Bern.

9 The mediations were presided over by Judge Wayne
10 Andersen, a retired federal judge, who was from -- Federal
11 District Judge in the Northern District of Illinois who I
12 appointed as mediator in the multidistrict litigation
13 proceedings, and the mediations were also presided over by
14 Judge Brian Martinotti in New Jersey.

15 I want to thank Judges Martinotti and Andersen for
16 their hard work, cooperation, and collaboration. It cannot be
17 overstated, I think, and I believe the counsel would agree
18 with me, that the level of cooperation between Judge
19 Martinotti and this Court made the process and procedures of
20 this case possible to be done as inexpensively as possible
21 despite the large amount of time and effort put into it.

22 Judge Martinotti's cooperation with this Court, I
23 believe, is unprecedented, and things went as smoothly as they
24 possibly could when you're dealing with a large number of
25 cases pending in state court in New Jersey, as well as the

1 more than 1,500 cases that have already been consolidated
2 before this court here in St. Louis, Missouri. And I want to
3 thank Judge Martinotti for his efforts and courtesies in
4 making this go as smoothly as possible.

5 Judge Martinotti and I specifically ordered counsel
6 not to discuss the mediation with any other parties during the
7 pendency of the negotiations, so that is why the reason you
8 did not hear about this settlement until today. I can tell
9 you that counsel on both sides worked very hard, over many
10 months, to achieve this resolution. I find, and I think
11 Judges Martinotti and Andersen agree, that the parties firmly
12 believe this settlement is a fair resolution of this
13 litigation.

14 All counsel should read the Master Settlement
15 Agreement and do so promptly. There are deadlines that must
16 be met in order to participate in the settlement, and
17 participation thresholds must be satisfied in order for the
18 agreement to become effective. This is a lump sum settlement
19 of \$100 million that covers the entire litigation nationwide.
20 The responses to the Census orders issued by this Court and
21 Judge Martinotti in New Jersey include approximately 3,800
22 filed and unfiled NuvaRing claims alleging different types of
23 injuries.

24 In order to qualify for a portion of the settlement
25 sum, each participant must meet the requirements in the Master

1 Settlement Agreement and abide by the forms appended to the
2 agreement. The claims will be processed by a third party
3 claims administrator, Brown Greer, on whose website you can
4 find a copy of the Master Settlement Agreement.

5 The determination of individual claim values under
6 the settlement agreement will be made by a committee of
7 plaintiffs' counsel pursuant to established criteria. Among
8 other conditions, the settlement agreement requires a minimum
9 of 95 percent participation by eligible plaintiffs and
10 claimants. In other words, if at least 95 percent of eligible
11 participants do not opt into the settlement, the settlement
12 fails and no one receives any portion of the settlement sum.
13 So in order for this to work for the collective benefit, the
14 parties hope that everyone will recommend participation in the
15 settlement program.

16 This is the only settlement in the NuvaRing
17 litigation and is intended to be the final resolution of the
18 litigation nationwide. The settlement comes after more than
19 five years of extensive and hard-fought litigation in this
20 Court and in the New Jersey proceedings.

21 Discovery has been exhaustive. Key evidence has been
22 presented here and in New Jersey. I personally ruled on a
23 large number of dispositive motions and Daubert motions, as
24 well as Judge Martinotti handling those motions in the state
25 court in New Jersey, and the timing and terms of this

1 settlement appears to be appropriate to me.

2 In addition to the Master Settlement Agreement, I
3 encourage everyone to read the case management orders issued
4 by this Court today. They have already been docketed in the
5 multidistrict litigation here in the Eastern District of
6 Missouri and are available to you online.

7 Those orders include deadlines that will apply to any
8 case that does not join the settlement program and sets forth
9 certain prima facie requirements, including preservation
10 obligations and expert reports, that plaintiff will need to
11 meet going forward if they choose to seek to litigate their
12 case in lieu of the settlement program. Those requirements
13 will also apply to any new cases filed today and in the future
14 that are not part of the settlement program.

15 If after reading the Master Settlement Agreement you
16 have questions about the settlement program, please direct
17 those questions to the contact names listed in the Master
18 Settlement Agreement or to the claims administrator. Should
19 any further orders be necessary for me or from Judge
20 Martinotti, the negotiating counsel and defendants' counsel
21 will contact the respective courts for scheduling as
22 appropriate.

23 Thank you for your time and courtesies. And Court is
24 adjourned. Thank you very much.

25 **(PROCEEDINGS CONCLUDED AT 11:44 AM.)**

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 11 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 7th day of February, 2014.

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