

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: GADOLINIUM-BASED)	Case No. 1:08 GD 50000
CONTRAST AGENTS PRODUCTS)	MDL No. 1909
LIABILITY LITIGATION)	Judge Dan Aaron Polster
)	<u>MINUTES OF 3/1/12 CONFERENCE</u>
)	AND
)	<u>SCHEDULING ORDER</u>
)	

THIS DOCUMENT APPLIES TO ALL CASES

On March 1, 2012, the Court held a Large Group Conference to determine how best to resolve the approximately 107 cases remaining in this MDL. After commending the parties for the number of cases they have settled, the Court separately caucused with the individual Defendants in an effort to resolve the remaining cases against them.

A. Cases Against the Bayer Defendants

There are approximately 67 cases remaining against the Bayer Defendants. After subtracting the cases with pending proposed dismissals, cases undergoing active settlement negotiations, and the Williamson firm cases which are on a separate discovery track, there are approximately 40 cases remaining against the Bayer Defendants. Bayer divides the 40 cases into cases it considers compensable but have not yet started settlement negotiations, non-compensable due to various legal or factual issues (e.g., shotgun complaints with lack of product identification, statute of limitations or diagnosis issues), and cases with insufficient information

enabling Bayer to determine whether they are compensable. As a result of discussions, counsel agreed to submit the Joseph Someillan case, No. 1:09 GD 50173, to Cathy Yanni for the mediation she has already scheduled with the Mallinckrodt Defendants.

Counsel also agreed to submit the following cases to Cathy Yanni for neutral evaluation within the next 60 days:

Plaintiff's Name	Case Number	Defendant(s)	Plaintiff's Firm
Wolcott, Ricky	1:10 GD 50089	Bayer, GEHC	Searcy Denney
Carna, Peter	1:08 GD 50228	Bayer	Roda & Nast
Wolridge, Betty	1:09 GD 50046	Bayer	O'Quinn
Salvucci, Gerald	1:09 GD 50105	Bayer	Nations
Simmons, Deborah	1:10 GD 50012	Bayer	"
Kiemsteadt, Cynthia	1:08 GD 50271	Bayer	Matthews
Outlaw, Barbara	1:10 GD 50074	Bayer	"
Nelson, William	1:10 GD 50073	Bayer	"
Tanzberger, Leigh Anne	1:09 GD 50112	Bayer	"
Cisco, Ellen	1:10 GD 50021	Bayer	"
Simmons, Sallie	1:11 GD 50035	Bayer, Mallinckrodt	Fibich

With regard to the Raul Flores case, No. 1:10 GD 50057, Plaintiff's counsel agreed to dismiss the case against the Bayer Defendants.¹

With regard to the Maria DelRosario Ruiz De Podesta case, No. 1:10 GD 50015, it was decided that Bayer will file a dispositive motion on the subject of the Court's jurisdiction given that Podesta is a Peruvian citizen living in Peru.

¹Flores has already settled his claims against the GEHC Defendants and the Mallinckrodt Defendants.

With regard to the Victoria Bailey case, No. 1:08 GD 50207, counsel reported that they had negotiated extensively in good faith to try to settle the case, but that they had reached an insurmountable impasse. Accordingly, they asked the Court to issue a Suggestion of Remand, to which the Court agreed. Such order shall be issued separately.

With regard to the John Freeman case, No. 1:09 GD 50038, the Court gave the parties the deadline of May 1, 2012 to resolve the case. Counsel shall contact the Court if they need more time to do so.

With regard to the Paul Keller case, No. 1:09 GD 50042, Plaintiff's counsel agreed to dismiss the case after conferring with the client.

With regard to the following two cases, Bayer's counsel agreed to confer with Plaintiff's firm on how to resolve the cases:

- Ronald Springs, Case No. 1:08 GD 50242
- Esther Gonzalez, Case No. 1:10 GD 50035

There are three cases remaining against the Bracco Defendants. Counsel for Bracco reported that all other cases against it have been dismissed without the payment of any settlement money. After discussions, the Court set a deadline of March 15, 2012 for counsel to dismiss the Dialyn Rae case, No. 1:10 GD 50093.

With regard to the Wanda Moore case, No. 1:10 GD 50025, Plaintiff Moore filed her claims against all four GBCA manufacturers. She settled and dismissed her claims against the GEHC Defendants on December 5, 2011. This case is presently the subject of a motion to withdraw as Plaintiff's counsel and the cross-motion of Mallinckrodt to dismiss the case with prejudice. The Court has issued an order requiring Moore to substitute new counsel or file a

notice to proceed *pro se* no later than April 2, 2012 or the case will be dismissed with prejudice. After discussions, the Court decided to issue an amended order requiring Moore to file proof specifically identifying the manufacturer of any other GBCA-administered MRIs to which she was exposed no later than May 1, 2012 or the Court will dismiss the case with prejudice. This new deadline will also be the deadline for substituting counsel or filing notice to proceed *pro se*. The Court shall issue this order separately.

With regard to the Barbara Grandy case, No. 1:08 GD 50306, Plaintiff's counsel said he expected to dismiss the case in the near future.

With regard to the following two cases, Plaintiff's counsel agreed to send discussed information to Bayer **no later than March 15, 2012** or the cases will be dismissed for want of prosecution:

- Mark Hamalainen, Case No. 1:10 GD 50042
- Michael Cieminski, Case No. 1:10 GD 50042

C. Cases Against Mallinckrodt

There are approximately seventeen Mallinckrodt cases remaining in this MDL. The following cases, in which the Plaintiffs are represented by the Lopez McHugh law firm, are in active negotiations with Mallinckrodt:

- Joseph Battaglia, Case No. 1:08 GD 50173
- Marilyn McDanel, Case No. 1:08 GD 50284
- Barbara Lingo, Case No. 1:08 GD 50312
- Terry Ford, Case No. 1:08 GD 341
- Evelyn Keye, Case No. 1:10 GD 50047

These five cases are among a total of nine state and federal Lopez McHugh cases brought against Mallinckrodt that are undergoing active negotiations.

Counsel agreed that the following Mallinckrodt cases should be submitted to Cathy Yanni for neutral evaluation to be completed within 60 days:

Plaintiff's Name	Case Number	Defendant(s)	Plaintiff's Firm
Simmons, Sallie	1:11 GD 50035	Mallinckrodt, Bayer	Fibich
Someillan, Joseph	1:09 GD 50173	Mallinckrodt, Bayer	Searcy
Eazer, Theodore	1:09 GD 50197	Mallinckrodt, Bayer, GEHC	Levin Simes
Doye, Alexis	1:11 GD 50021	Mallinckrodt	”
Libby, Shane	1:10 GD 50049	Mallinckrodt	”
Larson, Judith	1:12 GD 50002	Mallinckrodt, Bayer, GEHC	”

With regard to the Samuel De La Garza case, No. 1:10 GD 50087, which is confounded with Bayer and GEHC, the Court directed Plaintiff's counsel to provide specific identification of the manufacturer of any GBCAs used in any of his MRIs **no later than March 15, 2012** or the Court will dismiss the case with prejudice.

With regard to the John Sullivan case, No. 1:08 GD 50149, which is confounded with GEHC, Plaintiff's counsel, Howard Nations, reported that he will soon be filing a motion to withdraw as counsel, after which the Court will issue an order with a deadline for Sullivan to substitute new counsel or file a notice to proceed *pro se*.

With regard to the Sara Rodriguez case, No. 1:10 GD 50091, which is confounded with Bayer, the Court directed Plaintiff's counsel to submit proof identifying the Mallinckrodt scan no later than May 1, 2012, or the claims against Mallinckrodt will be dismissed with prejudice.

Finally, the Spangenberg firm reported that it has filed the following two new cases

against Mallinckrodt in which it expects to have serious settlement discussions with the Defendants shortly:

- Michael Clausen, No. 1:11 GD 50033, confounded with GEHC
- Canzoneri-Bace, Juliann, No. 1:11 GD 50017, confounded with Bayer

D. Cases Against GEHC

1. The Parker Waichman Cases Against GEHC

The Court reminded counsel that the Parker Waichman mediation with the GEHC Defendants will go forward at **9:00 a.m. on Wednesday, March 21, 2012**. The Court set a **deadline of March 7, 2012** for (1) Plaintiffs to provide GEHC with signed authorizations, (2) Plaintiffs to provide a demand, and (3) supplemented PFS are to be submitted. The Plaintiffs' medical histories will be frozen for purposes of the mediation based upon these March 7 submissions.

With regard to the Myrtle Mayfield case, No. 1:11 GD 50026, it was agreed that Plaintiff shall prove product identification, via deposition to be held **no later than March 21, 2012**, or her case will be dismissed.

With regard to the Norbert Strobel case, No. 1:09 GD 50133, it was determined that his GFR was greater than 50 at the time of his GBCA-administered MRI. As a result, this case will probably be dismissed.

With regard to the Reynolds Delgado case, No. 1:09 GD 50036, the Court said that it would confer with Plaintiff's counsel and GEHC to effectuate a dismissal.

2. The DeCarli Cases Against GEHC

The Court informed counsel that it expects them to settle the twelve cases filed by the

DeCarli firm against the GEHC Defendant within sixty days.

E. Pool of Individual Cases for the Court's Mediation

This leaves approximately twenty active cases remaining in the MDL. The Court encouraged the remaining Plaintiffs' counsel to create a pool for mediation by the Court. Attorneys Pete Weinberger, Steve Skikos and Cathy Yanni offered to help those counsel whose clients "opt in" to this pool to obtain necessary information and value their cases. Accordingly, counsel agreed to the following schedule:

March 8, 2012 at 4 p.m. Eastern Time:

Deadline for Plaintiffs' counsel to "opt in" to this settlement pool by emailing the undersigned)

March 12, 2012 at 4 p.m. Eastern Time:

Deadline for GEHC to identify, via email to the undersigned, the cases requiring more information for valuation of the "opt in" pool cases

April 16, 2012 at 4 p.m. Eastern Time:

Deadline for individual Mediation submissions

April 23, 2012 at 9:00 a.m. Eastern Time:

Settlement Conference

F. Conclusion of MDL

The Court decided that no cases may be filed in this MDL after June 1, 2012. This deadline is more than five years after the black box warning was issued by the FDA.

IT IS SO ORDERED.

/s/ Dan A. Polster March 8, 2012
Dan Aaron Polster
United States District Judge