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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: TAXOTERE
(DOCETAXEL) PRODUCTS
LIABILITY LITIGATION

CIVIL ACTION NO. 16-MD-2740 "N"
NEW ORLEANS, LOUISIANA
WEDNESDAY, APRIL 26, 2018, 10:00 A.M.

THIS DOCUMENT RELATES TO:
ALL CASES

TRANSCRIPT OF GENERAL STATUS CONFERENCE PROCEEDINGS
HEARD BEFORE THE HONORABLE KURT D. ENGELHARDT
UNITED STATES DISTRICT JUDGE

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P-R-O-C-E-E-D-I-N-G-S

WEDNESDAY, APRIL 26, 2018

M O R N I N G S E S S I O N

(COURT CALLED TO ORDER)

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7 THE DEPUTY CLERK: All rise.

8 THE COURT: You all may be seated.

9 For the record, this is a status conference in
10 the multidistrict litigation pending in the Eastern District of
11 Louisiana, MDL 2740, In re: Taxotere (Docetaxel) Products
12 Liability Litigation.

13 Welcome to all of you who are here in person, and
14 I understand we have several that are participating by phone,
15 several counsel that are participating by phone.

16 Also, it's my understanding that we may have a
17 few of the state court judges in whose courts there are claims
18 related to this case that are pending. If I could, I believe
19 we have a telephonic setup where those judges, if he or she
20 would choose to do so, could actually ask questions. Do we
21 have anybody on that line? Anybody?

22 Okay. Well, assuming, which may be a generous
23 assumption, that the phone system is working properly, I take
24 it that there are none or they would have responded, but if
25 there are and for some reason they can't communicate back, then

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1 I would welcome them as well.

2 Why don't we go ahead and get started. We had a
3 Draft Joint Report Number 9 of liaison counsel. If one of you
4 would like to go ahead and to begin that report.

5 Ms. Barrios, if you would do that.

6 MS. BARRIOS: Yes. Thank you, Your Honor. Good
7 morning.

8 THE COURT: Good morning.

9 MS. BARRIOS: A special welcome to Judge Milazzo, and
10 also our Special Master is here as well to make a report to the
11 Court today, and I believe we have over a hundred participants
12 on the phone, several of which are state court counsel, so I
13 welcome them to my MDL.

14 I'm going to go through the joint report in a
15 slightly different manner than usual. I'm going to try to
16 summarize it rather than going through every line because the
17 joint report, for all of those on the line, will be filed
18 either Friday or Monday. It will have all of the appendices
19 attached to it. It will be circulated through Centrality as
20 the service provider, so everyone will get to read the real
21 details of it, but I don't want this to be boring to people and
22 then they tune it out.

23 THE COURT: Okay. That's fine. I know most of you
24 all, I recognize, have been here for each of the conferences or
25 many of them prior to today. Our normal procedure is to go

1 ahead and have the report presented by counsel. We will
2 discuss what needs to be discussed as we go through.

3 If anyone has a question either while the report
4 is being presented or thereafter, we'll afford you the
5 opportunity to ask any questions, for those of you who are
6 here, or if we do have any of our state court judicial
7 colleagues on the phone can inquire. Then after we go through
8 the report, I'll open the floor for questions or comments.
9 Then lastly we will open the floor for any other issues that
10 have not yet been covered during the course of our conference,
11 so that will be our procedure.

12 Ms. Barrios, if you would like to proceed, that
13 will be fine.

14 MS. BARRIOS: Yes, Your Honor. Thank you.

15 The Judicial Panel on Multidistrict Litigation
16 named you the transferee judge in October of 2016. Since that
17 time there have been 8,557 cases that have come into the MDL
18 either directly or through transfer and removal.

19 As for the state involvement, we have had many
20 conversations with state court counsel. There are cases that
21 are currently pending in California, Illinois, Missouri,
22 New Jersey, and Delaware.

23 With regard to plaintiffs who are seeking to
24 remand any case, particularly in California, Your Honor has
25 entered Pretrial Order 77A, which provides for a special

1 expedited procedure so you can piggyback on the work that has
2 already been done.

3 There is a motion still under submission in this
4 court regarding two California multiplaintiff cases on the
5 issue of severance and remand and what procedure is the exact
6 proper one to use.

7 We communicate and send depo notices and anything
8 of any import to all state court counsel as well as to all MDL
9 counsel, and I really do appreciate the state court counsel's
10 cooperation with me on that.

11 We know that in Delaware there are many cases
12 before the Honorable Judge Vivian Medinilla. Counsel in
13 Delaware has requested on at least two occasions that I am
14 aware of that Judge Medinilla set a status conference and were
15 waiting for some movement in Delaware.

16 As for New Jersey, an application pursuant to
17 Rule 4:38A, Centralized Management of Multicounty Litigation,
18 to designate Taxotere as essentially an in-state MDL has been
19 filed. It will take a couple of weeks because it is now
20 published in *The Bar Journal*, and it has to go through their
21 regular cycle. The parties are seeking that the Honorable
22 James Hyland of Middlesex County be the -- I'll use the term
23 *transferee judge* in New Jersey.

24 In California there are six cases in six
25 different counties, and I know the parties under 77A, if they

1 have any issue with McKesson, will be discussing any remand
2 issues and any procedures pursuant thereto.

3 THE COURT: By the way, I appreciate the chart. I was
4 given this morning by liaison counsel a chart of the various
5 state courts in which there are pending cases related to the
6 MDL and also the particulars of each of those cases, including
7 the presiding judge.

8 Upon the identification of the presiding judge, I
9 have corresponded with -- and I think you all have been copied
10 on it, liaison counsel -- with each of the state court judges
11 in whose courts there is pending a related case.

12 I have not heard from any of the state court
13 judges. I think the letter is self-explanatory. Indeed,
14 Counsel even had input in preparing the letter in order to
15 disclose what we're doing here generally, but the letter does
16 invite any communication that a state court judge would like to
17 have with me as the presiding judge in the MDL. I haven't
18 heard from any of them, but if I do, then we'll cover that.

19 MS. BARRIOS: Yes, Your Honor.

20 This might be the appropriate point to discuss
21 the fact that the defendants have pointed out to us that there
22 were many duplicate cases filed around the country. We had
23 some issues with some firms, and I'm very happy to report that
24 all of those have been resolved that I know are outstanding.

25 I reached out to the defendants yesterday to ask

1 if there were any more duplicate case issues, and I haven't
2 heard back from them, but I stand ready, willing, and able to
3 get those resolved. I had offered on the prior round to do it,
4 and they did it on their own; so, I can't take any credit for
5 it. It was all through Chehardy and through the Shkolnik firm.

6 THE COURT: Okay.

7 MS. BARRIOS: Since our last report in court, you've
8 issued two pretrial orders. For the audience, all pretrial
9 orders will be listed on Appendix A to the joint report when
10 it's filed.

11 The pretrial orders that were entered since our
12 last meeting was Pretrial Order 77A, which is the one that I
13 had previously referred to regarding a streamline process for
14 filing motions to remand California cases.

15 I think just this week you entered
16 Pretrial Order 44 Amending, which replaced settlement counsel.
17 Your Honor had appointed settlement counsel committees at the
18 beginning of the litigation. New counsel will be
19 Matthew Moriarty for Accord Healthcare, Inc., and
20 Russell "Chip" Gaudreau for Sandoz, Inc. Mr. Gaudreau was also
21 named as chair of the 505(B)(2) Settlement Committee.

22 THE COURT: Okay.

23 MS. BARRIOS: Moving on to Item 4, Case Management
24 Orders, will be listed on Appendix B to this report when it's
25 filed.

1 You issued Case Management Order 13 on March 9th,
2 which set forth the four bellwether plaintiffs who will go up
3 for the first trial, and they are listed in a ranking order
4 that you had requested. For the record, those cases are
5 Antoinette Durden, Tanya Francis, Barbara Earnest, and
6 Lisa Tuyes, T-U-Y-E-S.

7 With regard to the plaintiffs for the second
8 trial that were identified in Pretrial Order 8A, we've had a
9 substitution for circumstances beyond anybody's control, and
10 the Cazayoux case will be replaced by Kerry Bland's case.

11 Item Number 5, this is the pretrial order which
12 is nearest and dearest to my heart, and that is the Counsel
13 Contact Form. Anyone who files a new case in the MDL must
14 follow Pretrial Order 7, complete the Counsel Contact Form.

15 That Counsel Contact Form gives us information
16 regarding your case and the paralegal on the case, so when we
17 communicate, we communicate both with the attorney and the
18 paralegal.

19 We then give this list to BrownGreer. BrownGreer
20 is the servicing agent, so if you don't send the Counsel
21 Contact Form, then you will not receive any pleadings, and you
22 will not receive any information from plaintiff liaison
23 counsel.

24 Paragraph Number 6 is the Master Complaint and
25 the Short Form Complaint. This is where anybody on the phone

1 needs to get out their pencils because I'm going to read record
2 docs.

3 The Plaintiffs' First Amended Long Form Complaint
4 was filed on July 25, which is Record Doc. 689. The defendants
5 filed Master Answers. The Court then entered
6 Pretrial Order 73, which is Record Doc. 1463, adopting the
7 approved Short Form Complaint. So anyone who is to file a
8 Complaint after January 2018 has to use the Complaint that is
9 attached as Record Doc. 1463-1.

10 If you have filed the Complaint using the prior
11 Short Form Complaint, you need not file an Amended Complaint
12 just to take advantage of the new form.

13 The Clerk's Office, when they are logging in any
14 Amended Complaints, will only pick up the defendant listed in
15 the amending complaints. So if you had a case, in your initial
16 complaint you had six defendants but in the Short Form
17 Complaint as amended you only have two defendants, only two
18 defendants will be listed in the Clerk's office.

19 We caution all plaintiffs' counsel, when they are
20 filing the Short Form Complaint, to look at the Master Long
21 Form Complaint because the Short Form Complaint incorporates
22 causes of action and facts in the Plaintiffs' Master Complaint.

23 If a plaintiffs' counsel has additional causes of
24 action arising under state law of that plaintiff, or whatever
25 state law the choice of law provides, you must add that in to

1 the Short Form Complaint. We have only the causes of action
2 approved by Judge Engelhardt, so if you have any other ones,
3 you must list them.

4 If you need to file an Amended Complaint, and
5 this arises oftentimes once counsel gets product IDs, it's
6 very, very important to follow the Local Rule 7.6 and
7 Pretrial Order 37A.

8 There is very specific steps that must be taken
9 by counsel to effectuate the filing of an Amended Complaint.
10 If those steps are not specifically taken, the Clerk's Office
11 will issue a deficiency.

12 So please make note of the Court's Local Rule 7.6
13 and Pretrial Order 37A, which requires contact with the
14 defendants in getting their approval and then ultimately doing
15 the filing. If they don't approve it, it has to go in as an
16 opposed motion.

17 The amendments to any complaint that requests a
18 voluntary dismissal of all defendants without prejudice --
19 these are plaintiffs who are going to dismiss the case but they
20 don't want it to go away permanently, it's just without
21 prejudice -- please be mindful of Pretrial Order 54, which is
22 Record Doc. 671, because there are very, very specific rules
23 that have to be followed.

24 Section 7 is a very lengthy section and deals
25 with Plaintiff and Defendant Fact Sheets. There are several

1 different areas that I'm going to go through, and I would like
2 to just tell everybody this is the part where you really,
3 really pay attention because we're talking about your fact
4 sheets. The defendants are known to file motions to dismiss
5 because of failure to properly file and serve a Plaintiff
6 Fact Sheet; so, plaintiffs' counsel, this is another place you
7 get your pencil out.

8 There are certain pretrial orders that counsel
9 should be aware of just out of the box on Plaintiff Fact
10 Sheets. The first is Pretrial Order 18, which provides the
11 form of the current Defendant Fact Sheet.

12 Amended Pretrial Order 22 sets forth the process
13 for service of Plaintiff and Defendant Fact Sheets and the
14 deadlines and deficiency process regarding those fact sheets.

15 Pretrial Order 23, which is Record Doc. 280, is
16 the form of the authorizations that plaintiffs must file along
17 with their Plaintiff Fact Sheet.

18 Pretrial Order 24 provides additional details on
19 the service and the authorization that must be given through
20 Centrality and the fact that all Plaintiff Fact Sheets and
21 Defense Fact Sheets will be filed through and served through
22 Centrality.

23 Although last, it's probably the most important
24 for those plaintiffs who need to file something, it's
25 Pretrial Order 55, which is Record Doc. 688, which is the

1 current form of the Plaintiff Fact Sheets. That can be found,
2 the current form of the Plaintiff Fact Sheets, can be found at
3 Record Doc. 236-1. It's also on the Court's website under
4 *Forms*. It's also provided in Centrality.

5 Amended Pretrial Order 22, Your Honor, as well as
6 ESI order -- Pretrial Order 71A, both of these orders contain
7 staggering provisions. Now, if you recall in the staggering
8 provisions in Amended Pretrial Order 22, if you had more than
9 25 fact sheets due on the same day, you've got to stagger the
10 completion and service.

11 Likewise, in 71A, there is a staggering
12 provision, but the number is increased to 50. There has been
13 some -- not some, much dialogue between counsel on the proper
14 method to count on staggering, and we are going to work with,
15 hopefully, Jake Woody at Centrality to see if he can help us,
16 because it's very difficult for them, the defendants, to
17 understand how many cases are due on the same day, and in this
18 time, we're doing our deficiencies on their Defense
19 Fact Sheets, they have a staggering provision, and that's
20 difficult for us.

21 The real difficulty is going to be for Your Honor
22 to figure out what case is really subject to staggering. So
23 we're going to work on that together to come up with a
24 solution --

25 THE COURT: Okay.

1 MS. BARRIOS: -- that will help the Court and all the
2 parties.

3 As of April 24, 2018, the plaintiffs have served
4 6,505 Plaintiff Fact Sheets. 1023 Plaintiff Fact Sheets are in
5 progress.

6 Based upon the Plaintiff Fact Sheets received as
7 of April 24th, the defendants named are as follows: Sanofi is
8 named in 3,288 Plaintiff Fact Sheets, Hospira in 465, Sandoz in
9 194, Accord in 141 Plaintiff Fact Sheets, Sun in 1 Plaintiff
10 Fact Sheet. Plaintiff Fact Sheets which indicates *Unknown*
11 *Manufacture* is 1,164 fact sheets.

12 On the Plaintiff Fact Sheets, if the plaintiff's
13 counsel leaves the answer to *Who is your manufacturer* blank,
14 that's in 637, and counsel who list *Other/Miscellaneous*
15 *Manufacturers*, that's 633.

16 We have advised all plaintiffs' counsel to be
17 timely in the filing of their fact sheets and to file them
18 completely to make sure they are substantially complete. We
19 also continue to remind them about their ESI obligations, as
20 well as Your Honor's guidance on the photographs that you
21 counseled us need to be put into evidence in Centrality.

22 The next section, Your Honor, I would like to
23 explain -- I'm sorry, Mr. Coffin, would you like to go now?

24 MR. COFFIN: That would be fine.

25 Your Honor, I'm sorry to interrupt Ms. Barrios,

1 but as we discussed in the plaintiffs' steering committee in
2 joint session with the defense counsel, we have come to a point
3 where, from the plaintiff's side, we're feeling that the
4 process for the PFS and the ESI documents has become very
5 inefficient.

6 We are spending an inordinate amount of time,
7 energy, and resources to get through that process, and then you
8 stack on top of that the deficiency or alleged deficiency
9 process, that is creating a lot of what we feel is unnecessary
10 work on behalf of the parties and eventually on behalf of the
11 Court, in some situations where cases are added to an Order to
12 Show Cause and hundreds are then removed from that order
13 because either they are cured or there was a mistake somewhere
14 in the alleged deficiency made by the defendant.

15 So I know we've talked about this in the
16 Plaintiffs' Steering Committee meeting, but as Mr. Lambert
17 indicated in the meeting, we've heard from a number of
18 plaintiffs' counsel. This has become an issue for us that is
19 really leading to dismissals of cases for technical reasons,
20 not because these plaintiffs don't have meritorious claims but
21 because these women are feeling overburdened by having to file,
22 you know, repeated responses to deficiencies when, in fact,
23 they've actual actually met their burden.

24 I understand the defense has a different view of
25 this, and Your Honor has instructed us that we need to sit down

1 and talk about whether or not we can reach other efficiencies.
2 We are going to work on some solutions to that, but it's
3 important for me to bring this up here in the open hearing so
4 that you understand and those lawyers on the phone understand
5 that this is an important issue to the PSC, and we're going to
6 address it with the defendants.

7 THE COURT: Well, that's what I indicated in our
8 committee meetings was that if there is a better way, a more
9 efficient way to do this, then that's fine. You all need to
10 discuss it with each other. If you can up with a common plan,
11 then I'm all ears. I think there are multiple ways of doing
12 this, and if there is one that's better, then let's do the one
13 that works better for everybody.

14 I'm just reflecting on the time period when, at
15 the outset, when we came up with the perfect Plaintiff
16 Fact Sheet as designed by defendants and the perfect Defendants
17 Fact Sheet as designed by plaintiffs, and the exercise at that
18 time was for you all to come together and maybe do some
19 horse-trading and some discussion and decide what it is that
20 you truly need and maybe make some concessions.

21 Although I don't doubt that that process happened
22 to some degree or another, it was ultimately left for the Court
23 to decide, on both counts, what would be included on the fact
24 sheets. So I rolled up my sleeves and made an evaluation and
25 gave you what I thought were the fair fact sheet fields of

1 information, and so that's how we did it.

2 If you want to revisit that with opposing
3 counsel, that's fine. If you want to change it, that's fine as
4 well. I'm not going to simply reopen the process and hear
5 arguments about what should and should not be on the fact sheet
6 because I've already done that.

7 MR. COFFIN: Understood and we get that. It's just the
8 reality of the inefficiency, especially of the deficiency
9 process when there is over 2,000 alleged cases that are
10 deficient, and then all of a sudden over 40 percent of those
11 are removed from the list, and counsel is having to respond,
12 because you've issued an Order to Show Cause, they have to
13 respond to that, it's putting the Plaintiffs' Steering
14 Committee in a very bad spot because of the timing.

15 So, some of this, Your Honor, quite frankly,
16 might just be able to be worked on it with a timing exercise.

17 THE COURT: Maybe so.

18 MR. COFFIN: Some of it may need to be in working on
19 the core data, the core information that the defendants really
20 need and, quite frankly, that the plaintiffs really need from
21 the Defendants Fact Sheets, so I understand what you're saying.

22 We are going to sit down with the defense. I've
23 already reached out with Mr. Ratliff to start that process, and
24 we'll see if we can come to a solution together, and if we
25 can't, then we'll come to you separate separately.

1 THE COURT: Okay.

2 MR. COFFIN: Thank you.

3 THE COURT: I don't intend to revisit something that
4 I've ruled on unless there is an error in my ways that you can
5 show me, but if there is an idea that the fact sheets are --
6 you can't come to an agreement on a better way to do the fact
7 sheets, then we're going to live with the ones that I -- I've
8 been through this already on the fact sheets, so it's going to
9 have to be something new, whether it's timing, as you suggest,
10 or whether it's a way to negotiate away some of the fields on
11 both fact sheets.

12 Mr. Ratliff, did you want to --

13 MR. RATLIFF: Yes, thank you, Your Honor.

14 Harley Ratliff on behalf of Sanofi.

15 As Mr. Coffin mentioned, we did talk about this
16 in the steering committee meeting, but since I have a broader
17 audience for this meeting, one of the things I wanted to
18 address was Mr. Coffin's statement about the inefficiencies of
19 this process.

20 What I'll tell you, Your Honor, is the only
21 inefficiency in the fact sheet process that we see right now is
22 the failure, the ongoing failure of plaintiffs to complete even
23 just the basic information in these fact sheets.

24 The reason that there are so many fact sheets
25 that go or cases that go on that show-cause list is because we

1 have to review them, determine that they are deficient, send
2 out those deficiency notices, and then the plaintiffs at the
3 last second cure them to get off the show-cause list. They are
4 given wide latitude to do this. All of this can be made more
5 efficient by completing those fact sheets on the front end with
6 the information that we're looking for.

7 One of the things that we have seen recently, and
8 it's becoming a growing problem across the inventory, is the
9 practice of attorneys submitting fact sheets that essentially
10 have the name and address and that's it. That is the only
11 information that is in the fact sheet, and we have hundreds of
12 those. That really is just a mechanism by which we then have
13 to issue a deficiency for the entire fact sheet, and it just
14 buys those plaintiffs more time.

15 So my concern is when Mr. Coffin and the PSC say,
16 "Well, this is really burdensome on us, this is really
17 inefficient," what we're seeing is massive noncompliance with
18 the fact sheet process, which, as I mentioned in the steering
19 committee meeting, is our really only mechanism for learning
20 about these plaintiffs, learning about the merits of their
21 claims, learning about their medical history.

22 So when we see plaintiffs submitting by the
23 hundreds fact sheets that have a name, an address, maybe two
24 other boxes checked but all of the other information left blank
25 just so they can meet that deadline, that is something that is

1 of very much concern to us and something that we anticipate --
2 I think we've already raised it with PLC -- but we may be back
3 before Your Honor seeking relief on that type of issue and a
4 way to -- we talk about timing.

5 Right now we see a very long time period by which
6 plaintiffs are given multiple avenues to cure these
7 deficiencies, but when we see what seems to be negligence on
8 the part of finishing these fact sheets, we may be wanting to
9 revisit the schedule to compress that, to move those types of
10 fact sheets directly to the end Show Cause Order to have those
11 ruled on.

12 So we will talk with Ms. Barrios, with Mr. Coffin
13 about this issue, but I want to raise that not only for
14 Your Honor but for all of the attorneys who are on this phone
15 call, who are listening, who are having to complete these fact
16 sheets that this is an issue that's out there, and we are very
17 well aware of it.

18 THE COURT: Okay.

19 MR. COFFIN: I think what Mr. Ratliff just said
20 illustrates the point that we need to sit down and talk.

21 THE COURT: It's very Newtonian -- "For every action
22 taken there is an opposite and equal reaction."

23 If I thought one of you would eventually sit down
24 and agree with the other, I would go ahead and have what
25 amounts to an oral argument.

1 I don't mean to bore you all with a childhood
2 story, and I'm probably giving away my age: When I was a kid
3 we collected football cards of football players, and at some
4 point after the *Brian's Song* thing happened, everybody wanted a
5 Gale Sayer's card. I didn't I have a Gale Sayer's card, but I
6 had a couple of Fran Tarkentons and a couple of Dick Butkus
7 cards.

8 So the endeavor became to see what it would take
9 to pry the Gayle Sayer's card away from a friend of mine.
10 Ultimately, we concocted some deal where I had to throw in a
11 Tommy Nobis card, and he threw in a Fran Tarkenton card, and
12 somehow we got a deal, and I got a Gayle Sayer's card. I don't
13 know where it is now.

14 At any rate, my point is: Find out what it is
15 that is going to be satisfactory to both sides, whether it's
16 more time on this or something else. You're going to have to
17 be reasonable about it, and you're not going to get everything
18 that you want, both sides, but you're going to have to start by
19 sitting down and putting things on the table and finding out
20 what the other side wants and seeing if there can be some type
21 of an accommodation, is what I'm suggesting, is that there be
22 an accommodation.

23 We can stay in our trenches, and like I said, we
24 already did this exercise on the fact sheets. They were
25 brought to me and put on my desk, I'm sure, with the best of

1 intentions, and I rolled up my sleeves and went through, and I
2 take it that the response that both sides got was probably no
3 like small amount of grumbling about what I had decided, but I
4 did decide it and we moved on.

5 The fact that it's burdensome is probably -- they
6 were probably burdensome when you first got my ruling, both
7 sides. You didn't get exactly what you wanted. So, you know
8 what, you come together, decide what fields are important,
9 what's the best way to get the information, and get it
10 efficiently and promptly and quickly and work on that basis.

11 The plaintiffs have the burden of proof in this
12 case. Every time we try a bellwether, that's the one thing
13 that's not going to change, and the plaintiffs who come to
14 court come with a body of information about their claim that
15 they will have to disclose certainly to opposing counsel
16 whether it's through the normal discovery process, which we're
17 trying to eliminate by making the fact sheets more complete.

18 Yes, they are burdensome, they are burdensome,
19 but it's better than getting a list of interrogatories and
20 multiple requests for production of documents individually over
21 the next 16 months. Let's see if we can get everything
22 together and give a packet.

23 I know it's burdensome, but that's the nature of
24 litigation. When you expect compensation for a claim or when
25 you expect to mount a defense in court, you participate in

1 discovery and it costly and it's burdensome. I don't know of
2 any way -- I've not had a case here, since I've been doing this
3 since 2001, that hasn't been burdensome to somebody.

4 MR. COFFIN: Those examples that Mr. Ratliff brought
5 up, it would be difficult for me to defend somebody who puts
6 their name and address. That's not what we're talking about.
7 I think it's really more in the deficiency process and the
8 nitpickiness of whether or not this woman straightened her hair
9 three times a week versus two times a week or the examples of
10 PTO 12 where there were alleged over 600 deficiencies, and they
11 removed over 500 of those. That causes offices to scramble and
12 be concerned.

13 THE COURT: Well, we've given a lot of cure
14 opportunities, and I suspect that -- Mr. Ratliff, you don't
15 need to stand up and deny that those are the examples of
16 things.

17 I take it there is some middle ground where there
18 is a fact sheet that has been filled out probably in good faith
19 by plaintiffs' counsel, subject to the deadline, they submitted
20 it, now has to go back and complete the exercise, which, yes,
21 consumes time and resources, and it's either satisfactory or it
22 isn't.

23 Ultimately, we have a mechanism that is the
24 Show Cause Order to try to address where those efforts fall
25 short. If there is a better way to do it, get together and

1 come up with it and I'm all ears. I'll be happy to sign an
2 order that alters a process that we currently have that isn't
3 working as well as we would like.

4 I have addressed fact sheets. I, frankly,
5 thought at the outset, when I gave it to you all to come up
6 with fact sheets at the outset of the MDL, my expectation was
7 that you all would come together and say, "Here is the
8 Plaintiffs' Fact Sheet that we are going to be using. Here is
9 the Defendants' Fact Sheet." Instead, I got quite a divergence
10 of what should be, so I resolved them.

11 MR. COFFIN: Understood. We'll get together and see
12 what we can do, Your Honor.

13 THE COURT: It's going to take giving. It's going to
14 take some giving and accommodation. I know you don't want to
15 do that, and that's not the nature of the adversary process,
16 but that's what it's going to take.

17 MR. COFFIN: I will be reluctant to give up my
18 Drew Brees card but I'll talk to him about it.

19 MS. BARRIOS: No reaction from me, Your Honor.
20 Opposite reaction.

21 Returning back to our process of the
22 deficiencies, for those on the phone we have numerous
23 appendices to every joint report. There is rhyme and reason to
24 it, and I would like to explain that.

25 THE COURT: Okay.

1 MS. BARRIOS: Sanofi has exhibits -- I mean, I'm sorry,
2 Appendices C.9, D.9, and E.9. Those three relate to a
3 plaintiff that did not file a fact sheet at all.

4 The second one is the plaintiff filed the fact
5 sheet, the defendants provided a deficiency notice, and there
6 has been no follow-up by plaintiff's counsel.

7 The third, shall we call them *bucket*, the third
8 bucket is that situation where a plaintiff has not
9 substantially completed the PFS as per the definition in
10 Amended 22.

11 So those lists will be attached to the final
12 joint report that is filed on either Friday or Monday. I
13 apologize to the Court, no party was able to give you an exact
14 number of those today.

15 That same process, numbering process in buckets
16 follows for the 505(b)(2)'s. They have Appendix F.9, G.9, and
17 H.9. Those are the same three buckets that I just explained.
18 No Plaintiff Fact Sheet filed, no response after deficiency
19 notice, and then substantially incomplete Plaintiff
20 Fact Sheets.

21 Appendix I.9, and this is some -- I don't want to
22 say *somewhat confusing*. It's not exactly clear, but
23 Exhibit I.9 are the same cases that are on Show Cause Order
24 Number 4. This causes great confusion, and this is what I
25 alluded to in our conference, Your Honor.

1 I would like to work with Kelly Brilleaux and
2 Nick Insogna, who works with me on this, to figure out an
3 easier process because, essentially, what we're doing is we're
4 doing the same two lists under two different names and giving
5 it to Your Honor.

6 THE COURT: Okay.

7 MS. BARRIOS: So I would like to work on that with
8 them, but I think that I can say it's approximately 1,300 cases
9 that would be on I.9. This is the appendix that I referred to
10 as the *guillotine appendix*. This is the one you have the Show
11 Cause for.

12 THE COURT: Right.

13 MS. BARRIOS: This is the first time that the
14 plaintiffs have now pointed out deficiencies on the Defense
15 Fact Sheet. We have three buckets, and our appendices are J.9,
16 K.9, and L.9.

17 Under the first bucket, where -- I'm sorry,
18 Your Honor, I just lost my place on here.

19 THE COURT: I'm following you on page 9.

20 MS. BARRIOS: I'm really on page 10.

21 THE COURT: Okay, maybe I'm not following you. Oh, you
22 must have a different draft.

23 MS. BARRIOS: It's a draft. I'm sorry, yes,
24 Your Honor.

25 THE COURT: We're on Centrality on 10. This is the

1 earlier draft.

2 MS. BARRIOS: I apologize. Appendix J.9 is our first
3 bucket where no Defense Fact Sheet has been filed.

4 Appendix K.9 is where a Defense Fact Sheet has
5 been filed, we have issued a deficiency, and there has been no
6 response. These buckets, for everyone, are really the same as
7 the defendants used. It's just the opposite way around.

8 Our last bucket is L.9, and that is where the
9 defense believes that he's cured the deficiency, but we believe
10 it hasn't cured the deficiency.

11 For everyone's knowledge, the Court has issued an
12 order on the responses on the Order to Show Cause Number 2, and
13 we have pending before you Number 3, and today we will file
14 Number 4.

15 THE COURT: Okay.

16 MS. BARRIOS: I do appreciate all counsel's cooperation
17 when Mr. Lambert and I send out numerous e-mails alerting them
18 to deadlines, encouraging them to follow the deadlines and to
19 complete everything, and we get a really good response, so I do
20 want to thank everyone on the phone for that.

21 Paragraph Number 8 is MDL Centrality. For those
22 who don't know what it is, it is a -- well, I wish I had
23 Mr. Oot here -- a platform that all Plaintiff Fact Sheets and
24 Defendant Fact Sheets are put on Centrality.

25 Each plaintiff has her own portal, so I can go to

1 every one of my plaintiff's portal and look at all of the
2 information there. No one else can look at mine on the
3 plaintiff side. So that is really important.

4 I got an e-mail this morning saying, "Okay, do I
5 file my Plaintiff Fact Sheet in court?" No. Please look at
6 Amended Pretrial Order 22. It gets filed on Centrality. They
7 are very easy to work with. You can send an e-mail to
8 Taxotere@BrownGreer to ask your question, and they'll be happy
9 to set you up on a portal and get all of the information to
10 you.

11 All the defendants have agreed that the records
12 that they pick up from the various authorizations that are
13 attached to the Plaintiff Fact Sheets are put in Centrality in
14 every plaintiff's portal; however, there is a charge for that.

15 So each plaintiff must pay \$25 for all the
16 records, and they will be unblinded, and each plaintiff will
17 get everything that the defendant has picked up. We do
18 appreciate the defendants' agreement on that, and we worked
19 that out with Mr. Woody.

20 So please look on every one of your client's
21 portals to see this little button that says *Centrality \$25 due*.
22 That means that you put your credit card information in, and
23 then you'll get the records that have already been collected.

24 For those of you who have filed complaints, the
25 Short Form Complaint, please be advised that you must serve

1 your defendants. I have heard of issues from the defendants
2 where counsel just file the Plaintiff Fact Sheet, and they
3 don't do any service on it. So, for your convenience, Counsel,
4 we have entered into different streamline service procedures.

5 For the domestic Sanofi entities that's in
6 Pretrial Order 9, Record Doc. 160, if you get a product ID that
7 says *Winthrop*, the correct defendant is
8 sanofi-aventis U.S. LLC, and that is contained -- the
9 streamline service for that entity is in PTO 9.

10 The other streamline service procedures for
11 Accord Healthcare is PTO 2. For Sandoz, Inc., PTO 3. For
12 Actavis Pharma, Inc., PTO 32A. Note that it was amended, so --
13 the Pretrial Order was amended so it's 32A. For McKesson
14 Pretrial Order 33. For Sun Pharmaceuticals, Inc.,
15 Pretrial Order 39A and for Hospira Worldwide and Pfizer, it's
16 Pretrial Order 40A.

17 Our next item in the joint report is the Product
18 Identification Order. This is an order that was negotiated by
19 the parties over many, many months. It is very detailed so I
20 warn plaintiffs' counsel out there that they must follow every
21 step of paragraphs numbered 1 and 2 in the Pretrial Order.

22 The following paragraphs provide that if
23 plaintiff issues the requisite information to a facility and
24 that facility does not provide the product ID, they notify the
25 defense, the defense -- I'm sorry, sends one letter identifying

1 themselves as the manufacturer of a docetaxel product in asking
2 for the information on product ID.

3 Once the defendant gets that, it has to go to the
4 plaintiffs. If the defendants don't get that, it also goes to
5 the plaintiffs, but we've noticed that there is no time frame
6 for that to happen.

7 It's important for counsel to know that the next
8 step is that plaintiff can issue a subpoena to do the
9 individual discovery necessary to find out the product ID if
10 you didn't get the information from either the plaintiff's
11 request for or the defendant's request.

12 THE COURT: Have we had to go through the subpoena
13 route very often up to this point?

14 MS. BARRIOS: Oh, yes, sir.

15 THE COURT: And with a result that ultimately
16 accomplishes the discovery of the product ID?

17 MS. BARRIOS: I'm sorry, I can't answer that because I
18 just get copies of the subpoena. I don't know.

19 Do you know if the subpoenas have been
20 productive?

21 MR. MOORE: I don't know the answer to that,
22 Your Honor. We have been receiving subpoenas. I think the
23 typing to begin issuing those subpoenas is upon us now, so I'm
24 not even sure that any are returnable as of yet. But I know
25 that they are going out, and then the process will follow from

1 there.

2 THE COURT: Okay. Good.

3 MS. BARRIOS: Assuming that the plaintiff get the
4 product ID through the subpoena process or even having to file
5 a Motion to Compel or a 30(b)(6) in some facility, once that
6 information is given, the plaintiff must go to her own portal
7 and upload the product identification to the drop-down tab that
8 says *CMO 12, Product Identification*.

9 Once the plaintiff gets the product
10 identification, then they have to go through the dismissal
11 process to dismiss the other defendants who they named in an
12 abundance of caution.

13 We're currently negotiating with the defendants,
14 and I think the negotiations are almost at end for an easy
15 dismissal method that we will circulate, obviously, to all
16 counsel. Ms. Anderson is going to work with the Clerk's Office
17 to set up a special tab or form or whatever the Clerk's Office
18 uses for these so they will fly through and not get a
19 deficiency.

20 MR. MOORE: Douglas Moore on behalf of Sanofi.

21 Just very quickly, Your Honor, on the streamline
22 process for affecting dismissals under CMO 12. Obviously the
23 point of the order is to place these cases in the right
24 defendant's bucket. The way that happens under the order, it
25 was specified that the improperly named defendants would be

1 dismissed, but because of the other orders, PTOs, existing --
2 you have 37 -- existing in the case, voluntary dismissals
3 require consent of the defendants. We have received -- both
4 named and unnamed.

5 We have received Consent Motions to Dismiss,
6 Stipulations of Dismissals, Notice of Dismissals, requests just
7 to amend the Short Form Complaint, all variety and manner of
8 ways to accomplish what the goal of CMO 12 is.

9 We are trying our best on the defense side to
10 timely respond to the requests for consent, but because they
11 require some due diligence on our side if it's a stipulation,
12 we've begun discussions on coming up with the streamline
13 process where under the CMO that we would propose to the Court
14 you won't be required to get consent from the defendants. So
15 long as you follow the form we agree on, the consent is on the
16 front end, and we hope that will make the process much more
17 streamlined.

18 THE COURT: Okay.

19 MS. BARRIOS: Exactly. I think the language in it will
20 indicate that the plaintiff is dismissing based upon the
21 information received in CMO 12, so in the very unlikely event
22 in the future that they find out it's the wrong defendant, we
23 have some recourse to come back.

24 THE COURT: Right. Okay.

25 MS. BARRIOS: Item number 11 is the Preservation Order.

1 The Preservation Order came out in Your Honor's very first
2 pretrial order, and everyone who practices in any court knows
3 the rules about preservation, so I'm not going to go into any
4 more details.

5 Judge North entered a Protective Order, which is
6 Pretrial Order 50. I would like to take this opportunity,
7 since I mentioned his name, to thank Judge North because he has
8 handled some very contentious matters and handled them in a way
9 that provides very practical results on all occasions.

10 We met with him yesterday. We have some further
11 briefing to do, and we already have another date -- I think
12 it's March 5th -- that we will meet with him, and we do
13 appreciate that.

14 THE COURT: Yes, I know he's expended a considerable
15 amount of time and energy on this case on a variety of fronts,
16 and the Court certainly appreciates that as well.

17 MS. BARRIOS: Thank you, Your Honor.

18 Item Number 13 is Electronically Stored
19 Information. Every plaintiff must understand that the
20 Plaintiff Fact Sheets and the requests for production requires
21 that the plaintiff provide certain electronically stored
22 information.

23 The Court entered, at the defendant's request,
24 Pretrial Order 70, I'm sorry, 71, and we, by consent, amended
25 it, 71A, to provide additional time for the plaintiffs.

1 This information is information that is important
2 for the Court. It's important for the plaintiffs to follow
3 this procedure. It's important information that the defendants
4 believes it needs, whether through litigation or through
5 settlement.

6 Plaintiffs' counsel, please note that you have to
7 upload the statement that must be made under Pretrial Order 71A
8 under the drop-down tab *Pretrial Order 71A ESI*. Because if
9 not, it gets lost in all of the information in everybody's
10 portals, and I know the defendants oftentimes are upset that
11 things are not put in the correct -- on the correct portal, so
12 I just ask people in advance to do it that way.

13 Item Number 14 is the Discovery of the Defendants
14 and the Trial Case Discovery that has gone on to date. The
15 plaintiffs have taken approximately 20 depositions of Sanofi
16 custodians and sales and marketing representatives.

17 The four trial plaintiffs identified in CMO 13,
18 the four women whose names I mentioned earlier are in the
19 Phase Two discovery process, and there are depositions being
20 taken of different relatives, anyone who the defendant thinks
21 may have relevant information.

22 There is also written discovery that went out to
23 these plaintiffs, and there have been more than 30 depositions
24 with the first pool of trial plaintiffs, so that has gone
25 along.

1 As for the second round of plaintiffs, plaintiffs
2 served merit discovery on Accord Healthcare, Hospira/Pfizer
3 defendants, and Sandoz. We have begun to receive production,
4 and we're in the process of working on search terms so that we
5 can begin the electronic receipt of their documents.

6 Item 15 is Motion Practice. There are actually
7 only two motions that are currently fully briefed and awaiting
8 rulings for Your Honor. The first is the Motion to Remand the
9 *Ernyes-Kofler* and *MaCallister* cases to Delaware. Your Honor,
10 that is Record Doc. 473. The plaintiffs have filed
11 supplementals, the defendants have opposed, and we have gone
12 back and forth, but that is all fully briefed and awaiting your
13 ruling.

14 The second motion is the Defendant's Motion to
15 Dismiss based upon CMO 12, failure to provide product ID. This
16 is one of the motions that Mr. Coffin was referencing.

17 The defendants filed, I think, 674 plaintiffs on
18 that Motion to Dismiss list. They sent the list, as is
19 customarily done, to Mr. Lambert and myself, we reach out to
20 plaintiffs, and we were able to convince the defendants that
21 over 500 of these 674 actually had product ID on their
22 Centrality portal, but it was not uploaded to the correct tab.

23 The situation that has occurred, Your Honor, is
24 that people put, my office included, people put their product
25 identification up on a tab that you can label prior to

1 identification before CMO 12 came out. So although it was
2 there when the defendants ran a report on Centrality to see
3 what was under that special tab, they got the 674.

4 So, we have been working together, and I
5 appreciate all of the plaintiffs' counsel who consistently
6 answer Mr. Lambert and myself, because what we want to do is
7 take people who should not be on the list and take them off so
8 Your Honor doesn't have to rule on them and so they don't have
9 to file very lengthy responses in the court.

10 MR. MOORE: Real quickly, Your Honor. Douglas Moore on
11 behalf of Sanofi.

12 The 522 cases that Ms. Barrios refers to are
13 cases that we identified as not having uploaded product ID
14 information or having sent us an e-mail telling us they've been
15 unable to obtain it, which was required under CMO 12.

16 When we learn from Ms. Barrios that those
17 plaintiffs did, in fact, have product ID, they just hadn't
18 uploaded it because they had gotten it before the entry of
19 CMO 12, we agreed to remove them from our motion and ask the
20 Court for different relief, not to dismiss them but to order
21 them to actually put the product ID information in the right
22 place. I believe they have all done it now anyway.

23 THE COURT: Okay. So that leaves a remainder of how
24 many that are subject to this motion?

25 MS. BARRIOS: 152, Your Honor.

1 THE COURT: 152.

2 MS. BARRIOS: Since this was done in mid-March, it may
3 very well be that many of these plaintiffs have already done
4 that. With Your Honor's permission, I'm happy to send out a
5 reminder to them and see if we can even reduce this 152 down.

6 THE COURT: Okay. Yeah, please do because that's a
7 motion that I think I have in a binder in my office right now.

8 MS. BARRIOS: That's the first big binder you got.

9 THE COURT: In light of our conversation at our liaison
10 counsel meeting, I haven't delved into that yet, but now with
11 the update today, let's go ahead and see if we can go ahead and
12 complete the product ID exercise and uploading of information.

13 MS. BARRIOS: Yes, Your Honor.

14 MR. COFFIN: Your Honor, could I just make a brief
15 point on this? This is a good illustration here. I'm going to
16 personally talk about my office.

17 104 of those cases that were in that motion were
18 from my office. It took my staff about four days to go back
19 and figure out for the defense that we actually had uploaded
20 the information. So what Mr. Moore said isn't exactly correct.
21 We had uploaded the correct information; it's just that they
22 didn't look in the correct place.

23 So this is where kind of the efficiency, you
24 know, burdensome stuff starts to come in. I'm speaking
25 personally for me now. 104 of the cases in my office did have

1 product ID, and we spent all of that time. That's not an
2 exaggeration. I can image what other plaintiffs' attorneys'
3 staff are going through, because I've had to go through it.

4 Now, I only say that because I wanted to correct
5 the record. We had uploaded that information, but we're going
6 to work it out with them, as Ms. Barrios and Mr. Moore said.
7 That's the kind of thing that we need to sit down and talk
8 about and we will, but I can't stand here and let him say that
9 we didn't --

10 THE COURT: Would it not have been easier to just pick
11 up the phone or send an e-mail and say, "Where are these?"

12 MR. COFFIN: I think they tried.

13 THE COURT: I can enter an order that says, Counsel
14 shall look in the right place for this, that and the other."
15 Here we are with, again, the Newtonian principle.

16 MR. MOORE: Equal reaction, right. We did look in the
17 right place. The product ID documentation was under a
18 different area.

19 We can only know product ID -- part of the reason
20 we created CMO 12 was to have the specific information that we
21 identified in CMO 12 as being sufficient to establish product
22 ID. We can only identify that if it's in the proper place on
23 MDL Centrality.

24 The place he's referring to as the *other place*,
25 it was a proof of use. In some of those uploads, there were

1 two or three pages; in others, there were 800 pages of
2 chemotherapy records that we would have had to sort through to
3 figure that out.

4 At the end of the day, even though we filed a
5 motion on it, we now have what we think we're entitled to under
6 CMO 12, and this was the only time that was going to happen,
7 was the first time, because those 522 cases were already
8 possessing a product ID before CMO 12 was be entered. No one
9 else is going to fall into that category moving forward. They
10 are either going to comply with the order or they are going to
11 be like this other 157 other people who just didn't do it at
12 all.

13 MR. OLINDE: Your Honor, I have one comment there,
14 which is that CMO 12 is a negotiated order. It is says where
15 it is that things need to be placed. In these cases, it was
16 not in the right place, so that's why they got put on a list.
17 They didn't do what the order agreed upon. We all talked about
18 it; we said it together. It was not in the proper place.

19 THE COURT: Well, I hope I'm not incorrect in saying
20 this, but in light of this experience, we all know where to
21 look, where to post, so we don't have to have this conversation
22 again.

23 MS. BARRIOS: No reaction from me; although, I would
24 like to give one.

25 MR. BACHUS: Your Honor, Kyle Bachus.

1 We have a hundred of those cases that are left on
2 the list, and the representation that was made about those is
3 not accurate because what actually happened there is that all
4 of those product IDs -- all the requests for product ID had
5 been made before CMO 12 was ever entered.

6 There was a mix-up on lists, and there was a
7 delay in e-mailing them notice for them to do their part. So,
8 I mean, really, you're probably down to less than 25 cases, so
9 long as we can work that piece out.

10 They now know that we made the request for
11 product ID, that we were unable to get it. We asked them to
12 make their request; yet, they wouldn't remove them from the
13 list of cases that is pending before Your Honor right now.

14 THE COURT: Okay. All right. Thank you, Mr. Bachus.

15 MS. BARRIOS: In light of all these comments, I'm going
16 to make it happen. I'm going to get these people to move it in
17 the right place and reduce the numbers.

18 Item 16 is the Settlement Committees. I don't
19 believe the Plaintiffs' Settlement Committee representative is
20 here. I don't know if Mr. Strongman wants to make any mention.

21 MR. STRONGMAN: I have nothing specific to report at
22 this time.

23 THE COURT: Okay.

24 MS. BARRIOS: I do appreciate that Your Honor said in,
25 I think, in the second-to-last liaison counsel meeting that if

1 the settlement committees wanted to talk to you at all, just to
2 provide you with some dates and times and you would be
3 available. We appreciate that.

4 THE COURT: That will be fine. I'll coordinate with
5 Judge Milazzo so that if we do have need to convene a meeting,
6 either with the representatives or with the entire committees,
7 I'd be happy to do that and that's fine.

8 MS. BARRIOS: Thank you, Your Honor.

9 Item 17 is the Special Master for Plaintiffs'
10 Time and Expenses, and we're honored to have
11 Special Master DeJean.

12 THE COURT: Mr. DeJean, did you have anything you
13 wanted to report to us?

14 SPECIAL MASTER DEJEAN: Your Honor, if I could just
15 report a few things essentially for people who may be on the
16 telephone.

17 Your Honor, I've completed an overall review of
18 the time portion of everything, and I'm now doing the official
19 audit. I wanted to give everybody a notice that they will be
20 getting e-mails. If you've done work, you will be getting
21 e-mails pointing out either questions that I have, deficiencies
22 or rejection of time with reasons.

23 If you get one, nobody is going to the penalty
24 box. I ask that they not overreact. Simply pick up the phone,
25 e-mail me, do what we can to try to work these out, and we'll

1 move forward with them. So, it's progressing is nicely. The
2 program is working fine.

3 THE COURT: Okay. All right. Does anybody have any
4 question for Mr. DeJean at this point? Anybody present here?
5 Okay. Thank you.

6 SPECIAL MASTER DEJEAN: Your Honor, I did meet with the
7 PSC yesterday, so they had various questions at that time, and
8 we resolved some of those.

9 THE COURT: Ms. Barrios, anything further?

10 MS. BARRIOS: The only thing to add to what the
11 Special Master said, once he gets to a point where he has a
12 specific time period done, official letters will go out to
13 everyone as the Pretrial Order requires, so that will be going
14 out within the next 30 to 60 days.

15 THE COURT: Okay.

16 MS. BARRIOS: The last item is the date of our next
17 status conference. You've given counsel three different dates
18 in June and we respectfully ask --

19 THE COURT: Judge Milazzo.

20 JUDGE MILAZZO: I just have to find out the dates.

21 MS. BARRIOS: The dates are June 15th, 22nd, and
22 June 29th.

23 THE COURT: Those are all Fridays. Again, subject to
24 Judge Milazzo's availability, if you all want to canvas your
25 respective sides and pick one of those three that is best for

1 everyone, that's fine. If those three don't work out, then let
2 us know that, and we'll try to offer you a couple of others
3 that, perhaps, will be more convenient.

4 MS. BARRIOS: Sure. Thank you.

5 JUDGE MILAZZO: I am available on 15th and the 29th,
6 but I would prefer the 15th.

7 MS. BARRIOS: Sure. Thank you, Your Honor. We'll try
8 to make that happen.

9 THE COURT: The 15th is the preferred date. If you all
10 can work with that one first, that would be appreciated.

11 Anything further?

12 MS. BARRIOS: No, just to state for the record, the
13 22nd will be off the table, Judge Milazzo, and then the
14 fallback will be the 29th.

15 THE COURT: All right. Mr. Moore would you like to
16 follow up?

17 MR. MOORE: Yes. Just one point of clarification.
18 When Ms. Barrios talked about the duplicate filed cases, and
19 she indicated that the issue was resolved, that there is an
20 issue with a firm in particular, that is correct.

21 The motion remains pending. We continued the
22 submission date so that we can affect the resolution that we
23 are working out, but it was -- I was asked to mention that
24 there are other duplicate filed cases that we are identifying
25 and that we will work with plaintiffs' liaison counsel to clean

1 up.

2 THE COURT: Okay. All right. Thank you, Mr. Moore.

3 Mr. Olinde, anything?

4 MR. OLINDE: John Olinde, the defense 505(b) (2)
5 liaison, and I want to thank Ms. Barrios for the joint report.

6 One thing she had mentioned with regard
7 to this one plaintiff in the second trial pool, who is
8 Priscilla Cazayoux, it was mentioned it was beyond anyone's
9 control that the case was dismissed.

10 We don't know from the defense side what the
11 reason for the dismissal was. It was a case which was selected
12 by the 505(b) (2) defendant, who is Sandoz, and a replacement
13 through an unopposed motion, a replacement case which was
14 mentioned is before Your Honor as an unopposed motion to have
15 that case instead of the Cazayoux case.

16 THE COURT: Okay. All right. Thank you.

17 Does anybody have any questions or comments about
18 anything we have already covered at this point?

19 MR. EXNICIOS: If I may, Your Honor.

20 THE COURT: Yes. Come on up.

21 For purposes of the record, if you could identify
22 yourself, please. I know who you are, but I want to make
23 sure --

24 MR. EXNICIOS: Yes. Thank you very much, Your Honor.

25 Val Exnicios on behalf of the plaintiffs.

1 Your Honor, the Plaintiff Fact Sheet issue has
2 obviously consumed a considerable amount of Your Honor's time
3 this morning, and I don't wish to add to that burden, much less
4 incur your wrath by doing so.

5 By the same token, I wanted to share with
6 Your Honor and maybe even more importantly for the defendants'
7 edification, it's my understanding, Judge, that there is a
8 growing perception amongst plaintiffs' counsel across the
9 country that the Plaintiff Fact Sheet in this particular case
10 is being perceived as one of the most onerous in MDL
11 litigation, the practical effect of which is discouraging
12 lawyers from joining in this MDL and, instead, inducing them to
13 litigate their cases in state court.

14 To the extent that defendants have an interest in
15 cumulating as many as these cases as possible here before
16 Your Honor, or Judge Milazzo as the case may be later, perhaps
17 they may want to consider that disincentive versus whatever
18 perceived benefit they may think is available to them from
19 dismissals via purported technical difficulties or deficiencies
20 or what have you.

21 So, I'm not suggesting, Your Honor, that
22 anecdotal information is accurate, but it's being reported to
23 me as a perception, and to the extent that people believe what
24 they hear and they act upon it, that has a negative result in
25 cumulating as many of these actions as possible before this

1 court, I want to share that both with Your Honor and also for
2 the defendants' edification.

3 Thank you very much, Judge.

4 THE COURT: Thank you.

5 Counsel?

6 MR. MOORE: Thank you, Mr. Exnicios. That was
7 something, I think, that was mentioned to me anecdotally by
8 Mr. Palmar recently not with respect to the fact sheet.

9 We believe the fact sheet is reasonable. It was
10 not everything that we asked for. It will be comparable to
11 what we request the courts in New Jersey and Delaware to use,
12 in the event we proceed with consolidated proceedings in those
13 state jurisdictions. It will be significantly less than the
14 written discovery that a plaintiff would have underwent if they
15 would have litigated their case in their home jurisdiction.

16 We understand the concern. We are aware of the
17 desire to place cases in an MDL and then not have to go through
18 this process, but we think it's an important one. We think
19 that the fact sheet that the Court, although it was not
20 everything that we asked for, we think it's entirely reasonable
21 and certainly consistent with fact sheets that have been
22 entered in numerous other MDLs involving pharmaceutical
23 products.

24 I make that comment. We will take Mr. Exnicios'
25 comments into consideration in our decision-making with them

1 when we talk about the fact sheet, but I did want to state that
2 we do believe, having done MDLs my entire career, that this
3 fact sheet is comparable, that it's not more burdensome or more
4 onerous than what is typically employed in an MDL of this
5 nature.

6 THE COURT: Okay. All right. Thank you, Mr. Moore.

7 Anybody else?

8 Does anybody have any issue or comment about
9 something that has not yet been covered here today? Anything
10 new?

11 Okay. I appreciate all the work that's been done
12 on this, and I understand a lot of the vexations. We're
13 probably at the point in the MDL where I think this is a
14 fairly -- at least in the ones I've had and the ones I'm very
15 familiar with in this building handled by others, I think that
16 we're probably at a point where a lot of these issues are
17 starting to come to a head in terms of fact sheet, the backlog,
18 show cause, discovery. Some of the burdens of getting the work
19 done are starting to catch up, so I appreciate the constraints
20 you all are operating under and, you know, the efforts that
21 you're putting forth to meet these deadlines.

22 We did have a conversation this morning, which
23 hasn't come up here today -- is there some way I can talk
24 without it hurting people's ears other than changing my voice?
25 All right. It's still kind of an echo. I feel like I'm in

1 cave. All right. That's better. That's better.

2 We did have a conversation this morning in an
3 attempt to address the first bellwether trial and its date. We
4 had a lengthy conversation about that, both with liaison
5 counsel as well as with the committees, and so I'll await
6 further word.

7 Again, I expect there to be some concessions --
8 some degree of concession on both sides in order to accomplish
9 what we want to accomplish, particularly with regard to getting
10 that first bellwether to trial, whether it's in September or
11 whether it's in January.

12 There were some issues that came up with regard
13 to that I was unhappy to hear, but I'm certain they can be
14 addressed and resolved either with counsel's cooperation or by
15 the Court in the event that counsel are unable to come up with
16 a comprehensive plan. I didn't think it was going to be that
17 complicated, but apparently there are some other issues that
18 have arisen, so keep working on that.

19 If there are no other questions, we'll go ahead
20 and adjourn for the day.

21 All right. Thank you all very much.

22 MS. BARRIOS: Thank you, Your Honor.

23 THE DEPUTY CLERK: All rise.

24 (WHEREUPON, at 11:21 a.m., the proceedings were
25 concluded.)

REPORTER'S CERTIFICATE

1
2
3 I, Cathy Pepper, Certified Realtime Reporter, Registered
4 Merit Reporter, Certified Court Reporter in and for the State
5 of Louisiana, Official Court Reporter for the United States
6 District Court, Eastern District of Louisiana, do hereby
7 certify that the foregoing is a true and correct transcript to
8 the best of my ability and understanding from the record of the
9 proceedings in the above-entitled and numbered matter.

10
11 s/Cathy Pepper

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