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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
Section "N"
New Orleans, Louisiana
December 19, 2018 at 11:40 a.m.

THIS DOCUMENT RELATES TO ALL CASES

TRANSCRIPT OF STATUS CONFERENCE
HEARD BEFORE THE HONORABLE MICHAEL B. NORTH
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography,
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1 PROCEEDINGS

2 (Call to order of the court.)

3 THE COURT: First item on the agenda are documents
4 subpoenaed from third parties. I'm advised that that issue
5 has been resolved.

6 MR. CENTOLA: Not correct, Your Honor.

7 THE COURT: Okay. Why am I hearing that it's not
8 been resolved today for the first time? I mean, you got a
9 letter yesterday that told me that it's been resolved. Why
10 didn't I hear from you?

11 MR. CENTOLA: I apologize, Your Honor. I was trying
12 to work it out with counsel. They sent an e-mail saying that
13 they think it's resolved. We sent another e-mail saying, no,
14 we have to talk about this, and we've got no response. And
15 it is not a resolved issue --

16 THE COURT: What is left unresolved?

17 MR. CENTOLA: The third parties are producing
18 documents to Sanofi first, and they have that absolute right.
19 We understand that. At the meet and confer in September,
20 which they unilaterally set and we went forward with, we had
21 an agreement and we want to know what the volume of documents
22 are so we can work out a schedule, and they will have the
23 opportunity to do it and produce it.

24 THE COURT: I know all that.

25 MR. CENTOLA: We have suggested a schedule, and they

1 say, no, no how, no way. There's nothing we're going to do.
2 We don't have an issue. We've produced to you everything
3 that we have. And that's it. That's final.

4 We got production today. There are more third-party
5 documents that are being produced and going forward. We want
6 to have a protocol going forward. We think we can work with
7 them on the timing. But they don't even think a protocol is
8 necessary, and it is causing delay in production of documents
9 to the plaintiffs. We understand they have the right. We
10 just want it to be done in a timely fashion.

11 THE COURT: All right. You all need to work out a --
12 you all need to work this out for productions going forward.

13 MR. RATLIFF: Your Honor, may I address that --

14 THE COURT: Yes.

15 MR. RATLIFF: -- very, very briefly?

16 We had agreed with plaintiffs' counsel that in the
17 few instances where we get, I guess, what they call preview
18 documents from the third parties so we can do a quick
19 privilege review that we'll notify them when we received
20 them, what the volume of documents are, what we think they
21 look like in terms of kind of general categories and how long
22 we think we can get through those or how long it will take us
23 to get through those depending on the size.

24 I sent Mr. Centola I believe a couple of days ago --
25 we had just received a preview -- our preview production from

1 a third party. We said it's been received on this date.
2 It's fairly sizable. We think it will take us two and a half
3 weeks to get done. But as we get through them, we're not
4 going to wait. We're going to tell the third party we don't
5 see any privilege issues and go ahead and release these
6 documents to plaintiffs' counsel.

7 THE COURT: All right. Mr. Ratliff and Mr. Centola,
8 if you all can't get this worked out to your mutual
9 satisfaction by Friday of next week, then get on the phone
10 and call me.

11 MR. RATLIFF: Thank you, Your Honor.

12 THE COURT: All right. The 30(b)(6) and retention
13 policies, I've got one side telling me that there is an
14 ongoing negotiation as to topics and scope, and then I've got
15 Sanofi telling me that they are 100 percent absolutely
16 positively opposed to any discovery along these lines. So
17 what's going on?

18 MS. MENZIES: Yes, Your Honor, Karen Menzies for the
19 plaintiffs.

20 We served two 30(b)(6) notices as you saw. We had
21 talked about -- they're pretty lengthy, the objections anyway
22 on the -- on instructions and definitions and otherwise. And
23 Mr. Oot requested that we do these together, to meet and
24 confer on the substance to walk through -- there's some
25 general objections, instructions, and definitions came from

1 their documents, stuff I can go through with them. You know,
2 it's a little tedious, but we need to do it.

3 We have not done that yet, but what we do have for
4 Your Honor today is the -- what were edited and passed,
5 whether we get a witness in a 30(b)(6) context to address
6 these topics. And so that's what we were bringing to your
7 attention today and what we think we feel needs to be
8 resolved.

9 As far as the rest of the stuff, we're happy to
10 continue to meet and confer. If they're going to decide not
11 to meet and confer, then we would need I guess to make a
12 formal motion to compel.

13 THE COURT: So what has changed to make me take a
14 different approach to this discovery?

15 MS. MENZIES: As we have --

16 THE COURT: Because you haven't explained to me in
17 your paper that there's been any change in circumstance.

18 MS. MENZIES: Well, these are -- these are very
19 specific -- the change in circumstance, Your Honor, is that
20 we asked Your Honor to -- you gave us an order that required
21 them to provide further information. They provided some
22 further information, but still had very serious issues. So
23 we raised that in a couple meet and confer letters, went back
24 and forth. And the reality of it is that we've gone now to a
25 30(b)(6) deposition to the witness because we're getting the

1 same -- what we consider are incomplete and argumentative
2 answers and we're not getting the information we need. And
3 so we think we're better crafted in getting the answers from
4 a company witness for a couple of reasons. One is, for
5 example, we -- in the 30(b)(6) notices that we were doing, on
6 the notice issue with Mr. Bachus, we were asking the company
7 witness where are the documents for follow-up when you get a
8 report of an adverse event for permanent hair loss. And he
9 continues to testify, "I don't know if there are others." He
10 doesn't know. We reserved our right to go talk to a company
11 witness who does know where that follow-up is.

12 THE COURT: I assume. Here's the thing. I'm hearing
13 all this for the first time, and I understand Mr. Oot's
14 argument, but I've not been presented with any of this
15 information.

16 MS. MENZIES: The subject of the topics -- I agree
17 with you. That's my concern is that I'm trying to get them
18 to sit down and talk about these topics and say similar to
19 what Mr. Bachus did in the months of negotiating on the
20 30(b)(6) ray notice. We haven't had that discussion. What
21 we have had though is no matter what Karen I'm not willing to
22 give you a witness on this. And so before I can get to the
23 substantive meet and confer and try to work out -- you know
24 the five topics that we listed we -- similar to what we did
25 with the 30(b)(6) RAE notice, we listed specific documents

1 that they would refer to in very what we believe are
2 extremely narrow topics. We are happy to narrow those more
3 if they have concerns, but we haven't had that discussion and
4 we can't -- because we can't get past the fact that --
5 whether we can use the 30(b)(6) notice witness as an avenue
6 for discovery on this.

7 THE COURT: All right. You need to -- what you all
8 need to give me and pull it out of the scores of pages of
9 whatever you all attached to your submission earlier. You
10 need to give me exactly what it is that you want a witness to
11 testify about in this arena, and you need to explain why you
12 need a witness to testify about those things, specifically in
13 terms of what you -- what I said they needed to produce, what
14 they haven't produced, what other questions you have. You
15 need to explain to me why you need to talk to a human being.
16 All right?

17 MS. MENZIES: Okay.

18 THE COURT: And then Mr. Oot is going to explain to
19 me why you're not entitled to talk to his human being based
20 on that submission and then we'll go from there.

21 MS. MENZIES: Okay.

22 THE COURT: Okay. I'll put a deadline in the minute
23 entry, but I'm not -- I don't want to -- I don't want to wing
24 it with the holiday right on the heels of this.

25 MR. BACHUS: Your Honor, can I ask for just a little

1 guidance? I mean -- and you're right. We just did the last
2 Wednesday and Thursday a second piece of that 30(b)(6) and
3 what happens is that in that testimony, the witness that
4 they're presenting says, "I can't answer your questions.
5 Because although there should be documents of communications
6 with adverse event reporters, I can't answer your questions
7 because the company hasn't prepared me to answer those
8 questions." And --

9 THE COURT: So put that in your submission.

10 MR. BACHUS: Okay. So that's --

11 THE COURT: You got to convince me why I should order
12 them to put a person up as a 30(b)(6) designee on these
13 topics and I've not been convinced.

14 MS. MENZIES: Right. And I understand what you're
15 saying.

16 MR. BACHUS: I think we can do that.

17 MS. MENZIES: Well, the topics, just so you're aware,
18 the difference is rather than general retention policies,
19 what we've done is narrow down where we see holes in missing
20 information, missing documents. Either it never existed or
21 it was destroyed, and we're trying to get answers on that.
22 That's what we're trying to focus on, and so we will as
23 you've requested go through that more specifically.

24 THE COURT: I don't want to make a -- I'm not going
25 to make a decision without knowing what the specific basis of

1 their request is.

2 I read everything you gave me, Mr. Oot. I understand
3 your position. All I'm saying is, I'm going to give them the
4 opportunity to make their case, and then I'll give you an
5 opportunity to respond to it.

6 MR. OOT: Sure, Your Honor.

7 MS. MENZIES: Thank you.

8 MR. OOT: But I'd like to point out that PTO 49 sets
9 out the procedure for how they get discovery on discovery.
10 They first have to come to us, not to you, and seek a meet
11 and confer on the deficiency and provide us with the
12 opportunity to cure that deficiency.

13 THE COURT: I'm hearing that that's in process.

14 MR. OOT: That has not happened.

15 THE COURT: Well, it's going to happen. I mean,
16 Ms. Menzies just got through telling me that there's things
17 you haven't talked about yet. And to the extent that the PTO
18 49 requires you all to talk about the deficiencies that
19 you're going to highlight to me, you all need to talk about
20 it, right?

21 MS. MENZIES: Yes. And we've been talking for a good
22 eight months now, but along these specifics, we'll talk more.
23 Thank you.

24 MR. COURT: Very good.

25 MR. OOT: And for over a year, we've said that these

1 are outside the scope of discovery, even the cases that
2 they've cited in their own papers.

3 THE COURT: I get that. So they're probably thinking
4 that the meet and confer is not really going to come to
5 anything, but they're going to have it anyway, right?

6 MR. OOT: Well, I think we're still -- we're still
7 going to be in the same position, Your Honor, that we've been
8 in the past is that, you know, 26(b)(1) still applies.

9 THE COURT: I've read it all. We've been down this
10 road. And there is -- there is perhaps an incremental
11 approach to what discovery is going to be allowed based on
12 what's happening with the discovery that I've already ordered
13 or allowed to take place. There are benchmarks they can hit
14 that will cause me to allow them to do additional discovery.
15 I don't know if they can hit them, but I need to know where
16 we are. I need to be able to assess the request in context
17 and the context is -- I don't know what the context is right
18 now. That's all I'm asking for. I'm not -- I'm not trying
19 to preview what's going to happen. I just need to know why
20 I'm even being asked to do this.

21 MR. OOT: Yeah, we're past the discovery deadline.
22 So --

23 THE COURT: I get it.

24 MR. OOT: What's happening now is, they sent us this
25 last-minute discovery-on-discovery deposition notice, skipped

1 over the PTO 49 requirements, and now we're here having to
2 defend against discovery on discovery without the case --
3 without it properly worked out.

4 THE COURT: And that may at the end of the day be
5 dispositive.

6 MR. OOT: Thank you, Your Honor.

7 THE COURT: I need to know what's going on. I don't
8 want to make decisions without knowing what's going on --
9 what's actually going on in the background.

10 MR. OOT: Okay. Thank you, Your Honor.

11 THE COURT: All right. The bellwether plaintiffs'
12 discovery responses, everybody get out your No. 2 pencils.
13 You want to tell me what's been resolved already? Is that
14 what you're here --

15 MR. RATLIFF: I wish that's what I was here to say,
16 Your Honor.

17 THE COURT: See all these notes, I've already decided
18 what's going to happen. That's why I said get out your
19 sharpened No. 2 pencils.

20 I've gone through every disputed response and every
21 request, and I've gone through them -- and some of them are
22 disputed in multiple areas. And I've gone through them in
23 the way in which Sanofi sort of grouped them in their
24 submission in the five categories. So I'm going to address
25 that -- I'm going to address that here. And I've spent a

1 fair amount of time on it, so I'm comfortable -- I'm
2 comfortable that these are the -- at least from my
3 perspective, these are the -- this is the correct approach.

4 As to the first group, I think that the answers that
5 have been provided are sufficient and the references to
6 expert opinion are appropriate with one exception, which is
7 Request for Admission Number 6, which I want the plaintiffs
8 to respond to directly. I think the response that's been
9 given is argumentative, and I think that the request requires
10 a direct admission or denial.

11 As to the second group, my findings are the same. I
12 think that the -- I think the responses to the requests are
13 sufficient under Rule 36 except, again, as to Request for
14 Admission Number 6 which needs to be responded to.

15 As to the third group, the responses to Requests to
16 Admissions 3, 4, 8, and 9, in my view, comply with Rule
17 36(A) (4)'s requirement that a denial fairly respond to the
18 substance of the matter. The responses to Requests for
19 Production Numbers 4 and 5, I do not think are sufficient and
20 I think those responses -- those responses need to be
21 supplemented.

22 The plaintiffs don't get to decide what's
23 representative. There's no proportionality objection that's
24 been made, and so whatever has been requested to the extent
25 that the plaintiff has control -- possession, custody, and

1 control needs to be produced.

2 MR. COFFIN: Your Honor, I think you mentioned Number
3 4 twice in that last group.

4 THE COURT: My first reference to -- was to Requests
5 to Admissions 3, 4, 8, and 9 which are sufficient. My second
6 was a response -- was a reference to a Request for Production
7 Number 4 and 5 need to be supplemented.

8 MR. COFFIN: Thank you.

9 THE COURT: The fourth group, I'll just say again to
10 the extent there are general objections, I think general
11 objections are improper and I ignore them as I think I
12 properly should.

13 Interrogatory Number 3 needs to be answered. I think
14 the fact of a privileged communication is not itself
15 privileged, and that request the way it's worded does not
16 implicate the subject matter of a conversation to the point
17 that it would implicate actual privilege communication. So
18 Interrogatory Number 3 needs to be supplemented to the extent
19 that the identity of any individual has been withheld on the
20 basis of a privilege claim.

21 Interrogatories 4, 6, and 10, those responses need to
22 be supplemented as to all persons who are not attorneys. So,
23 essentially, I'm rewriting the interrogatories to -- to limit
24 the universe of people to non-attorneys which should cure any
25 privilege problem, and if the list is complete, say it's as

1 to attorneys, the supplemental response just needs to say
2 that.

3 Requests for Production 10 through 13 and Number 15,
4 there are no objections as to relevance that I see, so there
5 needs to be supplemental responses that confirm that all
6 responsive documents have been produced. And a privilege log
7 needs to be provided if privilege documents have been
8 withheld or documents -- any documents have been withheld on
9 the basis of a privilege, a log needs to be produced.

10 As to the last group, Number 5, if there are other
11 persons to be identified, they must be identified. It's not
12 sufficient to require the defendant to go through a
13 deposition or some list in some other context and pull out
14 the names of individuals they think might be responsive. I
15 don't know if that's a catch-all that you all used. If it
16 is, then that will be very little work. But if there are
17 other individuals who are responsive to those requests, they
18 need to be identified as opposed to referencing everyone who
19 is identified in the deposition.

20 All right.

21 MR. RATLIFF: Your Honor, may I address that very
22 briefly?

23 THE COURT: Yes, very briefly.

24 MR. RATLIFF: One, can we get a deadline by which
25 these responses will be amended? And, two, in the effort for

1 brevity and learning the hard way that you do not like
2 voluminous exhibits from the Sanofi defendants, we did not
3 include the Durden and Francis written discovery responses,
4 although they are essentially identical, and so I just want
5 confirmation that that same type of guidance --

6 THE COURT: Yes.

7 MR. RATLIFF: -- and the Earnest rules applies to
8 those two cases --

9 THE COURT: Yeah, that guidance which I'll call it,
10 because I haven't actually read those responses, but that
11 guidance will apply to those responses.

12 MR. RATLIFF: Thank you, Your Honor.

13 THE COURT: I'll give you a deadline. It will be in
14 the minute entry.

15 MR. RATLIFF: Understood.

16 THE COURT: I'm sure it will be reasonable.

17 MR. SCHANKER: Darin Schanker on behalf of the
18 plaintiffs, Your Honor.

19 Just one question concerning clarification. With
20 regard to the log produced, I just want to make sure that
21 we're complying with what your intent is. Do you want
22 literally like every letter -- letters to clients, those
23 sorts of things in the privilege log? What are you
24 envisioning? I just want to make sure.

25 THE COURT: No. I don't want to go down a road where

1 you're having to -- I think we discussed this in the past. I
2 do not consider these requests to reach actual communications
3 between client and lawyer, particularly about this
4 litigation. I'm not requiring all of those communications to
5 be listed in a log. And I think the safest thing to do is
6 when you produce the log to say this log does not include
7 multiple communications between the lawyer and client about
8 the litigation or claim. And everybody understands what's in
9 the log and what's not. But I don't think that we have any
10 arguments about whether every written communication between a
11 lawyer and his or her client needs to be listed on a log
12 because I don't think that it does.

13 MR. SCHANKER: And then you specifically said
14 supplement responses as to persons who are not an attorney,
15 obviously attorney or staff.

16 THE COURT: Yes. Correct.

17 MR. SCHANKER: Thank you, Your Honor.

18 THE COURT: All right. I've gone back and forth on
19 this issue of the subpoenas to the experts. And as you all
20 can imagine, I was not, you know, instinctively inclined to
21 allow subpoenas to any of these experts on the basis of the
22 discussion that we had before. However, PSC makes an
23 argument and I think -- I think it's a reasonable argument, a
24 compelling enough argument, that they're not seeking
25 litigation based materials from these individuals, but

1 they're seeking -- you know, they're seeking materials that
2 are similar in kind to what Sanofi sought from Dr. Tosti,
3 given that these individuals are published or are
4 researchers. And I think to the extent -- and I'm also
5 considering that they only subpoenaed two of these people.
6 They haven't subpoenaed every one of your experts. I think
7 to the extent that they are seeking through subpoena
8 information that, as the PSC said in its letter, they could
9 have or would have received or sought even had Sanofi not
10 retained them as experts, I think that's appropriate -- and
11 appropriately limited. So I'm inclined to allow them to
12 obtain information via subpoenas to those two individuals
13 that is not in any way related to this litigation --
14 specifically related to the litigation or their status as
15 experts. I think that's -- I think that is a -- I think
16 that's a fair outcome.

17 MR. RATLIFF: Your Honor, may I address that very
18 briefly?

19 I think our concern is with Dr. Tosti who we did not
20 know as an expert treated many of the plaintiffs in this
21 litigation, not necessarily bellwether plaintiffs, but had
22 plaintiffs which was the genesis of our initial subpoena.
23 The PSC has known that Dr. Goldberg was a consulting
24 expert and Dr. Shapiro --

25 THE COURT: I understand that. I'm not ignoring all

1 that. But I'm also -- I'm also considering that there's
2 information that they've sought from these two individuals
3 before they were designated, even if they knew or suspected
4 they would be, that is like I said similar and kind to the
5 information you all sought from Dr. Tosti based on work that
6 they've done outside litigation. And on balance, I think
7 it's fair to allow them to obtain that information due to
8 subpoenas.

9 MR. RATLIFF: Understood, Your Honor.

10 I guess two maybe administrative kind of questions or
11 clarifications for you, which is I believe both of those
12 subpoenas are returnable maybe on December 27th. I can
13 certainly ask them for an extension of time because it's
14 going to be difficult for these two individuals who are
15 practicing doctors over the holidays to be able to respond to
16 those types of things --

17 THE COURT: I think that you all should talk about
18 extending the deadline particularly given that this is an
19 issue in dispute and is only being resolved today.

20 MR. RATLIFF: And these are also not professional
21 experts, and so calling out for them what are communications
22 related to the litigation versus not is the other thing. The
23 other part of this is I will need to inform Dr. Goldberg and
24 Dr. Shapiro of your ruling today to which they may want to
25 take their own action on their own behalf. So I will advise

1 them of that. But that's -- really the timing component is
2 the part that was going to be the most pressing for us over
3 the holidays.

4 THE COURT: Well, you all -- look. There's a
5 subpoena out there that nobody has moved to quash including
6 these two doctors. I don't know how that's going to play if
7 you're suggesting that they might want to do that. Because
8 I'm here to tell you that if they file that motion, it's
9 going to be -- it's going to be filed in another
10 jurisdiction. Then it's going to be transferred here, and
11 it's going to come before me. And I'm going to deny it. So
12 you might want to advise them of that as well.

13 MR. RATLIFF: I will. Your Honor, I certainly will
14 pass along your message.

15 THE COURT: I do think it's a reasonable -- I do
16 think it's reasonable to give them an extension in time to
17 respond given the holidays and the fact that the issue is
18 only being resolved today.

19 MR. RATLIFF: Thank you, Your Honor.

20 THE COURT: I'll leave that to you all.

21 MR. COFFIN: Your Honor, Chris Coffin --

22 MR. MICELI: Your Honor, David Miceli on the phone.
23 And I will work with -- I will speak with Mr. Ratliff, and I
24 will also work with counsel for Dr. -- Dr. Shapiro at NYU and
25 Boston University for Dr. Goldberg just as I encourage the

1 attorney for the University of Miami and her compliance with
2 Sanofi's subpoena. And I think we can accommodate an
3 extension, and I think we can do it in a timely manner that
4 would also allow us to not have to put off any depositions of
5 Dr. Shapiro.

6 THE COURT: Very good.

7 MR. COFFIN: My comment, Your Honor --

8 MR. MICELI: Thank you.

9 MR. COFFIN: My comment, Your Honor, was that of
10 course we're willing to give an extension. The concern is we
11 need to know what action the doctors intend to take, sooner
12 rather than later, because if we're giving them an extension
13 and then they're going to object to the subpoena and then --

14 THE COURT: That will make even less likely that they
15 get the relief that they seek.

16 MR. COFFIN: I'm sure it would, but I don't know
17 these individuals but --

18 THE COURT: I don't either. They're not in the
19 courtroom, nor their lawyers. Other than the preemptive shot
20 across the bow they've already fired, I'm not going to go any
21 further than that. I mean, everybody is hearing what I'm
22 saying. When you communicate with these doctors and their
23 lawyers, you can tell them -- you know, you can reasonably
24 predict the outcome of a challenge to those subpoenas.

25 MR. RATLIFF: Thank you, Your Honor.

1 THE COURT: All right. The Feigal deposition, it
2 sounds to me like you all were trying to make an effort to
3 resolve this and ask for two more hours, and now that you're
4 here, you're asking for four more hours.

5 MR. RATLIFF: Yeah, Your Honor. I think that is --

6 MR. MICELI: Well --

7 THE COURT: Hold on. I've got somebody at the podium
8 to address this.

9 MR. RATLIFF: I'll let Mr. Miceli go --

10 MR. MICELI: Okay.

11 MR. RATLIFF: -- after I go, which is I think there
12 is maybe not an intentional misrepresentation but a
13 misrepresentation in the PSC's position which is when we had
14 met and conferred with them and we had communicated with them
15 on the issue of Feigal and her showing up late, showing up
16 with a new report, showing up with new broader opinions, as
17 we said, we wanted two hours to go over the changes in her
18 report, not doing it on the fly, and then two hours to be
19 able to cover any sort of general issues that flowed from her
20 new report that we weren't able to cover during what was a
21 fairly torture deposition.

22 THE COURT: That was communicated to the PSC?

23 MR. RATLIFF: Yes. Yes. And so whether that was
24 some confusion on their part or they didn't think that's what
25 was articulated, that has always been our request is two

1 hours and two hours or just a total of four hours and we can
2 use that time however we see fit using our own sort of
3 professional judgment.

4 THE COURT: All right. Listen. When I read the
5 submission, that doesn't strike me, Mr. Miceli, as an
6 unreasonable request considering that your expert showed up
7 an hour late with new materials.

8 MR. MICELI: Well, if I can address that Your Honor,
9 the new materials were not new materials in that they were
10 anything new to Sanofi, and the text of her report speaks the
11 same. It's just that she inserted some footnotes, four, even
12 six of those, are approval -- two approval letters to Sanofi
13 from FDA and one document that is referenced four times,
14 twice into the same page and the others were similar, just
15 added footnotes to the report.

16 Now, I hear what Mr. Ratliff is saying from the
17 podium, but I know Your Honor will use what we submit. An
18 Exhibit B to our submission yesterday attaches the e-mail
19 from Mr. Kaufman who is the attorney who took the deposition
20 and as the attorney who best knows how much more time he
21 needs. He goes through a full page, single spaced,
22 explaining the need for more time. And he says,
23 "Accordingly, Sanofi requests that the plaintiffs produce
24 Dr. Feigal for two further -- for two hours of further
25 questioning."

1 THE COURT: Has a request --

2 MR. MICELI: He's had a meet and confer --

3 THE COURT: Has a request --

4 MR. MICELI: -- that is --

5 THE COURT: Mr. Miceli, has a request --

6 MR. MICELI: There's no --

7 THE COURT: Let me ask my question. Let me ask my
8 question.

9 MR. MICELI: Okay.

10 THE COURT: Has someone requested four hours of
11 additional deposition time before these letters were
12 submitted to me?

13 MR. MICELI: Yes, they have. And I think we recount
14 that in our letter. What had happened was, we had a meet and
15 confer. The issue came up. The exact words were, "We will
16 accommodate you on Mr. Kaufman's request."

17 A second meet and confer was had the following day
18 with a new attorney participating for Sanofi, and they said,
19 "No, we think Mr. Kaufman was confused or somehow his e-mail
20 requesting two hours was confusing. And what we want now,
21 now that you have agreed to the two hours that we requested,
22 we want to request four hours." And we simply said --

23 THE COURT: Let's go back to --

24 MS. BYARD: This is Adrienne Byard on the phone.

25 That is not what the conversation was. All along we

1 explained that we asked -- that we wanted to ask for four
2 hours.

3 THE COURT: All right. That ship has sailed. I'm
4 done --

5 MS. BYARD: I don't know why this is the focus.

6 THE COURT: I'm not focused on it. I'm much more
7 concerned about an expert witness showing up late for a
8 deposition with a new report. That's what I'm concerned
9 about.

10 MR. RATLIFF: We are too, Your Honor, and, frankly,
11 the relief that we asked for is to have that report stricken.

12 THE COURT: I'm going to -- I'm going to give them
13 four hours of deposition time. That's it. Okay. I'm going
14 to give them four hours of deposition time because this is
15 unorthodox to say the least. And I don't think it is -- it
16 is severe or draconian in any way. I think it is measured
17 and proportional to the circumstances that give rise to this
18 dispute.

19 So you all are going to get -- Sanofi is going to get
20 an additional four hours with this witness.

21 MR. RATLIFF: Thank you, Your Honor.

22 THE COURT: That's what's going to happen.

23 Okay. As to this Taxotears Group issue, I'm unclear
24 -- it seems to me that what the PSC is saying is that -- is
25 that the individuals that Sanofi is seeking to have

1 identified are lawyers. But I don't know if that's the case.
2 And I don't know that Mr. Oot knows who they are, so I think
3 I'm sort of perceiving that they're asking for the identity
4 of individuals, and you all, the PSC, is saying you can't
5 have it because there's a privilege. But I don't know -- I
6 don't know where the disconnect is.

7 MR. OOT: So, Your Honor, let me delineate what our
8 request is before --

9 THE COURT: Yes, let me hear that first --

10 MR. OOT: -- we get to the plaintiffs position.

11 Our request is pursuant to PTO 49 to identify the
12 custodians of who produced the Taxotears membership group to
13 them so we can investigate more about the issue. In Ms.
14 Cantwell's declaration in support of her Rule 45 -- objection
15 to Rule 45 subpoena, she said that -- she stated that there
16 were thousands of messages associated with the Taxotears
17 Group. We have not received thousands of messages associated
18 with the Taxotears Group. And we're moving forward with the
19 deficiency on this issue because we believe that it is
20 relevant to the statute of limitations claim and everything
21 that we put in our papers in the past.

22 So we asked the plaintiffs to identify pursuant to
23 PTO 49 who were the custodians of these records who provided
24 them to counsel that -- that built up to what was produced to
25 us which was the membership group. They objected and said

1 that there's privilege and communication between counsel.

2 THE COURT: You're asking for the identity of the
3 custodians?

4 MR. OOT: Correct.

5 THE COURT: Of the information that was collected and
6 then sent to counsel?

7 MR. OOT: Correct.

8 THE COURT: That's all you're asking for?

9 MR. OOT: Correct.

10 THE COURT: All right. Ms. Menzies, why is the
11 identity of these individuals -- I mean --

12 MS. MENZIES: First of all --

13 THE COURT: You all are constantly arguing the flip
14 side of the same coin.

15 MS. MENZIES: Let me start out by saying, as we said
16 in our paper, they have as far as the names of women who are
17 Facebook members that we received as the PSC. They have all
18 the exact names that we have. The only names they don't have
19 are women who aren't plaintiffs.

20 THE COURT: I think what Mr. Oot wants to know is who
21 gathered the information that was sent to you all that was
22 then produced in the litigation, and I think he's entitled to
23 know that.

24 MS. MENZIES: So just -- and to be clear too, Your
25 Honor, he's invoking this custodian requirement under PTO 49.

1 Just so the record is clear, this was information that we
2 gathered at the 11th hour before our hearing with you on
3 June 13th, just to address the Facebook membership names,
4 people -- because we didn't even know there was a Facebook
5 page. You probably remember that whole discussion. And so
6 we obtained -- we had -- one of the plaintiffs' lawyers had a
7 plaintiff go online to her Facebook page, type up the names
8 and furiously send them to us. They sent them to us. I've
9 given him those names. Now what they want to know is, who is
10 the plaintiff who sent it and who are the lawyers who
11 received it. This is not responsive to a discovery request.
12 My communications with plaintiff's counsel I think that --
13 that's what they're trying to get, and I believe that that is
14 privileged. We don't get communications -- we don't get
15 e-mails --

16 THE COURT: Mr. Oot just told me that all he wants is
17 names -- is a name or names. That's not communications.

18 MS. MENZIES: The name of the plaintiff?

19 THE COURT: The name of whoever it is that did this.

20 MS. MENZIES: All right. I'll tell you right now who
21 the plaintiff is, Your Honor.

22 THE COURT: You need to write it down and tell him in
23 a formal way that works --

24 MS. MENZIES: I will do that, Your Honor, but as you
25 recall, the deficiency process is what is required and the

1 particular plaintiff who submitted this information has
2 submitted 70 pages of information of printouts of documents
3 she has produced since last year --

4 THE COURT: Mr. Oot just stood at the podium and said
5 all he wants to know is the name of that person. So give it
6 to him --

7 MS. MENZIES: He wants to know who the plaintiff --

8 THE COURT: Then we're done.

9 MS. MENZIES: He wants to know who the plaintiff was
10 who provided --

11 THE COURT: The plaintiff is a person.

12 MS. MENZIES: Okay. So I don't have to give him --

13 THE COURT: If the person is a plaintiff, that's
14 who --

15 MS. MENZIES: I don't need to give the e-mail that
16 communicated from my plaintiff's --

17 THE COURT: That is not what I was just told that he
18 wants.

19 MR. OOT: Your Honor, throughout this hearing -- our
20 conferences with you, Ms. Menzies has consistently said that
21 the PSC does not have access to the Taxotears Group. So we
22 just want to know who we can talk to that does have access to
23 this group so we can --

24 THE COURT: I don't have a problem with you
25 identifying the person who undertook this exercise.

1 MS. MENZIES: She is a non-trial plaintiff who has
2 made a very large production on these issues. If they have
3 concerns for her deficiencies, we presume they will go
4 forward through --

5 THE COURT: Do they know who she is?

6 MS. MENZIES: They do not right now.

7 THE COURT: Then, how can they determine whether
8 she's got a deficiency?

9 MS. MENZIES: What they asked from me was the
10 communication related to who provided --

11 THE COURT: Well, that may be the case, but what he
12 just asked me for is something different, the identity of an
13 individual.

14 MS. MENZIES: And then if he has concerns about her
15 production, he can address it through the deficiency process.
16 Thank you.

17 THE COURT: We will go from there.

18 MR. OOT: Your Honor, I think that the deficiency
19 would be with compliance with your prior order on the
20 Taxotears --

21 THE COURT: And that may be the case. But let's take
22 it one step at a time. They're entitled to know who the
23 person is.

24 All right. Next meeting, I have three potential
25 dates. Let's start with January 14th, at 11 o'clock.

1 MR. OOT: Your Honor, can we do --

2 MR. RATLIFF: We're here on January 18th for a
3 hearing with Judge Milazzo, Your Honor.

4 THE COURT: How about the day before? That was one
5 of my other dates, January 17th.

6 MR. RATLIFF: That will work for us, Your Honor.

7 THE COURT: January 17th at 11:00.

8 MR. COFFIN: Can we do it on the 18th, Your Honor?

9 THE COURT: I can't do it on the 18th.

10 MR. COFFIN: Well, the problem that we have is that
11 our Plaintiffs' Executive Committee will be in depositions
12 here, there, London, California, we just -- the leadership
13 won't be here.

14 THE COURT: All right. January 24th.

15 MR. COFFIN: That's even worse.

16 THE COURT: January 14th.

17 MR. RATLIFF: Now, Your Honor --

18 MR. COFFIN: That's fine, Your Honor. We'll take
19 that. That works perfectly well.

20 MR. RATLIFF: You know, Your Honor, this runs both
21 ways which is January 14th doesn't work for the leadership on
22 our side because of these exact same issues. What I will
23 point out is, consistently from Sanofi, you see one and two
24 lawyers who come down and address this. I see --

25 THE COURT: I know --

1 MR. RATLIFF: -- a host of PSC people who can address
2 the issues.

3 THE COURT: I know. I will look at the 18th. I will
4 look at the 18th, and I will try to make that work.

5 MR. COFFIN: Thank you, Your Honor. I appreciate it.

6 One other issue, I heard Mr. Oot saying we're past
7 the discovery deadline and we are anticipating -- this is not
8 an issue to substantively talk about, but we're anticipating
9 there is some outstanding discovery requests that were made
10 prior to the discovery deadline that we may have disputes
11 about. If that occurs between now and our next conference,
12 when is the Court available over this next few weeks?

13 What I'm trying to get at Your Honor, I don't want to
14 be calling you up on December 27th --

15 THE COURT: Well, you can call. Call Blanca and
16 schedule something.

17 MR. COFFIN: Will do.

18 THE COURT: That's -- I mean, I can't even tell you
19 if I'm available on the 18th. I definitely can't tell you
20 when to call about a dispute that may or may not occur.

21 MR. COFFIN: I just want to give you a preview about
22 it --

23 THE COURT: If you need to talk to me, just call my
24 office and we'll set something up on the telephone.

25 MR. RATLIFF: And certainly, Your Honor, we're not

1 aware of what Mr. Coffin's talking about in terms of
2 discovery disputes or outstanding --

3 THE COURT: But you will be --

4 MR. RATLIFF: -- discovery. I assume we will be. We
5 have certainly -- we have two witnesses, company witnesses,
6 who they had asked for prior to the December 15th general
7 liability cut off. We couldn't get them scheduled before
8 then, so we agreed to get them scheduled afterwards. And we
9 would not be in here making the argument that those
10 depositions don't get to go forward. As to anything else,
11 I'm unaware and I'll talk with Mr. Coffin --

12 THE COURT: As you're going to imagine, I'm going to
13 be pretty flexible in terms of you all conducting discovery
14 after the deadline if necessary, given the -- given the
15 breadth of this case and what needs to be done.

16 MR. COFFIN: Just as a reminder, I sent some e-mails
17 with Mr. Ratliff, and we've had some discussions about the
18 issues. They're not surprise issues, but we'll come back to
19 you if we need to.

20 THE COURT: All right. You all have a good holiday.

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(WHEREUPON, the proceedings were adjourned at 12:16 p.m.)

* * * *

REPORTER'S CERTIFICATE

I, Nichelle N. Drake, RPR, CRR, Official Court Reporter, United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

 /s/ Nichelle N. Drake
Official Court Reporter