

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

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IN RE NUVARING® PRODUCTS)	4:08-MD-1964 RWS
LIABILITY LITIGATION)	MDL No. 1964
)	

ORDER RE SUGGESTION OF REMAND

The cases listed in Exhibit A of this order are ready to be remanded to the transferor courts. To assist the transferor courts following remand, this order describes pertinent events that have taken place to date in this MDL. A copy of this order will be sent to the transferor courts with each remanded case. The documents, orders, and rulings which have been filed in this case and in the individual related cases are available to the transferor courts through the Court's CM/ECF docketing system.

I. INTRODUCTION

On August 22, 2008, the Judicial Panel for Multidistrict Litigation ("JPML") designated this Court as the transferee court for the centralized management of all cases alleging personal injuries related to the use of the hormonal contraceptive

product NuvaRing®. During the pendency of MDL 1964 to date, 1,934 cases have been transferred to this Court.

On February 7, 2014, the parties entered into a Master Settlement Agreement in the NuvaRing® litigation. Under the Master Settlement Agreement, plaintiffs with cases pending in MDL 1964, the *In Re NuvaRing Litigation* coordinated proceeding in the New Jersey Superior Court, Bergen County, and other state court jurisdictions, as well as eligible claimants alleging injuries from the use of NuvaRing® who had not yet filed a case, were permitted to participate in a national settlement program. In total, 3,825 plaintiffs and claimants enrolled in the national settlement program and dismissed and released their claims related to NuvaRing®.

Certain plaintiffs chose to opt out of the national settlement program to pursue litigation of their claims. Additionally, some new plaintiffs filed cases alleging injuries related to NuvaRing® after the last date of the enrollment period under the Master Settlement Agreement. These cases have been transferred to, and are currently pending in, MDL 1964. Currently, there are 76 cases pending in, or expected to be transferred to, MDL 1964.

On October 19, 2016, the Court remanded 13 cases to their transferor courts for all purposes, while MDL 1964 remains in effect. The Court is of the view that

the additional cases listed in Appendix A should also be remanded to their transferor courts for all purposes. MDL 1964 remains in effect as it continues to serve a valuable coordinating function with respect to new cases that may be filed.

II. CASE MANAGEMENT CONFERENCES AND ORDERS

During the pendency of MDL 1964, this Court presided over 76 in-person and telephonic Case Management Conferences, which were attended by lead counsel for defendants and by lead counsel for plaintiffs, which included members of the Plaintiffs' Steering Committee, as well as by other plaintiffs' counsel. This Court issued approximately 30 orders on case management, covering a variety of topics including the organization of plaintiffs' counsel, plaintiffs' common benefit fund, pleadings and challenges thereto, removal and remand, plaintiffs' initial discovery obligations, defendants' initial discovery obligations, electronic discovery, general and case specific discovery, mediation and settlement, and post-settlement orders for preservation of records and production of discovery information.

III. DISCOVERY

More than 2.4 million pages of documents were produced by defendants in discovery and made available to all plaintiffs, including documents related to the research and development, FDA regulatory approval and oversight, sales and

marketing, pharmacovigilance reporting, and scientific studies of NuvaRing®. Plaintiffs took 25 depositions of defendants' company witnesses, many of them in the Netherlands, on the above topics related to NuvaRing®. Approximately 87 depositions of plaintiffs, prescribing physicians, and other fact witnesses were conducted in selected cases in MDL 1964. Additionally, the parties conducted discovery of defendants' and plaintiffs' general experts and of some case specific experts. Following the national settlement program, the Court ordered the supplementation and completion of general fact discovery, which included the supplemental production of defendants' regulatory documents and additional company witness depositions related to the label update for NuvaRing® approved by the FDA in October 2013.

The Court finds that fact discovery has been completed on all general topics related to NuvaRing® and orders that general fact discovery in the NuvaRing® litigation is closed. Case-specific fact discovery still needs to be conducted after remand to the transferor jurisdictions. Upon remand the parties will inform the transferor judge regarding the case-specific discovery which needs to be completed in each case.

IV. BELLWETHER CASES

The claims of individual plaintiffs were selected for bellwether trials in both this MDL case and in the coordinated NuvaRing® mass tort litigation proceeding in the New Jersey Superior Court, Bergen County. Defendants filed motions for summary judgment and motions to exclude plaintiffs' experts in those cases.

Defendants' motions for summary judgment were granted in the following New Jersey cases: Bozicev v. Organon, BER-L-2869-09; Mariconda v. Organon, BER-L-2692-09; Barrow v. Organon, BER-L-2707-09; Fields v. Organon, BER-L-2793-09; Wilson-Johnson v. Organon, BER-L-597-10; Namack v. Organon, BER-L-2831-09; Ziwange v. Organon, BER-L-2829-09; Millian v. Organon, BER-L-2848-09; and Marino v. Organon, BER-L-3081-09.

In the MDL litigation, in August 2012, defendants and plaintiffs filed several Daubert motions in cases that were selected for bellwether trials. In March and April 2013, the Court ruled on those motions as follows:

Defendants' motion as to Dr. Tischkau was denied (Doc # 1500);

Plaintiffs' motion as to Dr. Grimes was denied (Doc # 1501);

Defendants' motion as to Dr. Parisian was denied (Doc # 1502);

Plaintiffs motion as to Dr. Rekers and Dr. Mulders was granted in part and denied in part (Doc # 1503);

Defendants' motion as to counterbalance issues was denied (Doc # 1504);

Defendants' motion as to bursts and variability was denied (Doc # 1506);

Defendants' motion as to the opinion that NuvaRing should be taken off the market was granted in part and denied in part (Doc # 1528); and

Defendants' motion as to Dr. Richart was denied in bellwether case Prather v. Organon, 4:08 CV 558 RWS (Doc # 64).

In addition, Defendants' motion for summary judgment in Prather v. Organon, 4:08 CV 558 RWS was granted in part and denied in part. Defendants' unopposed motion for summary judgment on statute of limitations grounds was granted in James v. Organon, 4:09 CV 216 RWS.

V. NATIONAL SETTLEMENT PROGRAM

This Court presided over the national settlement program pursuant to the parties' Master Settlement Agreement. The Court oversaw the progress, administration, and completion of the national settlement program. In total, 3,825 plaintiffs and claimants enrolled in and resolved their claims through the national settlement program. Over 97% of plaintiffs and eligible claimants nationwide

enrolled in the national settlement program. Due to the success of the national settlement program, the Court did not conduct any bellwether trials.

VI. POST-SETTLEMENT CMO RE DISCOVERY REQUIREMENTS

The Court entered Case Management Orders requiring plaintiffs not enrolling in the national settlement program, or filing new cases after the enrollment period, to comply with certain preservation and discovery obligations as a requirement of pursuing further litigation of NuvaRing® claims (Doc #s 1679 and 1680). The Court finds that the cases listed in Appendix A have complied with these post-settlement CMO obligations. Other cases pending MDL 1964 that are not reflected in Appendix A, as well as any new cases filed in the future, must comply with these post-settlement CMO requirements. Any plaintiff who fails to comply with the post-settlement CMOs relating to preservation and discovery shall not be considered for remand to the transferor court and shall be promptly dismissed by this Court upon defendants' motion.

VII. SUGGESTION OF REMAND

The Court recommends to the JPML that the cases listed in Appendix A be remanded to their transferor courts at this time for all purposes. All other cases shall remain with this Court and will continue to be managed within MDL 1964 for compliance with the Court's post-settlement CMO requirements, until such time as

the Court finds it appropriate to issue a further suggestion of remand of additional cases. No case will be considered for remand to the transferor court until this Court determines that all post-settlement CMO requirements have been met.

VIII. DOCUMENTS TO BE SENT TO TRANSFEROR COURT

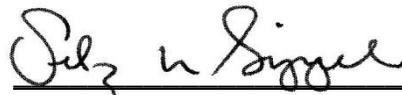
After receiving the Final Remand Order from the JPML, the Clerk of the Court will issue a letter to the transferor courts, via email, setting out the process for transferring the individual cases listed in the Final Remand Order. The letter and certified copy of the Final Remand Order will be sent to the transferor court's email address. The Clerk of Court shall include a copy of this order with the letter.

If a party believes that the docket sheet for a particular case being remanded is not correct, the party may, with notice to all other parties in the case, file with the transferor court a Designation Amending the Record. Upon receiving a Designation Amending the Record, the transferor court may make any needed changes to the docket. If the docket is revised to include additional documents, the parties should provide those documents to the transferor court.

CONCLUSION

This Order does not expand or modify any previous order of this Court, and this Court may modify or supplement any part of this Order as appropriate.

IT IS SO ORDERED this 19th day of September, 2017.



RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE NUVARING® PRODUCTS
LIABILITY LITIGATION

4:08-MD-1964 RWS
MDL No. 1964

APPENDIX A TO ORDER RE SUGGESTION OF REMAND
CASES RECOMMENDED FOR REMAND

<u>CASE</u>	<u>E.D. MO. CASE NUMBER</u>	<u>TRANSFEROR COURT</u>	<u>TRANSFEROR COURT CASE NUMBER</u>
<i>Cormicle v. Organon USA Inc., et al.</i>	4:16-cv-00383	District of New Jersey	2:16-cv-01237
<i>Dowdell v. Organon USA Inc., et al.</i>	4:16-cv-00723	District of New Jersey	2:16-cv-02286
<i>Dunnington v. Organon USA Inc., et al.</i>	4:16-cv-00379	District of New Jersey	2:16-cv-00299
<i>Gerety v. Organon USA Inc., et al.</i>	4:16-cv-00721	District of New Jersey	2:16-cv-02243
<i>Heldman v. Organon USA Inc., et al.</i>	4:16-cv-00722	District of New Jersey	2:16-cv-02268
<i>Keller v. Organon USA Inc., et al.</i>	4:16-cv-00725	District of New Jersey	2:16-cv-02368
<i>Lucas v. Organon USA Inc., et al.</i>	4:15-cv-01491	District of New Jersey	2:15-cv-06771
<i>Nguyen v. Organon USA Inc., et al.</i>	4:16-cv-00381	District of New Jersey	2:16-cv-00467

<u>CASE</u>	<u>E.D. MO. CASE NUMBER</u>	<u>TRANSFEROR COURT</u>	<u>TRANSFEROR COURT CASE NUMBER</u>
<i>Robins v. Organon USA Inc., et al.</i>	4:16-cv-00581	District of New Jersey	2:16-cv-01833
<i>Schell v. Organon USA Inc., et al.</i>	4:16-cv-00580	District of New Jersey	2:16-cv-01806
<i>Solomon v. Organon USA Inc., et al.</i>	4:16-cv-00384	District of New Jersey	2:16-cv-01265
<i>Stuart v. Organon USA Inc., et al.</i>	4:16-cv-01155	District of New Jersey	2:16-cv-01669