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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: TAXOTERE (DOCETAXEL) *
PRODUCTS LIABILITY * Docket No.: 16-MD-2740
LITIGATION * Section "H(5)"
* January 18, 2019
This Document Relates To All Cases * New Orleans, Louisiana
* * * * *

TRANSCRIPT OF MONTHLY STATUS CONFERENCE
HEARD BEFORE THE HONORABLE JANE TRICHE MILAZZO
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Barrios, Kingsdorf & Casteix, LLP
BY: DAWN BARRIOS, ESQ.
701 Poydras Street
Suite 3650
New Orleans, Louisiana 70139

Pendley, Baudin & Coffin, LLP
BY: CHRISTOPHER COFFIN, ESQ.
1515 Poydras Street
Suite 1400
New Orleans, Louisiana 70112

Gainsburgh, Benjamin, David,
Meunier & Warshauer, LLC
BY: PALMER LAMBERT, ESQ.
2800 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163-2800

1 APPEARANCES:

2 For Plaintiffs:

Lemmon Law Firm
BY: ANDREW LEMMON, ESQ.
650 Poydras Street
Suite 2335
New Orleans, Louisiana 70130

5

6

Gibbs Law Group, LLP
BY: KAREN BARTH MENZIES, ESQ.
400 Continental Boulevard
6th Floor
El Segundo, California 90245

7

8

9

10

The Mulligan Law Firm
BY: CHARLES G. ORR, ESQ.
3710 Rawlins Street
Suite 901
Dallas, Texas 75219

11

12

13

14 For Sanofi S.A.:

Irwin Fritchie Urquhart
& Moore, LLC
BY: DOUGLAS J. MOORE, ESQ.
BY: KELLY BRILLEAUX, ESQ.
400 Poydras Street, Suite 2700
New Orleans, Louisiana 70130

15

16

17

18

19 For Hospira
Worldwide, LLC:

Chaffe McCall
BY: JOHN F. OLINDE, ESQ.
2300 Energy Centre
1100 Poydras Street
New Orleans, Louisiana 70163

20

21

22

23

24

25

1 APPEARANCES:

2 For Sandoz, A Novartis
3 Division:

Greenburg Traurig
BY: R. CLIFTON MERRELL, ESQ.
Terminus 200
3333 Piedmont Road, NE
Atlanta, Georgia 30305

6 For Actavis Pharma, Inc:

Ulmer & Berne, LLP
BY: MICHAEL J. SUFFERN, ESQ.
600 Vine Street
Suite 2800
Cincinnati, Ohio 45202

10 For Accord Healthcare,
11 Inc.:

Tucker Ellis
BY: JULIE A. CALLSEN, ESQ.
950 Main Avenue
Suite 1100
Cleveland, Ohio 44113

15 Also Present
16 Via Telephone:

The Honorable James F. Hyland

17 Official Court Reporter:

Jodi Simcox, RMR, FCRR
500 Poydras Street
Room B-406
New Orleans, Louisiana 70130
(504) 589-7780

22 Proceedings recorded by mechanical stenography, transcript
23 produced by computer.
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1 sort of static or whatever.

2 **JUDGE HYLAND:** Can you hear? Judge Hyland.

3 **THE COURT:** Hello, Judge Hyland. Now, we can hear
4 you.

5 **JUDGE HYLAND:** Okay. I can hear you, too.

6 **THE COURT:** Okay. Great. Thank you. Thank you.

7 Okay. Before we begin with the joint report of
8 liaison counsel, as you all know, the parties, lead counsel, as
9 well as liaison counsel, met with the Court prior to this joint
10 status conference to review several issues, first of which was
11 selection of a date for a trial team meeting for the first
12 bellwether trial.

13 Trial counsel has requested an opportunity to
14 visit with the Court regarding certain policies and procedures
15 and what one might expect trying a case in Section H of the
16 Eastern District. We have decided that we will have that
17 meeting on the evening preceding our next status conference.

18 The second issue that was raised by the parties
19 was Sanofi's pending motion for summary judgment. There are
20 three pending motions for summary judgment related to issues
21 that are not part of the bellwether cases. And at that time,
22 after extensive conversation, the Court indicated that I would
23 take up those motions, but the parties should be informed that,
24 very frankly, they were going to be at the bottom of the list
25 of those things that I would consider, and that I would grant a

1 motion for continuance simply because there are multiple issues
2 and other motions before the Court, and so those would be taken
3 up last.

4 Additionally, the Court cautioned defense
5 counsel that before raising, bringing any of those motions,
6 they should be -- they're well advised to have completed
7 discovery as to those issues that will be brought before the
8 Court.

9 The third issue that was raised at our
10 conference was expert updates for the first bellwether trial.
11 As I appreciate it, there are two or three experts that because
12 of a variety of factors may need to have -- the parties may
13 require a brief continuance. I instructed counsel to meet and
14 then present me with a proposal on a brief continuance, which I
15 would likely grant.

16 Finally, we discussed appointment of plaintiffs'
17 steering committee and plaintiffs' liaison counsel, and, very
18 frankly, I think that was just an oversight on the Court's
19 part. So I believe Ms. Barrios has indicated that she would
20 present to me an order, which will be signed upon presentation.

21 And, finally, there was a request as to
22 selection of second trial bellwether's plaintiff and first
23 alternate. I have received those submissions last week. I
24 will try my level best to have those selections sometime next
25 week, but I did caution the parties that I am beginning a

1 significant jury trial Tuesday, but, hopefully, this is
2 something that I can, nonetheless, have by sometime next week.

3 I believe that's all we discussed in our
4 conference. Is there anything else?

5 **MR. COFFIN:** Your Honor, just there was one addition
6 in the expert issue column, and that was that we indicated --
7 the plaintiffs indicated to Your Honor that two of the experts
8 that we have on our side may supplement reports. Your Honor
9 indicated that if they're going to change their opinions, you
10 would appreciate us filing a motion for leave to do so. If
11 they're just going to change their reliance lists, I believe
12 the Court indicated there's no need to file a motion for leave.

13 **THE COURT:** But that may require another deposition.

14 **MR. COFFIN:** Correct. Correct. Understood.

15 **THE COURT:** If reliance materials are supplemented,
16 that I think defense counsel has indicated they may issue to
17 redepose, which would be appropriate.

18 **MR. COFFIN:** And we'll work that out with them.

19 Thank you, Your Honor.

20 **THE COURT:** Okay. Is there anything else?

21 **MR. LAMBERT:** I think that's it, Judge.

22 **THE COURT:** Okay. Mr. Lambert.

23 **MR. LAMBERT:** Good morning, again, Judge. Palmer
24 Lambert, plaintiffs' co-liaison counsel, here to present Joint
25 Report No. 14 of liaison counsel, which actually has not been

1 filed into the record yet, but it has been distributed to
2 counsel so that they can follow along.

3 Good morning and welcome to Judge Hyland. Thank
4 you for joining us on the phone today.

5 Section No. 1 of the report is the claims and
6 case inventory. There's no real change to this section other
7 than an increase in about 2,000 cases since the last general
8 status conference.

9 Section 2, federal/state coordination. There
10 are related state court proceedings pending in California,
11 Illinois, New Jersey, and Delaware. There's a slight change to
12 this section in that the Attorney General for the state of
13 Mississippi filed a related action which has been removed and
14 joined with the MDL.

15 We also understand that Judge Hyland's
16 multicounty litigation will be having a status conference next
17 Wednesday, January 23rd.

18 Section 3, pretrial orders. All counsel need to
19 be reminded of all pretrial orders in the case. Those will be
20 attached to this joint report, as they always are, as Appendix
21 A to the joint report. Since the last status conference, the
22 Court entered Pretrial Order 87, that's Record Document 5363,
23 which establishes streamline procedures for dismissing a case
24 with prejudice that's not in the trial pool.

25 Pretrial Orders No. 88 through 90 are

1 reappointment orders of appointed counsel in this case, and we
2 anticipate an additional reappointment order as Your Honor
3 mentioned at the beginning of the status conference.

4 Section No. 4 of the report is unchanged. There
5 are not any new case management orders since the November
6 status conference.

7 Section No. 5 is unchanged. Although with the
8 additional cases filed, I would ask that all counsel who are
9 new to the MDL, please submit their Pretrial Order No. 7
10 contact form as that is the manner in which you become added to
11 the list to receive pleadings in this case and communications
12 from liaison counsel.

13 On Section No. 6 of the joint report, master
14 complaint/short form complaint, no new updates here except that
15 the short form complaint has been updated as of January 4th,
16 2019, to correct the mistake in the caption. I do want to
17 mention, especially for the benefit of the new counsel in this
18 case, that plaintiffs cannot just voluntarily dismiss without
19 prejudice by a notice. They must follow the procedures in
20 Pretrial Orders No. 15, or Case Management Order No. 12A, or
21 the newly entered Pretrial Order No. 87.

22 Regarding Section 7, plaintiff and defendant
23 fact sheets, there are a number of important orders related to
24 plaintiff fact sheets. Amended Pretrial Order No. 22 sets
25 forth the process for service of the plaintiff fact sheet and

1 the defendant fact sheet and the deadlines associated
2 therewith. Pretrial Orders No. 18, 23, 24, 55, and 22A provide
3 additional rules and orders regarding the plaintiff fact
4 sheets.

5 As of January 14th, plaintiffs have served 9,068
6 plaintiff fact sheets. Another 2,201 are in progress. Those
7 fact sheets break down as follows: 4,749, Sanofi; 974,
8 Hospira, 364, Sandoz; 226, Accord; 2, Sun; and approximately
9 2,700, unknown, other, or miscellaneous.

10 Counsel should also familiarize themselves with
11 Pretrial Order No. 68 related to the plaintiff fact sheets to
12 provide representative and dated photographs.

13 Consistent with Pretrial Order No. 22A, the
14 defendants submitted notice of noncompliance cases that are
15 subject to a call docket, which will follow this status
16 conference.

17 Section No. 8 is unchanged. But, again, for the
18 benefit of those counsel who are new to the MDL, please
19 familiarize yourselves with the streamline service orders that
20 are listed in Section 8 of the joint report.

21 Section 9, product identification order is CMO
22 No. 12A. This section is unchanged since the last time with
23 the exception of the last sentence. The plaintiffs' steering
24 committee has been advised by certain counsel in the MDL that
25 there are compliance issues with regard to subpoenas issued in

1 connection with CMO 12 to the various infusion facilities
2 around the country. We are discussing with the defendants
3 potential ways to make the enforcement of those subpoenas more
4 efficient.

5 Section No. 10, preservation order. Counsel are
6 reminded to familiarize themselves with the terms of Pretrial
7 Order No. 1 and also the requirements in CMO No. 15 for
8 preservation of evidence and related to biopsies performed on
9 plaintiffs for their hair loss.

10 Section 11 of the joint report, protective
11 order, has not changed, and neither has Section 12 regarding
12 electronically stored information.

13 Section 13, the plaintiffs have served merits
14 discovery on Sanofi, Accord, Hospira, and Sandoz. The parties
15 continue to bring any discovery disputes before Magistrate
16 Judge North, and our next status conference with Judge North is
17 actually in 15 minutes.

18 The trial case discovery in the three cases that
19 are subject to the first trial date, expert reports have been
20 exchanged by plaintiffs and defendants, and the expert
21 depositions are ongoing in those matters.

22 As was discussed at the beginning of this
23 conference, the plaintiffs and Sanofi nominated plaintiffs to
24 be the primary and ultimate plaintiff for the second trial, and
25 those nominations are under submission with the Court.

1 Section No. 14 of the joint report lists pending
2 motions, and I won't go through each one of them, but I will
3 mention that plaintiff Antoinette Durden's motion to enforce
4 CMO 12A will be heard after the show cause hearing today.

5 Section No. 15, special master of plaintiffs'
6 time and expenses. Special Master DeJean is not here today,
7 but there's nothing new to report in his absence.

8 And Section No. 16, the next status conference
9 will likely be in February. We have not chosen a date yet, and
10 we'll get back to Your Honor on a date that the parties select
11 from the options you gave.

12 **THE COURT:** Okay. Just for those people that are
13 listening on the phone, that next date will be in the joint
14 report, so you can find it there, and I believe it will also be
15 on the Web site.

16 **MR. LAMBERT:** And that concludes the report, Your
17 Honor, unless you have any questions for us.

18 **THE COURT:** No. All right.

19 Are there any questions from anyone? Any other
20 comments? Mr. Olinde.

21 **MR. OLINDE:** No. No, comments, Your Honor. I just
22 want to say thanks to Palmer for doing that, but we have
23 nothing further.

24 **THE COURT:** Okay. Thank you.

25 **MR. MOORE:** Nothing further from Sanofi, Judge.

1 **THE COURT:** All right. I think we're ready to
2 proceed with the call docket. I understand that some of you
3 need to leave for a conference with Magistrate Judge North, so
4 I'll excuse you at that time. I need to go pick up my call
5 docket. Oh, you have it. Okay. Great.

6 (WHEREUPON, the Court took a recess.)

7 (WHEREUPON, the proceedings were concluded.)

8 *****

9 **CERTIFICATE**

10 I, Jodi Simcox, RMR, FCRR, Official Court Reporter
11 for the United States District Court, Eastern District of
12 Louisiana, do hereby certify that the foregoing is a true and
13 correct transcript, to the best of my ability and
14 understanding, from the record of the proceedings in the
15 above-entitled and numbered matter.

16
17
18 s/Jodi Simcox, RMR, FCRR
19 Jodi Simcox, RMR, FCRR
20 Official Court Reporter
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