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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

IN RE: PREMPRO PRODUCTS LIABILITY MDL No. 1507
4:03CV01507 BRW

* * * * *

Friday, January 25, 2013 - Little Rock, Arkansas - 9:03 a.m.

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TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE BILL WILSON,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

On Behalf of the Plaintiffs:

MS. ZOE LITTLEPAGE, ATTORNEY AT LAW
MR. RAINEY BOOTH, ATTORNEY AT LAW
Littlepage Booth
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Houston, Texas 77098

MR. MICHAEL L. WILLIAMS, ATTORNEY AT LAW
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MR. RALPH M. CLOAR, JR., Attorney at Law
Law Office of Ralph M. Cloar, Jr.
1501 North University Avenue, Suite 640
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On Behalf of the Defendants, Wyeth and Upjohn:

MR. F. LANE HEARD, III, ATTORNEY AT LAW
Williams & Connolly
725 Twelfth Street, N.W.
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MS. LYN PEEPLES PRUITT, ATTORNEY AT LAW
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[CONTINUED]

1 [APPEARANCES CONTINUED]

2 On Behalf of the Defendant, Novartis:

3 MR. JOHN P. BORGER, ATTORNEY AT LAW
4 Faegre Baker Daniels LLP
5 Wells Fargo Center
6 90 South Seventh Street, Suite 2200
7 Minneapolis, Minnesota 55402-3901

8 ALSO PRESENT:

9 MAGISTRATE JUDGE JOSEPH J. VOLPE

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25 Proceedings reported by machine stenography and displayed
in realtime; transcript prepared utilizing computer-aided
transcription.

P R O C E E D I N G S

1
2 THE COURT: Good morning, be seated, please. It's
3 mighty good to see those of you who attended the semi-mandatory
4 reception last night. Remind me when you are up *agin* a lawyer
5 who wasn't there that you have got a point and you get a
6 ruling. If your opponent is somebody that stayed at a ski
7 resort too long, you get two rulings against them.

8 All right. I am going to -- as I have told you many
9 times, I am like that preacher. Before I talk to you, I am
10 going to tell you something.

11 By the way, I would like to have every lawyer identify
12 yourselves, even those at the counsel table, and your client
13 representative if that person wants to be identified. If
14 you-all want to remain anonymous and below the radar screen,
15 okay. But we will start over here on my right and come across
16 the counsel table. And I am talking about lawyers in the
17 gallery too.

18 MR. HEARD: Lane Heard for Wyeth and Upjohn.

19 MS. PRUITT: Lyn Pruitt, Wyeth and Upjohn.

20 THE COURT: Tell me what your home base is too. I
21 know people at counsel table, but some of you out in the
22 gallery, I don't.

23 MS. LITTLEPAGE: Zoe Littlepage, Houston, Texas,
24 plaintiffs.

25 MR. WALKER: Erik Walker, Austin, Texas, plaintiffs.

1 MR. CLOAR: Ralph Cloar, all over Arkansas,
2 plaintiffs.

3 MR. WILLIAMS: Mike Williams, Portland, Oregon,
4 plaintiff.

5 MS. CORLESS: Catherine Corless, Little Rock.

6 MR. BRAMMER: Matt Brammer from Ulmer Berne,
7 Cincinnati, for Barr Laboratories and Duramed.

8 MS. GAARDER: Christina Gaarder from Venable,
9 representing Abbott.

10 MR. JULIAN: Jim Julian from Little Rock, representing
11 Abbott.

12 MS. PULLIAM: Janet Pulliam, Little Rock, Novartis.

13 THE COURT: Let me get my sunglasses on so I can look
14 at your outfit. It's nice.

15 MS. KIRBERGER: Marcela Kirberger, in-house counsel at
16 Novartis Pharmaceuticals.

17 MR. BORGER: John Borger, Minneapolis, Novartis.

18 MS. O'GORMAN: Debra O'Gorman from Dechert, New York,
19 for Ortho.

20 THE COURT: Y'all speak a little slower if you will,
21 particularly you Yankees.

22 MR. GREEN: I think I can talk reasonably slow, Your
23 Honor. I'm K.C. Green from Cincinnati, and I am here on behalf
24 of various Watson entities.

25 MS. HICKS: Emily Hicks, Pittsburgh, on behalf of

1 Mylan.

2 MR. BABINGTON: Joe Babington, Mobile, Alabama, for
3 GSK.

4 MS. La MONT: Jennifer La Mont from New Jersey, for
5 Berlex and Bayer.

6 MR. van den BOOM: Peter van den Boom, Winter Haven,
7 Florida, plaintiffs.

8 MR. WEBB: Seth Webb, St. Louis, plaintiffs.

9 MR. CATE: Brandon Cate from Springdale, Arkansas, for
10 Warner Chilcott.

11 MR. TROYER: Brian Troyer from Cleveland, Ohio, for
12 Solvay Pharmaceuticals, which later became Abbott Products.

13 MR. VICKERY: Alan Vickery from Dallas, Bristol-Myers
14 Squibb.

15 MR. BRUYERE: Mike Bruyere from Atlanta, Prasco
16 Laboratories.

17 MR. FINLEY: Chet Finley, St. Louis, plaintiffs.

18 MS. CULLEN: Sarah Cullen, Little Rock, Arkansas,
19 Solvay.

20 MS. TINSLEY: Caroline Tinsley, St. Louis, on behalf
21 of Novo Nordisk, Inc.

22 MR. HOLT: Gary Holt, Little Rock. My clients are
23 Kuhn and Davidson, set for February and April.

24 MR. TAYLOR: Mark Taylor, Dallas, Texas, plaintiffs.

25 MR. MCGOWAN: Tom McGowan, Little Rock, plaintiffs.

1 MS. LUCE: Melissa Luce, Charleston, West Virginia,
2 plaintiffs.

3 MR. CUSICK: Josh Cusick, Kansas City, Missouri,
4 plaintiffs.

5 MS. WALAS: Breean Walas, Little Rock, plaintiffs.

6 MR. DEERING: David Deering, Montgomery, Alabama,
7 plaintiffs.

8 MS. BOONE: Alex Boone, Dallas, Texas, plaintiffs.

9 MR. WETHERALL: Peter Wetherall, Las Vegas, Nevada,
10 plaintiffs.

11 THE COURT: Teetotaler from Las Vegas.

12 MR. THORNBURGH: Daniel Thornburgh, Pensacola,
13 Florida, plaintiffs.

14 MR. BOOTH: Rainey Booth, Houston, plaintiffs.

15 MR. MEADOWS: Ted Meadows, Montgomery, Alabama,
16 plaintiffs.

17 MR. KIRCHMER: Chris Kirchmer, Beaumont, Texas,
18 plaintiffs.

19 THE COURT: Thank you all very much.

20 Like I said, before I talk to you, I'm going to tell you
21 something. On December 31st of this year, I am going to step
22 down in the MDL case. I am going to recuse. I am going to
23 recommend to the committee that the cases still pending as of
24 December the 31st, unless they have been settled, that they be
25 sent back to the districts where they came. And when I said I

1 didn't want any cheering or groans, I don't want any cheering
2 for those who think you might get a good lawyer and I don't
3 want any groans from those of you who can't stand the thought
4 of me being here another year.

5 I believe that MDL has served its purpose to the extent
6 it's going to, and so I am not going to -- I am also going to
7 recommend to the committee that they not send any more cases to
8 me. Now, notice I said "recommend to the committee." They
9 have control. They may keep sending cases, and when I
10 recommend on December 31st that they take these cases out of
11 MDL, they may continue them in MDL. I think their track record
12 is go along pretty much with the recommendation of the Judge
13 that's handling the MDL case. I never can remember whether I
14 am a transferee or transferor. I am pretty sure I am a
15 transferee, but whichever I am, I think they go along with them
16 pretty much.

17 Like I say, I am not going to remand the cases that are
18 settled in principle, but I want to speed up the process.
19 Sometimes it's taken over a year when I get word that a case is
20 settled to get the settlement papers in. Surely there has to
21 be a way to get it done faster than that.

22 All right. What is the status of discovery in the
23 non-Wyeth defendants? Where is discovery? Can somebody speak
24 on that?

25 Ms. Littlepage.

1 MS. LITTLEPAGE: Good morning, Judge. For some of the
2 non-Wyeth defendants, all of the cases that they have pending
3 in the MDL have been resolved. So all discovery stopped
4 because all of the Solvay cases have been resolved. All of the
5 Bristol-Myers cases have been resolved.

6 For some of the other defendants, there are very few
7 cases. There are three or four or five cases against that
8 defendant. The PSC, as you know, we have petitioned the Court
9 for more money. The Court denied us without prejudice for us
10 refiling, but at the moment we don't have the funds to continue
11 discovery against a defendant that has only three or four or
12 five cases.

13 There are some defendants that have a number of cases --
14 Novartis, Novo Nordisk, and Barr are probably the three biggest
15 that are MDL defendants with a lot of pending cases. Some of
16 those defendants have settled some of their cases but not all.
17 Some of those defendants have settled none of their cases. And
18 we are proceeding with discovery against those bigger
19 defendants and using our resources against them as opposed to
20 some of the ones that only have three or four or five cases.

21 Does that help?

22 THE COURT: Thank you.

23 Anyone from the defense want to speak or any other
24 plaintiff lawyer?

25 MR. WILLIAMS: Just one correction, Your Honor. Mike

1 Williams from Portland.

2 We have one Bristol-Myers case that is still alive, and
3 there is a motion pending before you that should be ripe for
4 decision this month or next month. Zoe didn't know about that
5 one case.

6 THE COURT: All right. What issues do we have to
7 resolve this morning at this point?

8 Are you-all ready to go home? Speak or forever hold your
9 peace.

10 Let me see if my lawyers think I need to raise anything
11 else.

12 I understand that some clients have shown up, and I
13 appreciate them being here very much. And let me say this. If
14 there is any way to settle these cases, those of you who
15 know -- who have participated in this, I do not believe in
16 mandatory settlement conferences. But if these cases can be
17 resolved, I urge you to try to resolve them. And if all
18 parties agree that you want a case sent to a magistrate judge
19 for a settlement conference, I will send it, but only if all
20 parties agree.

21 MS. LITTLEPAGE: The one thing I would say is, for the
22 defendants, that we are pursuing discovery against Novartis,
23 Novo Nordisk, Barr. Many times Wyeth and Pfizer have settled
24 out of those cases now, but we do need the remaining case to be
25 remanded through the PP0-9 process because that, we believe, is

1 the only way we are going to get resolution against Novartis,
2 Novo Nordisk, and Barr, is to actually have trials against
3 them. So far they have not had any trials, and I think that's
4 part of the impediment to settlement because they don't really
5 know how to evaluate their exposure.

6 So although Wyeth and Pfizer may be gone, many of the
7 PP0-9 cases that have a non-Wyeth defendant, we are asking that
8 it does continue through the PP0-9 process and get remanded and
9 get set for trial so that we can --

10 THE COURT: Have you filed a specific motion on those?

11 MS. LITTLEPAGE: We can if you want us to identify
12 those, Judge.

13 THE COURT: I think that would be a good *idy*. I am
14 not saying I would grant your motion, but I would like to have
15 a paper to look at.

16 MS. LITTLEPAGE: Yes, sir. Thank you.

17 THE COURT: Mr. Walker, are you going to go an entire
18 hearing without saying anything?

19 MR. WALKER: I think it's probably coming. It's just
20 taking a while.

21 THE COURT: Come on up. It's kind of like a
22 preacher's revival. It's hard to get these sinners to come
23 forward.

24 MR. BORGER: Praise the Court. Your Honor, John
25 Borger on behalf of Novartis. Since our name has been taken,

1 not necessarily in vain, but it was taken, I thought I would
2 seize the moment to mention a few things.

3 We have resolved most of our cases with most of the
4 plaintiffs' attorneys, and we are prepared to talk with any of
5 the other remaining plaintiffs' attorneys to see if we can
6 resolve them on similar terms.

7 There has been no discovery of any sort served on Novartis
8 or pursued against Novartis for several years. As far as we're
9 concerned, it's pretty much done in terms of discovery against
10 us. If there is something else outstanding, we haven't heard
11 about it.

12 THE COURT: Okay.

13 MR. BORGER: We have about 2 dozen cases still
14 remaining -- 26 to be precise with another 4 that we have
15 settled in principle. Of the 26 remaining, Wyeth has settled
16 out of most of them, and we are frankly a little uncertain what
17 the status is on some of those. We have a case or two where
18 the plaintiff's attorney has said they are not going to update
19 medical authorizations because they have settled with Wyeth,
20 which seems to indicate to us they are not going to move
21 forward with that case and we have been willing to let that
22 process play out.

23 We understand that there are an awful lot of Wyeth-Pfizer
24 settlements that are still being processed, and the plaintiffs'
25 attorneys may still be making their decisions on whether they

1 are going to pursue this case or that. We haven't wanted to
2 interfere with that process, but at the same time it didn't
3 make a lot of sense to us to start meddling and say: What are
4 you going to do with that?

5 With Novartis, we have had situations in the past where a
6 particular plaintiff has settled with Wyeth or Pfizer and the
7 entire case has gone away. So we have reason to believe that
8 at least some portion of those cases, those remaining 26 cases,
9 will go away in that fashion. At least a third of those cases
10 involve situations where Novartis is maybe the only defendant
11 left and there is only a month or two months of use of
12 Novartis's product. It doesn't seem to make -- those in
13 particular seem to be ones which eventually, in our judgment,
14 the plaintiffs will decide that it does not make sense to
15 pursue the case. There may be others that are clear cases
16 where they do want to go ahead, and there may be cases where
17 they are still making up their minds.

18 So we want that process to play through, but -- and we are
19 willing to talk at any point. We may have motions in
20 particular cases. There are some perhaps overriding legal
21 issues, particularly in the cases brought in Minnesota that
22 have common issues with statute of limitations. I know we have
23 Minnesota statute of limitations applies, but there are a
24 number of cases that were brought more than four years and less
25 than six years after the WHI report, for example. In those

1 cases where there are claims that are governed by a four-year
2 statute and by a six-year statute, we are at least thinking
3 about an overall motion to -- for partial summary judgment to
4 get rid of the claims in those cases where they are governed by
5 a four-year statute and would be time barred.

6 So that's one issue that may be perhaps suitable for
7 resolution by you or perhaps suitable in that mid-interval
8 where it goes back to the Minnesota court before they are all
9 transferred back to the states where those particular
10 plaintiffs live. So those are some of the issues still out
11 there, and I invite anybody here on the plaintiffs' side who
12 still has cases against us that they really do want to pursue
13 and they know they want to pursue them at this point, come
14 forward and let's talk.

15 THE COURT: Okay. Thank you.

16 All right. I gave this a lot of thought before I decided
17 to recuse at the end of the year, and it's not because I am
18 aggravated at the lawyers. I am not going to say I haven't
19 been aggravated at you from time to time, and I know you-all
20 have been aggravated with me from time to time. And it's not
21 because the case is getting kegy. Keggy -- as you may not
22 know, back in the day they sold soda crackers in kegs, and when
23 they started getting stale, they said they got kegy. So the
24 case hasn't gotten stale even though I believe I could testify
25 for some of the experts that I have heard several times. I

1 have heard --

2 MS. PRUITT: You could probably do a better job,
3 Judge.

4 THE COURT: All right. I appreciate y'all being here.
5 We are in recess. Be at ease. Thank you.

6 (Proceedings adjourned at 9:20 a.m.)

7 C E R T I F I C A T E

8 I, Cheryl Nelson Kellar, Official Court Reporter, do
9 hereby certify that the foregoing is a true and correct
10 transcript of proceedings in the above-entitled case.

11

12 /s/ Cheryl N. Kellar, RPR, CRR, CCR Date: January 31, 2013
13 United States Court Reporter

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Cheryl Nelson Kellar, RPR, CRR, CCR
United States Court Reporter