

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In Re:

**AREDIA® AND ZOMETA® PRODUCTS
LIABILITY LITIGATION**

(MDL No. 1760)

This Document Relates to:

3:08-cv-00801 (*Miller*)

No. 3:06-MD-1760

Judge Campbell/Brown

ORDER

Counsel filed a motion for provisional substitution on November 18, 2013. (MDL Doc. 7145; Related Case 22) The Magistrate Judge entered an order on December 5, 2013 instructing counsel to “provide proof not later than December 23, 2013 that Patricia Miller was, in fact, married to the late Mr. Miller at the time of his death. . . .” (MDL Doc. 7184; Related Case 24) Counsel was given the following additional, specific instruction:

If Patricia Miller was married to the late Mr. Miller at the time of his death, counsel shall provide proof that Patricia Miller has initiated proceedings in the California courts to be appointed the personal representative of his estate. . . .

(MDL Doc. 7184; Related Case 24) Counsel filed a motion for an extension of time to comply on December 23, 2013, which was granted on December 30, 2013. (MDL Docs. 7264, 7275; Related Case 25, 26)

Counsel has filed a renewed motion for provisional substitution. (MDL Doc. 7299; Related Case 27) Counsel has provided a copy of a marriage certificate attached as an exhibit that shows Ms. Miller married the late Mr. Miller on May 7, 2011, the year prior to his death. (MDL Doc. 7299, Ex. 1; Related Case 27) Counsel notes the following in apparent response to the second half of the Magistrate Judge’s December 5, 2013 order quoted above:

While Mrs. Miller has not yet been able to initiate proceedings in California to be appointed the personal representative of Mr. Miller's estate, the Marriage License attached as Exhibit 1 provides sufficient evidence to justify her appointment as the provisional personal representative of Chester R. Miller, deceased, and her substitution as the party Plaintiff in this action.

(MDL Doc. 7299, ¶ 5; Related Case 27) Counsel does not explain why the required proceedings have not yet been initiated.

Although counsel failed to comply fully with the Magistrate Judge's December 5, 2013 order, counsel has provided a copy of a marriage certificate which, as he correctly notes, is sufficient for the grant of provisional substitution. Accordingly, the renewed motion for provisional substitution (MDL Doc. 7299; Related Case 27) is **GRANTED**. The Clerk is instructed to **TERMINATE** the initial motion (MDL Doc. 7145; Related Case 22) as **MOOT**.

Counsel shall comply with that portion of the Magistrate Judge's December 5, 2013 order quoted in part above at p. 1 not later than March 3, 2014. Specifically, counsel shall ensure that the required steps are taken to open the estate of the late Mr. Miller not later than that date. Counsel is forewarned that failure to do so may result in sanctions being imposed for failure to comply with the Case Management Order and the other orders of the court pertaining to this matter. As counsel already has had more than sufficient time to comply, no extensions of time will be granted absent good cause shown. Vague statements of inaction such as the one quoted above do not constitute good cause.

It is so **ORDERED**.

ENTERED this 30th day of January, 2014.

/s/Joe B. Brown
Joe B. Brown

United States Magistrate Judge