

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  
)  
) MINUTES ORDER  
) (8-17-09 Hearing on Bellwether Trial  
) Picks)

**\* THIS DOCUMENT APPLIES TO ALL CASES \***

On August 4, 2009, the parties each filed notices of the five Early Trial Pool (“ETP”) cases against which they were exercising their bellwether trial strikes, pursuant to CMO Nos. 8, 10, 12 and as discussed at the hearing on July 29, 2009. (ECF Nos. 465, 466.) This exercise left five potential ETP cases from which the parties could select the first four cases for bellwether trials (i.e., the PSC-designated *Bullock*, *Campbell* and *Knase* cases, and the Defendant-designated *Kono* and *Marino* cases).

On August 12, 2009, the PSC and GE informed the Court that they had agreed on the first (*Bullock*), second (*Kono*) and fourth (*Marino*) bellwether trials – and submitted briefs on their dispute over whether *Campbell* (Defendants’ choice) or *Knase* (Plaintiffs’ choice) should be the third bellwether trial. (See ECF Nos. 470, 471.) After reviewing the briefs, the Court

scheduled an informal hearing on this issue, which was held on August 17, 2009.<sup>1</sup> (See ECF No. 474.)

During the August 17 hearing, Attorney Joseph stated that she had just realized, upon reviewing Dr. Boomer's records, that he had ordered an MRI scan for Ms. Campbell in July 2003 – and that the scan took place at St. Francis Hospital in Tulsa, Oklahoma and involved the use of a gadolinium-based contrast agent. After much discussion, the Court ruled as follows:

- No later than August 31, 2009, Plaintiffs shall obtain the subject radiology report from Dr. Boomer and Ms. Campbell's records from St. Francis Hospital and exchange these records with Defendants. In order to speed up this process, the parties may file a proposed order, for my signature, directing Dr. Boomer and St. Francis Hospital to provide the records forthwith.
- No later than September 14, 2009, Defendants shall file a brief concisely explaining why it still believes *Campbell* would make a good choice for the third bellwether trial or substitute another of the ETP cases and discuss why that case would make a suitable third bellwether trial pick.
- No later than September 21, 2009, the Plaintiffs' Steering Committee shall file a brief responding to Defendants' brief.

**IT IS SO ORDERED.**

s/Dan A. Polster

**Dan Aaron Polster**  
**United States District Judge**

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<sup>1</sup>The hearing was attended by Plaintiff Attorneys Lea Morris, Larry Gornick, Peter Brodhead, William Hawal, Peter Burg, Philip Bohrer, Chris Tisi, Seth Katz, Steve Skikos Chris Seeger and Jane Joseph. Participating on behalf of Defendants were Attorneys Charna Sherman, Philip Calabrese, Heidi Levine, Tarek Ismail, Patrick Lysaught and Deborah Moeller.