

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

_____)	
IN RE: PRADAXA)	3:12-md-02385-DRH-SCW
(DABIGATRAN ETEXILATE))	
PRODUCTS LIABILITY ACTION)	MDL No. 2385
_____)	

This Document Relates to:

ALL CASES

TRANSCRIPT OF PROCEEDINGS
STATUS CONFERENCE
APRIL 28, 2015
BEFORE THE HONORABLE DAVID R. HERNDON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs: Roger Denton, Seth Katz, Mark Niemeyer,
Michael London

For the Defendant: Paul Schmidt, Bob Limbacher

Also present: Ellen Presby

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: Let's call the monthly conference for
3 the Pradaxa MDL-2385 to order. We have at the podium
4 Roger Denton for plaintiffs, Paul Schmidt for the
5 defendants.

6 First item on the agenda, gentlemen?

7 MR. DENTON: Your Honor, Roger Denton on behalf of
8 plaintiffs and the PSC. Report on the settlement progress:
9 We can report that of the 4,124 claimants in the settlement
10 program there's been distribution on 3,887. There are about
11 240 claimants that have some lien issues, mostly Medicare
12 Part C plans, and there's some holdback terms that Providio
13 is working through one at a time. We have some Medicaid
14 issues with California and Texas, and we just heard from
15 Providio yesterday that they're aiming to have another 250
16 cases distributed in wave 8.

17 And so the Court knows and folks on the call know,
18 Providio is distributing every two weeks, or twice a month
19 actually, and it's going wonderful. We have -- out of the
20 4,124 claimants, 3,887 have received some distributions. So
21 I think it's gone as well -- outstandingly, frankly.
22 Providio has done an outstanding job of getting these liens
23 resolved.

24 The defendants have cooperated as needed to resolve
25 some issues and I think it's going quite well. We hope to

1 have all this wrapped up in another month or two, and it's
2 only held up by a few unique lien situations. So all going
3 very, very well.

4 *THE COURT:* That's fantastic. Thanks.
5 Mr. Schmidt, anything to add?

6 *MR. SCHMIDT:* Nothing to add to that, Your Honor.

7 *THE COURT:* The second item.

8 *MR. SCHMIDT:* The second, third, and fourth items
9 raise an interrelated set of issues, Your Honor. The PSC
10 and defendants have conferred on those issues. We'd like
11 the opportunity, if we may, to confer further and look at
12 whether we can propose some kind of joint order to the Court
13 for the Court's consideration. On our side, the defense
14 side, that joint order will include what we proposed in our
15 paper yesterday regarding discussing with the remaining
16 plaintiffs our preservation obligations.

17 *THE COURT:* Okay. All right. That will be fine.
18 Thanks. Anything else then on any of those three items?

19 *MR. DENTON:* Excuse me. Your Honor, the defendants
20 did file a response to the PSC's motion relative to our --
21 asking to amend CMO 4. This was one other response of
22 record that the Court is aware of. Depending upon where we
23 go forward with the defendants on a proposed order, we may
24 or may not need a response. We hope that we will not need
25 one. And I think we're close to getting all this stuff

1 wrapped up with a solution proposed to the Court. We
2 understand that's going to happen very quickly over the next
3 week or so.

4 *MR. SCHMIDT:* I'm optimistic that we can work it
5 out without getting a response from the PSC. We've
6 committed to get them a proposal by Friday.

7 *THE COURT:* All right. Thanks. Next item, five?

8 *MS. PRESBY:* Excuse me, Your Honor. My name is
9 Ellen Presby. I'm one of the people who filed one of the
10 responses.

11 *THE COURT:* You want to step forward to the podium.

12 *MS. PRESBY:* I would love to. Thank you.

13 My name is Ellen Presby and I am one of the lawyers
14 who filed responses on behalf of the post master settlement
15 agreement plaintiffs. I have not seen the Court's agenda so
16 I don't exactly know what items 2, 3, and 4 are, but I'm
17 thinking that they sound like they might have to do with the
18 defendant's preservation of evidence and the document return
19 and perhaps common benefit work product, although I'm not
20 sure.

21 What I'm wondering, Your Honor, is, since I am an
22 interested party, or my clients are, and we were a signatory
23 to the common benefit order, if we might participate in the
24 meet and confer.

25 *THE COURT:* What's the PSC's position on it?

1 MR. DENTON: Your Honor, we're still determining
2 whether our order was filed in response to either one of
3 these pleadings. And if it's going to be a contested issue
4 we certainly will file whatever we need, but I just -- you
5 know, our motion is pretty clear that we don't want to
6 continue to maintain the depository or continue to maintain
7 this information because it's not -- our obligations, as far
8 as we're concerned, are done. Ms. Presby's clients, the
9 pleadings they filed indicate they're not before the Court.

10 THE COURT: Let me just ask one thing. One of my
11 understandings was you're not on the meet-and-confer.
12 You're going to submit proposals to one another?

13 MR. SCHMIDT: Yes.

14 THE COURT: That's it?

15 MR. SCHMIDT: Yes. From our -- well, I don't mean
16 to jump in, but we would like to be heard on this. We have
17 a view on whether they're an interested party, and they're
18 not. And I'll preface this by saying we've had cordial
19 discussions with Ms. Presby. I look for those to continue.
20 When you come to the Court and you don't have cases before
21 this Court, you're not an interested party.

22 MS. PRESBY: Except, Your Honor, that we signed the
23 common benefit order which was part of CMO 16, and we are
24 entitled to the promises that were listed in Exhibit A to
25 CMO 16. We are happy to take over the document depository

1 from the PSC if that's something that is attractive to
2 Your Honor.

3 We would like very much to work out everything that
4 we can cordially. We are not -- we are -- we have observed
5 that this Court is indeed winding down the MDL. We have
6 surmised that it's the Court's preference that the MDL be
7 wound down. We wanted to assure the Court that we will file
8 in other courts so that this particular Court does not have
9 to stay involved.

10 But we do have injured plaintiffs. We have
11 people -- the settlement agreement that went into place was
12 signed, released, and deadlined all on the same date. In
13 other words, there was no way for the then-injured
14 plaintiffs who had not sought representation to become
15 involved in the settlement agreement. So, of course, there
16 are people who have not had either their day in court or
17 their time in mediation with the defendant. The Court
18 anticipated that this would happen with the implementation
19 order, and we'd like to be able to comply with the
20 implementation order that has been adopted by the
21 Connecticut court with the general causation work product
22 that is part of the document depository and database that's
23 being maintained by the plaintiff, by the PSC.

24 What I think would be the very best way to handle
25 this, because we really are here and we really are part of

1 the common benefit order, is to allow us to participate
2 either in the exchange of proposals or the meet-and-confer,
3 whether it's done on the telephone, by e-mail, in person, or
4 by just the exchange of proposals. I think -- we think that
5 it is shortsighted, if you will, to act like we don't exist
6 and that there are not plaintiffs who are filing cases
7 against the manufacturers of Pradaxa for the very same
8 injuries that were part of the master settlement agreement,
9 and simply by luck of -- one may call it a lawyer or luck of
10 when they got injured, they're not encompassed by the master
11 settlement agreement and are prohibited from participation.

12 The participation was limited to the cases that
13 were then under contract on, I believe it was May 28, 2014.
14 The person who -- you know, the person who took her husband
15 home from the hospital on May 27th wasn't thinking of
16 calling the lawyer on May 28th. But I'm hoping that we have
17 a place that we can go and have a fair resolution of her
18 situation. It doesn't make sense to destroy the database
19 that was so carefully constructed when we certainly could do
20 discovery and get exactly the same materials, and it would
21 just cost the defendants more money to deconstruct and then
22 reconstruct, and it would cost the plaintiffs more money.
23 The efficient thing would be allow us to just take over the
24 database.

25 That said, I'm happy with what seems to have been

1 proposed by the parties, which is a meet-and-confer of
2 whatever construct, but I would ask Your Honor that we be
3 part of it.

4 MR. SCHMIDT: And, Your Honor, if I could just
5 briefly be heard on this.

6 The benefit has been achieved. This litigation is
7 being ended. Your Honor has issued or has taken steps to
8 prevent new cases from being transferred here. The PSC has
9 come forward and said our obligation should be shut down.
10 Our point of view, the benefit has been achieved. There's
11 been a massive settlement, and there's something deeply
12 improper in coming to the Court and saying, *We recognize*
13 *that. We're not going to follow this Court's application of*
14 *the implementation order. We're not going to proceed in*
15 *this Court but we want the benefit from this litigation so*
16 *we can go to another court and do something that, in our*
17 *view, is directly contrary to settlement that Your Honor has*
18 *overseen.*

19 There's something deeply, deeply wrong with that
20 and it's contrary to the direct language of CMO 16. CMO 16
21 defines "common benefit work product" as work product for
22 the benefit of plaintiffs. These are not plaintiffs in this
23 jurisdiction that advances this litigation to conclusion.
24 This has nothing to do with this litigation. This
25 litigation has been advanced to conclusion. And so to come

1 to the Court and say, *Give us the benefit that we didn't*
2 *have anything to do with because the plaintiffs who we are*
3 *trying to get this benefit for didn't exist at the time of*
4 *this litigation and give it to us so we can do something*
5 *contrary to the whole purposes of the settlement that*
6 *Your Honor has painstakingly overseen and successfully*
7 *overseen except for a request like that. That's, in our*
8 *view, deeply improper.*

9 MS. PRESBY: Your Honor, if I may.

10 THE COURT: Sure.

11 MS. PRESBY: I, in no way, am here to criticize the
12 settlement. I do think it was remarkable how quickly this
13 MDL moved and how well it was resolved, and then the
14 efficiency of the process that was put in place once the
15 settlement agreement was entered into. It would be great
16 should all litigations be like that.

17 The only problem that I see is, you know, the one
18 that I'm sure I would think that everyone thought of, and
19 that is that there are additional plaintiffs; that by making
20 an arbitrary cut-off date with no change in the product and
21 no change in the injuries that the product, as we contend,
22 caused, that there would be more lawsuits. We were ordered
23 under the common benefit order to pay a portion of our
24 attorney's fees for work product. We don't mind doing that.
25 And we paid so that these gentlemen could do the fine job

1 that they did, and they got compensated for it at the end
2 out of our attorney's fees. Didn't affect our clients. Our
3 clients got their settlement. But the attorney's fees that
4 we paid, paid for the common benefit work. We're looking
5 for that common benefit work.

6 *THE COURT:* You had some plaintiffs that did, in
7 fact, participate in the settlement?

8 *MS. PRESBY:* Yes, I did, Your Honor. And I, in all
9 candor to the Court, was awarded some common benefit fees,
10 and my -- I had plaintiffs that recovered. I have one of
11 the 240 remaining with a Part C issue in his lien. So I
12 have participated. I participated in the litigation. I
13 represented the Kohn family, which was one of the bellwether
14 cases, the CPA who died very quickly, and participated in
15 discovery related to that case and developed a passionate
16 belief in this case.

17 So now that there are people out there who are
18 injured who need some kind of representation, I feel like
19 I'm happy to do that. I am proud to do that. I think they
20 deserve representation. I understand the order. I know
21 what it requires of me. I am not afraid of it. But in
22 entering a 30-day deadline for a causation report that took
23 very talented lawyers two-and-a-half years to the point of
24 getting ready to submit, the only way that we can meet that
25 30-day requirement is by having the benefit of the product

1 that we paid for. All of the people who signed the document
2 that is before this Court, our response to both the
3 defendant's request to come out from under the preservation
4 order and the PSC's proposal, all of them have paid common
5 benefit fees. They all participated in the Pradaxa
6 litigation that was before this Court. They all recognize
7 that it is winding to a close.

8 Maybe we misinterpreted signals that, you know, the
9 Court probably unknowingly was giving, but it was our
10 impression that the judge might feel that he had run his
11 course on Pradaxa and might feel that perhaps it would be
12 better to be in another court, and that's why we've made the
13 decision that we have.

14 *THE COURT:* So as I said, the process that they're
15 going to go through, as I understand it -- and maybe I'm
16 wrong -- but is that they're going to -- the defendants, as
17 I understand it, by Friday are going to submit a proposed
18 order to the PSC as opposed to sit down and meet and
19 actually negotiate face-to-face.

20 I have what you have filed. It's Document 645,
21 which certainly will get every consideration by the Court.
22 If you would like to submit a proposed order yourself,
23 either to Mr. Schmidt or to the PSC, feel free to do that,
24 as well as submit a proposed order to the Court. I'd be
25 happy to consider that as well as considering the response

1 that you filed which is embodied within Document 645.

2 MS. PRESBY: All right.

3 THE COURT: So you're certainly not left out of
4 this process and your position will be considered.

5 MS. PRESBY: Now, is it possible, Your Honor, for
6 me to be part of the e-mail exchanges between Mr. Schmidt's
7 side and the PSC side about the proposals that they're
8 submitting? Likewise, I would copy both sides on what we
9 submit.

10 THE COURT: Well, I will leave that up to them.
11 Whether they want to participate with you in a give-and-take
12 is entirely up to them. But I will consider your position,
13 certainly, before I make a decision on what the Court will
14 order in this matter.

15 MS. PRESBY: All right. Thank you, Your Honor.

16 THE COURT: All right. So the next item then is
17 five, the update on the nonparticipating claimants and
18 plaintiffs.

19 MR. SCHMIDT: Yes, Your Honor. We were able to
20 give an update on the seven cases that remain, and those are
21 referenced in, I believe, the first footnote of our response
22 paper yesterday that appears on the second page of the
23 brief. And unless Your Honor has questions about those, I
24 think those have been addressed.

25 THE COURT: Yes, that's fine.

1 MR. SCHMIDT: And as to dismissals, CMO 90 has been
2 amended to give Providio additional time. We're
3 anticipating completing that process by May 29th. If it
4 doesn't look like we can complete that process by May 29th,
5 we'll come to the Court in advance with an update and
6 request appropriate relief.

7 THE COURT: Very good.

8 So then our next conference. We had a difficult
9 time setting this conference date, which will be June the
10 9th at 1:00. Everybody's very courteous in asking me for
11 permission in advance if they're not able to attend
12 personally. To absolve you of that effort, anybody can
13 attend by teleconference if you would like. Just let
14 Caitlin know, if you would, if that's your intention, so
15 we'll have it set up. Both the pre-conference and the
16 conference itself, we'll have it set up for telephone
17 purposes. You don't need to ask me in advance if you can
18 attend by telephone. I understand a lot of people won't be
19 able to be here in person, so that's quite all right.

20 Anything else we need to talk about?

21 MR. SCHMIDT: Not on the defense side, Your Honor.

22 THE COURT: Appreciate, once again, all your hard
23 work. We stand adjourned.

24 **(Court adjourned)**

25 * * * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 13 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 30th day of April, 2015.

LAURA A. ESPOSITO, RPR, CRR, CCR