

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
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Docket No. 6:06-MD-1769-Orl-22DAB

.
IN RE: :
SEROQUEL PRODUCTS LIABILITY :
LITIGATION : Orlando, Florida
MDL DOCKET No. 1769 : September 11, 2007
: 9:30 a.m.
ALL CASES :
:
:
.

TRANSCRIPT OF PRETRIAL CONFERENCE
BEFORE THE HONORABLE DAVID A. BAKER
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: Paul Pennock
Larry M. Roth
Scott Allen
F. Kenneth Bailey
Camp Bailey
Lawrence Gornick
Richard Laminack
Buffy Martines
Kenneth Smith
Jonathan Sedgh
Holly Wheeler
Dennis Canty (by phone)



1 research about them before you do that. But this should
2 happen in the next day or two.

3 MR. MCCONNELL: Great. Thank you.

4 THE COURT: Okay. Let me turn next to
5 third-party discovery issues. How many and where are
6 there motions to compel for protective order?

7 MS. WHEELER: Your Honor, Holly Wheeler for the
8 plaintiffs. I'll address that.

9 We're preparing several motions to compel, but at
10 this point we're still working with the attorneys for
11 these various third parties to come to an agreement which
12 would allow them to feel comfortable to produce these
13 documents. We are preparing a few right now, but we're
14 also still in talks with them.

15 THE COURT: Well, let me tell you what my
16 position is. I think it's at least arguable under the MDL
17 authority that I could directly deal with those motions.
18 I'm not inclined to take on that fight because it's not
19 clear.

20 I think it's also not crystal-clear, but I think
21 there's certainly precedent that the Courts, where the
22 witnesses have been subpoenaed, can defer any such motions
23 back to me, and it's up to them, it's up to those judges,
24 but knowing how I would react, I think most of them would
25 defer them back to me because of the complexity of this

1 case.

2 So if you tell me where they are, I will contact
3 those judges and let them know that I'm available to take
4 them back, but I don't want to override their authority.
5 So that's how I'm planning to proceed with that.

6 So it would be my expectation that to the extent
7 there are those motions to be resolved, I will encourage
8 the other judges to send them back to me for resolution.

9 Like I say, I think there's ample authority for that,
10 although specifically you can read Rule 26 that way.
11 Rule 45 really doesn't read that way, and I understand
12 it's legal, but I feel comfortable with that.

13 MR. MAGAZINER: Your Honor, I would think it's
14 possible that in the course of litigation, either
15 plaintiffs or we might be filing motions in other courts
16 from time to time. I would ask how the Court would like
17 us to inform Your Honor that we have done so. Because I
18 know the Court doesn't encourage correspondence. This
19 would not be a motion that is filed in this Court.

20 I would think the thing to do is just to add Your
21 Honor to the service list, if that would work, so that if
22 Miss Wheeler files a motion in the District of Nebraska,
23 it would be served on you. If we file a motion in the
24 District of Washington --

25 THE COURT: How are you going to serve it on me?

1 I'm just asking.

2 MR. MAGAZINER: I don't know the answer, but I
3 know in other situations like this where --

4 THE COURT: I'll tell you what you can do is
5 serve it by sending an electronic copy to the chambers
6 e-mail address, which you have used for some other things.

7 MR. MAGAZINER: All right. Without any cover
8 letter or anything? We would just --

9 THE COURT: Yeah. Just put it there so we can
10 see it.

11 MR. MAGAZINER: Okay. Thank you, Your Honor.

12 MS. WHEELER: Your Honor, if I can say one
13 thing. One of the reasons why we have not started filing
14 the motions to compel is because the biggest holdup
15 appears to be the confidentiality.

16 If we could get some kind of confidentiality order in
17 place to protect these third-party documents, I don't
18 think it will be necessary to file many of these motions.

19 THE COURT: That's why I was apologizing.
20 That's my fault at this point.

21 Okay. Just given the preface that you just made, in
22 general are things proceeding? Are you getting anything?

23 MS. WHEELER: We have gotten two sets of
24 documents from two third parties. As I said, a lot of
25 them just want some kind of confidentiality in place and

1 they have already agreed that they'll give up their
2 documents.

3 And then the last issue that's really causing a bit
4 of delay is costs. So that's really going to be what the
5 motions to compel focus on.

6 THE COURT: Okay. Well, they're certainly
7 entitled to be heard about that.

8 Okay. I'll get that confidentiality order out.

9 MS. WHEELER: Thank you, Your Honor.

10 THE COURT: Mr. Brown.

11 MR. BROWN: Yes, Your Honor. Good morning.

12 THE COURT: Good morning. I'm up to you now.
13 How are things going?

14 MR. BROWN: Your Honor, if you have time, I can
15 give you a brief report on what we've accomplished since
16 our last status conference on the 22nd of August. And
17 then it would also give us the context for the items
18 listed on your agenda, which concerns an order that we
19 feel is necessary to aid in implementing your
20 case-specific discovery plan.

21 We have a written report that the Court had asked us
22 to file on the 15th of each month, so that is forthcoming
23 soon. But I think to understand the issues that are on
24 the agenda, we need to take a little bit of time and tell
25 you what we have accomplished since the 22nd.