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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

) 3:09-md-02100-DRH-PMF
IN RE YASMIN AND YAZ)
(DROSPIRENONE) MARKETING,)
SALES PRACTICES AND PRODUCTS)
LIABILITY LITIGATION,)
) MDL No. 2100
)

TRANSCRIPT OF PROCEEDINGS
STATUS CONFERENCE
JANUARY 27, 2015
BEFORE THE HONORABLE DAVID R. HERNDON
CHIEF UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs: Mark R. Niemeyer, Michael Burg,
Roger C. Denton

For the Defendant: Kaspar Stoffelmayr, John Galvin,
Susan Weber, Prentiss Hallenbeck, Jr., Lisa Floro,
Gary McConnell

Court Reporter: Laura A. Esposito, RPR, CRR
U.S. District Court
750 Missouri Avenue
East St. Louis, IL 62201
(618) 482-9481

Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 **(Court convened)**

2 *THE COURT:* We've called the Yasmin and YAZ MDL
3 2100 to order, monthly conference. Sorry we're late as
4 usual, folks.

5 Who will go over the agenda with us for the
6 plaintiffs? Michael Burg for the PSC; Kaspar Stoffelmayer
7 for the defendants.

8 *MR. BURG:* Good afternoon Your Honor.

9 *MR. STOFFELMAYR:* Good afternoon.

10 *THE COURT:* So the first order of business is the
11 Gallbladder Resolution Program.

12 *MR. BURG:* Your Honor, we gave a report in chambers
13 that we're moving forward with that. The Court's
14 recommendation appears to have worked with many of the
15 states. I think all the states now have participated and
16 we're hopeful that the remaining liens will be resolved over
17 the next 90 days.

18 *THE COURT:* Mr. Stoffelmayer?

19 *MR. STOFFELMAYR:* Nothing to add on that. Thank
20 you.

21 *THE COURT:* Thank you.

22 So update, then, on the generic fact discovery.

23 *MR. BURG:* Your Honor, depositions are going on.
24 There will be some depositions in Amsterdam. We confirmed
25 that the depositions -- two of the depositions in Amsterdam

1 will be in English and two will be in German. In addition,
2 there's additional depositions going on, I believe in
3 New Jersey at the same time, and so we're moving forward
4 with the generic discovery per your order.

5 *THE COURT:* Okay.

6 *MR. STOFFELMAYR:* Your Honor, there are two in the
7 U.S.; four in Europe. Just to be clear, there was some
8 confusion about which of the depositions will be taken with
9 an interpreter and which will not, and we said what we
10 understood to be the case and we would confirm that and get
11 back to plaintiffs promptly. There is an e-mail exchange on
12 this so there shouldn't be dispute.

13 *MR. BURG:* Each deposition will be two days long,
14 and our understanding, which we're hopeful we'll get a
15 confirmation that two will be in English and two in German.

16 *THE COURT:* Just to be clear, if we got a witness
17 that's testifying in English in one litigation, certainly
18 expect him to testify, him or her to testify in English in
19 this litigation.

20 *MR. BURG:* We would expect that also. That's why
21 we brought it up with Your Honor and defense counsel.

22 *THE COURT:* All right. So the next couple of
23 agenda items have to do with issue the Court raised on its
24 own motion regarding the long-range plans for this MDL. I
25 think the parties are going to meet and confer on some

1 additional issues relative to our long-range plan. I don't
2 know if either counsel wants to bring additional matters up
3 regarding the long-range plan for the MDL. Mr. Burg, you
4 want to --

5 *MR. BURG:* Your Honor, we, as we indicated, will be
6 discussing with defense counsel to try to agree on a
7 long-term plan as to how we will proceed with the remaining
8 cases in the litigation.

9 *THE COURT:* All right.

10 *MR. STOFFELMAYR:* The only other things I point out
11 we talked about were how to, I suppose in an orderly
12 fashion, complete the CMO 68 process. The Court expressed
13 your view that CMO 68 no longer serves its original function
14 but we don't want to waste the time and effort that's
15 already been put into that, so we need to, in short order,
16 come to an agreement what to do with that.

17 What I just made the Court aware of is that three
18 of the 33 cases identified in CMO 68 have voluntarily
19 dismissed, and the Robertson case, the No. 1 case, **we**
20 **understand her lawyers will be filing a motion to withdraw**
21 **and she may or may not have new counsel.** We're hoping to
22 find that out soon.

23 *THE COURT:* We would hope that there be some word
24 from that part as soon as possible.

25 *MR. BURG:* Your Honor, the only thing I would add

1 is that under CMO 68, I think there was discussion about how
2 we could make it work better, and we will discuss that and
3 attempt to come to some resolution with regard to that.

4 *THE COURT:* Yeah. I would hope as quickly as
5 possible.

6 So the subject matter jurisdiction issue.
7 Mr. Stoffelmayr, you want to elucidate on this?

8 *MR. STOFFELMAYR:* We just wanted to bring to the
9 court's attention that in the process of selecting cases
10 under CMO 65, that went into the pool for CMO 68, and we
11 became aware of two cases where there's no diversity. The
12 plaintiffs' names are Flornoid and Kellison. Since then
13 we've looked -- we think there are probably some others, and
14 taking the Court's guidance, we've alerted the Court to
15 that. We will communicate directly with the lawyers who
16 filed those cases and we'll CC the PSC members. If they're
17 not voluntarily dismissed, I would say within 30 days or 60
18 days, we could file a very simple motion to dismiss just
19 citing the complaint and the lack of diversity.

20 *THE COURT:* I would think an action needs to be
21 taken within 30 days, and let's see if we can't resolve
22 those. We certainly don't want to be -- don't want to have
23 something on the docket that I have no -- the Court has no
24 subject matter jurisdiction.

25 So anything further on the next agenda item, VTE

1 settlement?

2 MR. BURG: My understanding, there continues to be
3 VTE settlements and there continue to be meetings. I think
4 one time two hearings ago it was the hope of Bayer that all
5 these cases would be resolved at the end of the year. We're
6 obviously beyond that but we're hopeful that the VTE cases
7 will continue to be resolved.

8 MR. STOFFELMAYR: I think what I'd add to that, one
9 of the discussions we had in chambers is of the unresolved
10 VTE cases. There's a group of a few hundred that are not
11 going to be settled, we also don't think pursued, for
12 instance, somebody who never took birth control pills or
13 where there's another issue. As far as at the time, I think
14 things are still moving relatively quickly for the cases
15 that are compensable cases.

16 As new cases have been filed in the last year, we
17 don't necessarily have records or plaintiff fact sheets.
18 There were an alarming number of cases filed last spring,
19 and so those are still in the pipeline and moving forward
20 and, you know, that should continue to happen. There are
21 continuing to be new filings, although the rate has declined
22 in the past couple months.

23 MR. BURG: Your Honor, if I may, just so it's
24 clear. The plaintiff PSC and the leadership certainly
25 doesn't believe that people should be compensated if they

1 never took the drug or birth control pill, so I just want to
2 make that -- when I refer to settling the cases, it's cases
3 which meet the parameters.

4 *THE COURT:* Sure, I understand that. And I think
5 lawyers sometimes sign up cases, although with the best of
6 intentions, find out later that their clients don't qualify,
7 just don't get around to dismissing the case or resolving
8 the case voluntarily. And I think some housekeeping matters
9 are in order and I would hope that if there's anybody out
10 there that's listening and hasn't taken stock of their
11 inventory lately, perhaps they will do that and resolve
12 these issues sooner rather than later so that we can take
13 better stock of the inventory, generally speaking, and I'm
14 sure the P S C joins me in that desire.

15 So the next conference will be March 2nd. The
16 in-court conference will be at 1 o'clock. Anything else,
17 gentlemen?

18 *MR. BURG:* Nothing for the plaintiffs, Your Honor.
19 Thank you.

20 *MR. STOFFELMAYR:* Not for the defendants. Thank
21 you, Your Honor.

22 *THE COURT:* Thank you. Appreciate everybody's hard
23 work. We stand adjourned.

24 *(Court adjourned)*

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REPORTER'S CERTIFICATE

I, Laura A. Esposito, RPR, CRR, CCR(MO), Official Court Reporter for the U.S. District Court, Southern District of Illinois, do hereby certify that I reported in shorthand the proceedings contained in the foregoing 7 pages, and that the same is a full, true, correct, and complete transcript from the record of proceedings in the above-entitled matter.

Dated this 5th day of February, 2015.

LAURA A. ESPOSITO, RPR, CRR, CCR