

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: TAXOTERE (DOCETAXEL)
PRODUCTS LIABILITY LITIGATION

VS.

MDL No. 16-2740
Section "N"
New Orleans, Louisiana

THIS DOCUMENT RELATES TO
ALL CASES

March 7, 2018

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

FOR THE PLAINTIFFS:

MS. DAWN M. BARRIOS
MR. ZACHARY WOOL
Barrios Kingsdorf & Casteix
701 Poydras Street
Suite 3650
New Orleans, Louisiana 70139

MR. M. PALMER LAMBERT
MR. IRVING WARSHAUER
Gainsburgh Benjamin David
Meunier & Warshauer
1100 Poydras Street
Suite 2800
New Orleans, Louisiana 70163

MR. CHRISTOPHER L. COFFIN
MS. JESSICA PEREZ REYNOLDS
Pendley, Baudin & Coffin
1515 Poydras Street
Suite 1400
New Orleans, Louisiana 70112

MS. KAREN B. MENZIES
Gibbs Law Group
400 Continental Boulevard
6th Floor
El Segundo, California 90245

MR. J. KYLE BACHUS
Bachus & Schanker
1899 Wynkoop Street
Suite 700
Denver, Colorado 80202

MR. LAWRENCE J. CENTOLA
Martzell Bickford & Centola
338 Lafayette Street
New Orleans, Louisiana 70130

MS. ASHLEA SCHWARZ
Paul, LLP
601 Walnut Street
Suite 300
Kansas City, Missouri 64106

MR. DANIEL P. MARKOFF
Atkins & Markoff Law Firm
9211 Lake Hefner Parkway
Suite 104
Oklahoma City, Oklahoma 73120

MR. DAVID F. MICELI
Simmons Hanly Conroy
One Court Street
Alton, Illinois 62002

MR. RAND P. NOLEN
Fleming, Nolen & Jez
2800 Post Oak Boulevard
Suite 4000
Houston, Texas 77056

MR. BENJAMIN W. GORDON
Levin Papantonio Thomas
Mitchell Rafferty & Proctor
316 S. Baylen Street, Suite 600
Pensacola, Florida 32502

MR. ANDREW LEMMON
Lemmon Law Firm
650 Poydras Street
Suite 2335
New Orleans, LA 70130

MR. ALEXANDER G. DWYER
Kirkendall Dwyer
440 Louisiana
Suite 1901
Houston, Texas 77002

MS. ANNA HIGGINS.
MS. EMILY JEFFCOTT
The Lambert Firm
701 Magazine Street
New Orleans, LA 70130

MS. GENEVIEVE ZIMMERMAN
Meshbesh & Spence
1616 Park Avenue South
Minneapolis, MN 55404

MR. DAVID BONNIN
The Law Offices of
A. Craig Eiland, PC
2211 The Strand
Suite 201
Galveston, Texas 77550

MR. VAL PATRICK EXNICIOS
Liska, Exnicios & Nungesser
1515 Poydras Street
Suite 1400
New Orleans, LA 70112

MS. CHRISTINE BRANDT
MS. LAUREN E. GODSHALL
Morris Bart
Pan America Life Center
601 Poydras Street
24th Floor
New Orleans, Louisiana 70130

MR. MARK R. NIEMEYER
Niemeyer, Grebel & Kruse
10 S. Broadway
Suite 1125
St. Louis, MO 63102

MS. ELIZABETH P. KAGAN
Kagan Legal Group
8191 College Parkway
Fort Meyers, FL 33919

MS. ANNE ANDREWS
Andrews Thornton Higgins
Razmara
2 Corporate Park
Suite 110
Irvine, California 92606

FOR SANOFI S.A.:

MR. DOUGLAS J. MOORE
Irwin, Fritchie,
Urquhart & Moore
400 Poydras Street
Suite 2700
New Orleans, LA 70130

MR. HARLEY V. RATLIFF
MR. JON STRONGMAN
Shook, Hardy & Bacon
2555 Grand Boulevard
Kansas City, Missouri 64108

FOR ACTAVIS PHARMA, INC.:

MR. MICHAEL J. SUFFERN
Ulmer & Berne, LLP
600 Vine Street
Suite 2800
Cincinnati, OH 45202

FOR PFIZER INC. AND HOSPIRA
WORLDWIDE, LLC:

MR. JOHN F. OLINDE
Chaffe McCall
2300 Energy Centre
1100 Poydras Street
New Orleans, LA 70163

MS. MARA C. GONZALEZ
Quinn Emanuel Urquhart &
Sullivan
51 Madison Avenue
22nd Floor
New York, NY 10010

**FOR SANDOZ, A NOVARTIS
DIVISION:**

MR. R. CLIFTON MERRELL
Greenberg Traurig
Terminus 200
3333 Piedmont Road, NE
Atlanta, GA 30305

MS. DEBORAH B. ROUEN
Adams & Reese
701 Poydras Street
Suite 4500
New Orleans, LA 70139

**FOR ACCORD HEALTHCARE,
INC.:**

MS. JULIE A. CALLSEN
Tucker Ellis
950 Main Avenue
Suite 1100
Cleveland, OH 44113

**FOR SUN PHARMA GLOBAL,
INC.:**

MR. GEOFFREY COAN
Hinshaw & Culbertson
28 State Street
24th Floor
Boston, Massachusetts 02109

Official Court Reporter:

Mary V. Thompson, RPR, CRR
500 Poydras Street, B-275
New Orleans, Louisiana 70130
(504) 589-7782

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

2 (Call to order of the court.)

3
4 THE COURT: All right. You-all may be seated. Let's
5 go ahead and begin.6 This is the general status conference in Multi-District
7 Litigation No. 2740, *In Re: Taxotere (Docetaxel) Products*
8 *Liability Litigation*.9 As is always the case when we have these meetings, I
10 met with liaison counsel this morning, and after that met with
11 the committees leading up to this general status conference.
12 What we'll do is go through the draft joint report; cover all of
13 the information contained in that report to make certain everyone
14 understands that. If anyone has any questions while we do that,
15 please stop us and ask. You certainly are free to ask any
16 questions about any topic that's being covered by counsel at the
17 podium at any point in time.18 After we go through the joint report, I will open the
19 floor for questions about any other topic. If you're here and
20 would like to ask about something, we'll certainly try to answer
21 any questions so that everyone leaves here with a full knowledge
22 of where we are in the litigation, what we would like to
23 accomplish before the next conference, and so on and so forth in
24 terms of our long-term handling of the MDL.

25 Before I do that, you-all have, no doubt, heard from

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1 liaison counsel that I will not be presiding over this
2 multidistrict case if I am confirmed for the circuit court next
3 door. And I have no idea when -- or really if that will happen
4 or when it will happen, but the JPML has already designated one
5 of my colleagues from this bench, Judge Jane Milazzo, who is here
6 with us here today.

7 If she would stand up so that you-all know her if you
8 haven't met her yet.

9 Judge Milazzo has a world of experience on the bench.
10 She's been on our bench for several years now, and I -- she also
11 was on the state court bench prior to joining our court. I have
12 no doubt that she will do at least as good a job as I would hope
13 to do on the case. My expectation is that she will far exceed my
14 capabilities in handling your case.

15 She and I have met several times already. She is very
16 familiar with the issues in the case. She's constantly absorbing
17 more and more of what we have already done up to this point and
18 all the things that we anticipate on the road to completing the
19 MDL. The next step will be the bellwether trial in the fall and
20 the motions pertinent to that.

21 In that regard, we have received the submissions
22 earlier this week of the nominated cases for that trial. I have
23 reviewed them, not in as much detail as I would like to prior to
24 making a decision on it, but I've also provided them to
25 Judge Milazzo and will rely on her a great deal in making the

1 final decision. In fact, I will defer to her, but it will be
2 after some conversation with her about the nominee cases and the
3 information you've provided in connection with those.

4 So having said that, let me go ahead and ask counsel if
5 you would like to begin to present the joint report.

6 Mr. Lambert.

7 MR. LAMBERT: Thank you, Your Honor. Good morning.
8 Palmer Lambert from Gainsburgh Benjamin, plaintiffs' co-liaison
9 counsel.

10 And we appreciate your comment, Judge Engelhardt.
11 We've enjoyed working with you and your staff on this case and
12 obviously will continue to work with you until your confirmation.

13 And we appreciate Judge Milazzo meeting with us today,
14 and also with Judge North earlier, and we look forward to working
15 with Judge Milazzo.

16 I would also like to welcome some new plaintiff counsel
17 who I'm sure are on the phone.

18 Since December we've added some more cases. Our
19 current case count in the draft joint report is 8,037 cases.

20 And for the benefit of the folks on the phone, the
21 joint report is in draft form until after this conference. We'll
22 make some changes, clean up any issues that need to be cleaned
23 up, and that will be filed into the record as a draft -- as final
24 Joint Report No. 8 after this conference.

25 THE COURT: Okay.

1 MR. LAMBERT: Section 2, Federal/State Coordination.
2 My co-liaison counsel, Dawn Barrios, is the
3 federal/state liaison.

10:09:27

4 We have related state court proceedings in California,
5 Illinois, Missouri, New Jersey, and Delaware. The Court recently
6 entered Pretrial Order No. 77 to streamline the remand briefing
7 related to any California cases that get removed to this Court
8 and consolidated by the JPML.

10:09:53

9 The Court has received some supplemental briefing on
10 two California state court cases that were multi-plaintiff cases,
11 and that issue, I believe, is submitted to the Court for ruling.

12 The parties continue to coordinate and communicate with
13 all counsel and advise them of the status conferences.

10:10:18

14 Dawn Barrios is also in communication with the state
15 court judges, and has provided Your Honor and Ms. Anderson with
16 the names and addresses of those state court judges and their
17 offices.

10:10:37

18 THE COURT: We're going to go ahead and get the letter
19 that we have sent to the other state court judges -- the two
20 others that we sent. We're going to go ahead and send the same
21 letter to any other state court judges to apprise them of not
22 only the existence of the MDL, but our continued work on it, so
23 that they'll be fully aware of what we're doing here and
24 hopefully be able to coordinate their proceedings consistently
25 with what we're doing here.

10:10:56

1 MR. LAMBERT: Thank you, Your Honor.

2 And we appreciate the Court also providing a call-in
3 number for those state court judges to participate should they
4 wish to do so.

10:11:09

5
6 Section 3, Pretrial Orders.

7 All of the pretrial orders in this case are available
8 on the court's website. There is a specific page dedicated to
9 the Taxotere MDL. We encourage all counsel to familiarize
10 themselves with all the pretrial orders.

10:11:26

11 The ones listed in Section No. 3 of the report are
12 those issued since the last status conference on December 15th,
13 and I would like to just highlight a couple of those.

14 Pretrial Order 72 is regarding dismissal of the French
15 sanofi defendants. I'll talk about that later on, but the French
16 sanofi defendants have been dismissed without prejudice per
17 stipulation entered into by the parties.

10:11:48

18 Pretrial Order 73 contains the revised exemplar
19 short-form complaint, and we urge anybody who files a short-form
20 complaint going forward to use that particular form.

10:12:13

21 Pretrial Order 74, Record Document 1470, is the
22 procedures for withdrawal of counsel.

23 Pretrial Order 70A, Record Document 1528, places
24 certain limitations on contact, *ex parte* contact, with
25 physicians.

10:12:39

1 Pretrial Order 71A, Record Document 1531, relates to
2 the plaintiffs' responsibilities regarding ESI obligations
3 related to the plaintiff fact sheets.

4 Pretrial Order No. 37A, Record Document 1682, contains
10:13:03 5 the procedures for filing and amending short-form complaints, and
6 that supersedes Pretrial Order No. 37.

7 As discussed in liaison meetings with Your Honor, we
8 also recommend and remind all counsel to familiarize themselves
9 with the PTOs and the local rules before filing anything in the
10:13:32 10 MDL.

11
12 Section No. 4, Case Management Orders.

13 Since the last conference, Case Management Order No. 11
14 has been entered, and it extends certain deadlines related to
10:13:46 15 Case Management Order No. 3.

16 And as Your Honor stated earlier, CMO 3 relates to the
17 first bellwether trial which is scheduled for September 24th,
18 2018. Pursuant to that CMO, there have been approximately 40
19 depositions taken in the last two-and-a-half months working up
10:14:11 20 the initial pool of bellwether plaintiffs, and Your Honor will be
21 selecting four of those to go forward this week.

22 THE COURT: Right.

23 MR. LAMBERT: Case management order --

24 THE COURT: And this came up earlier, but in case it is
10:14:29 25 not clear, those who are not selected by the end of this week

1 would still be available and subject to consideration for a later
2 bellwether trial date. So the amount of work that's been
3 invested -- you mentioned all the depositions -- would still be
4 time well spent in the event that those cases might still be
5 considered for a subsequent bellwether trial date.

10:14:51

6 MR. LAMBERT: Thank you, Your Honor.

7 Case Management Order No. 12, Record Document 1506,
8 sets forth the process for obtaining product identification. We
9 encourage everybody to familiarize themselves with that case
10 management order. It is proving to be helpful.

10:15:13

11 We understand plaintiffs have had difficulties in
12 identifying the manufacturer of the docetaxel or Taxotere
13 product, and hopefully this order will help you get through that
14 process and match to the appropriate defendant.

10:15:34

15 THE COURT: Okay.

16 MR. LAMBERT: The parties are meeting and conferring on
17 submitting additional case management orders for the third,
18 fourth, and fifth trial dates that have been set by this Court.

10:15:50

19 THE COURT: All of those dates I believe are in 2019,
20 if I'm not mistaken.

21 MR. LAMBERT: Yes, Your Honor. I don't have the dates
22 in front of me, but I believe they are in each quarter of 2019.

23 THE COURT: Yeah.

10:16:04

24 MR. LAMBERT: We discussed in the steering committee
25 meeting before this, the assertion of *Lexecon* rights by parties

1 in this case, and we have discussed CMO 8A as well with
2 Your Honor, which included some nominations of plaintiffs who
3 fall outside of the EDLA in terms of their original jurisdiction.
4 We understand that those cases will continue to be worked up in
5 the same manner as the Case Management Order No. 3 bellwether
6 plaintiffs have been.

7 THE COURT: Yeah, that's correct. It was discussed in
8 some detail this morning. There's no prohibition between --
9 against designating cases that are not Eastern District of
10 Louisiana cases. And under that circumstance, of course *Lexecon*
11 applies and will be followed absent some change in positioning
12 for the party that enjoys the benefit of the holding of that
13 case.

14 It may well be -- and it's way too early to tell --
15 that we do expose one or more of the cases in the MDL to a
16 different jury pool in a different jurisdiction, including a
17 state court. We don't know yet. None of us here know yet where
18 we'll be when that time comes in terms of status of the
19 litigation, but that's always a possibility, that a case is tried
20 either by me or Judge Milazzo in another jurisdiction or by
21 another Article III judge in another jurisdiction or in state
22 court. Those are all possibilities as we view the long-term
23 handling of the MDL.

24 MR. LAMBERT: And we understand those comments,
25 Your Honor, and we'll discuss potential solutions for the future

1 CMOs related to the trials in those.

2 MR. OLINDE: Just one mention, Your Honor. You talked
3 about the cases in the first pool going over to the second pool.
4 We didn't mention in the liaison counsel meeting today the *Chetta*
5 case which turns out to be not a Sanofi case but a Hospira case,
6 apparently, and Hospira is not a defendant in this case so we're
7 meeting and conferring about what to do, whether that case should
8 totally drop out of the pool itself because of that reason.

9 THE COURT: With that one exception, that's correct.

10 That's my understanding.

11 MR. LAMBERT: All right. Unless there's anything
12 further on Section 4, we'll move on to Section 5, Counsel Contact
13 Information Form.

14 Just a reminder to all counsel to fill out that form.
15 It's an important form in terms of getting you the ECF filings in
16 this case and also to get your information to BrownGreer to set
17 up MDL centrality for your firm. And that information is in PTO
18 No. 7. The form should be e-mailed to taxotere@bkc-law.com.

19
20 Section 6, Master Complaint, Short-Form Complaint.

21 These documents can be found on the court's website.

22 Just a couple of notes on this section. Plaintiffs'
23 first amended long-form complaint was filed on July 25, 2017.
24 That's Record Document No. 689.

25 The Court had entered Pretrial Order No. 73, Record

1 Document 1463, which we mentioned earlier. And that is the
2 short-form complaint that's currently in place in this case.

3 We caution all plaintiffs to not file an amendment only
4 to change the form of the document. Just because the amended
10:20:12 5 exemplar short-form complaint has been changed, it doesn't mean
6 you need to go back and refile amendments. It's just that going
7 forward that form needs to be used.

8 THE COURT: Okay.

9 MR. LAMBERT: Should any plaintiff wish to file an
10 amended complaint, you need to follow the procedures set forth in
10:20:28 11 Pretrial Order No. 37A, which requires notice to the defendants
12 prior to filing and to also provide them with a copy of the
13 proposed motion as well as the amended pleading.

14 THE COURT: It's very important if -- for those of you
10:20:58 15 who are maybe on the phone, Pretrial Order No. 37A is critical,
16 particularly after a product identification has been completed.
17 You absolutely have to file Pretrial Order No. 37A. If you're
18 not familiar with it, please pull it or ask for it to be sent to
19 you from liaison counsel or one of your colleagues.

10:21:20 20 But that's one of the more important ones. In terms of
21 procedure in trying to streamline and get the MDL further down
22 the road, 37A is a particularly important pretrial order.

23 MR. LAMBERT: And also I have a note related to amended
24 complaints. If you use the short-form complaint and you do not
10:21:39 25 carry forward the same defendants that were on your case

1 previously, those defendants will be dropped from the case --

2 THE COURT: Right.

3 MR. LAMBERT: -- by the clerk's office.

4 THE COURT: Okay.

10:21:53 5 MR. LAMBERT: An additional point in this section, and
6 then we can move on.

7 The voluntary dismissal of an entire case is controlled
8 by Pretrial Order No. 54. That's Record Document No. 671.

9 Under that pretrial order, you may not notice a case
10:22:15 10 for voluntary dismissal without prejudice. You must either get a
11 stipulation to dismiss or file a motion for dismissal with
12 prejudice. Those procedural requirements in Pretrial Order 54
13 are important and should be reviewed before any dismissals are
14 filed of the entire case.

10:22:44 15 THE COURT: Let me stop at this juncture, Mr. Lambert.
16 Mr. Moore, did you want to add anything to what
17 Mr. Lambert has covered already?

18 MR. MOORE: Not at this time.

19 THE COURT: Mr. Olinde, anything?

10:22:55 20 MR. OLINDE: No, Your Honor.

21 THE COURT: And we're on Page 6 of the draft report.
22 We are just completing Item No. 6, which ends on Page 6. Does
23 anybody have any questions at this point about anything that
24 we've covered so far?

10:23:09 25 (No response.)

1 THE COURT: Let's go ahead and proceed.

2 MR. LAMBERT: Thank you, Your Honor.

3 Section 7, Plaintiff and Defendant Fact Sheets.

4 The form of the fact sheets is Pretrial Order No. 18.

10:23:20 5 Amended Pretrial Order No. 22 is one of the more
6 important pretrial orders in this case. That's Record
7 Document 325. It sets forth the process for service of PFSs and
8 DFSs and also the deadlines for issuing deficiencies and the
9 deficiency process.

10:23:43 10 Per Amended Pretrial Order No. 22, as of February 28th,
11 2018, plaintiffs have served 4,794 PFSs. An additional
12 approximately 1200 are in progress.

13 Based on the PFSs to date, they break down as follows:

14 2,478 Sanofi.

10:24:19 15 319 Hospira.

16 123 Sandoz.

17 97 Accord.

18 1 Sun.

19 And approximately 1700 with the defendant unknown.

10:24:39 20 Under Amended Pretrial Order No. 22, the defendants
21 have identified certain cases which are deficient and have
22 remained deficient for more than 30 days, and those cases will be
23 attached in appendices to Joint Report No. 8.

24 And those exhibits will be related to deficiencies
10:25:05 25 where either no PFS, authorizations, or responsive documents have

1 been submitted; the plaintiff has failed to respond in any manner
2 to the deficiency for more than 30 days; or the plaintiff has
3 failed to provide the three categories of information needed to
4 make the PFS substantially complete.

10:25:28 5 It's important to familiarize yourself with the process
6 set forth in Amended PT0 22. Those cases that remain deficient,
7 after being identified in the attachment to this joint report, at
8 the next status conference will be placed on a show cause list.

9 THE COURT: Let me ask, other than the fact that this
10:25:57 10 is a particularly time-consuming and labor-intensive exercise,
11 are we having any problems with the procedure that we've outlined
12 in these pretrial orders? Have we had any hiccups or anything
13 that needs to be addressed with liaison counsel?

14 MR. LAMBERT: I believe the process itself is working.
10:26:20 15 The fact sheets require substantial information --

16 THE COURT: Right.

17 MR. LAMBERT: -- and it is somewhat of a daunting task;
18 but in terms of the deficiency process, the process set forth in
19 the pretrial order, it appears to be working.

10:26:40 20 The one thing we did discuss in our liaison meeting is
21 the change in the response to show cause process.

22 THE COURT: Right.

23 MR. LAMBERT: The last -- in Show Cause Order No. 2,
24 the responses were filed by each individual counsel in the
10:26:57 25 record. I believe there's approximately 80 of those filed.

1 This response to Show Cause Order No. 3, which was due
2 to be provided to liaison counsel two days ago and then we will
3 file it into the record today, has proved to be quite an
4 administrative task.

10:27:20 5 The response will have an index. It will be organized,
6 but it will contain more than 100 attachments and so we may need
7 to discuss a process for making that a little bit easier on
8 people.

9 THE COURT: Okay.

10:27:39 10 Mr. Moore?

11 MR. MOORE: Thank you, Your Honor. Douglas Moore on
12 behalf of Sanofi, co-defense liaison counsel.

13 We would agree with Mr. Lambert's comments, that the
14 process is working. It is. We've worked with, specifically,
10:27:56 15 Ms. Barrios to make the process more efficient and to make it
16 more streamlined for the court. We've gotten through a couple of
17 iterations of our joint reports with the deficiency notices and
18 the call -- placing cases on the call dockets.

19 The ultimate culmination of that process is a ruling
10:28:19 20 from Your Honor as to whether or not good cause has been shown --
21 or any cause has been shown to warrant keeping the case in the
22 MDL or whether the case should be dismissed under PT0 22.

23 And so we think the process, from our end, is as
24 efficient as we can make it, and we look forward to receiving the
10:28:39 25 rulings from the Court.

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

2 MR. LAMBERT: Unless there is anything more on
3 Section 7, we'll move on to Section 8, MDL Centrality.

4 As everybody should know, MDL centrality is the online
10:28:59 5 system that allows the exchange of the plaintiff and defendant
6 fact sheets, and it also circulates pleadings on a daily basis to
7 all counsel who have signed up from MDL centrality. If you are
8 not signed up, on the Court's website there is a tab that will
9 link you to the appropriate website to do so.

10:29:19 10
11 Section No. 9, Service on Defendants.

12 The defendants in this case have agreed to streamline
13 service procedures.

14 Those are set forth for Sanofi in the
10:29:38 15 Pretrial Order No. 9; for Accord Health Care, Inc., Pretrial
16 Order 29; Sandoz, Inc., Pretrial Order No. 30; Actavis Pharma,
17 Inc., PTO 32A; McKesson Corporation, PTO 33; Sun Pharmaceutical
18 Industries, Inc., PTO 39A; and Hospira Worldwide, LLC, the
19 Hospira entities, PTO 40A.

10:30:08 20 We encourage everybody to follow the service orders,
21 and they're in place to try to streamline that process. It's an
22 e-mail service process.

23
24 Section 10, Dismissal of Defendants.

10:30:27 25 This section is sort of a carry forward, but there were

1 three entities originally named as defendants that have been
2 dismissed. Those are Apotex, Inc., Northstar RX, LLC., and Eagle
3 Pharmaceuticals, Inc.

4 THE COURT: We could probably -- like you said, this is
10:30:46 5 a carry-forward section. I think at this point, unless we have
6 someone else who is making a similar case on the defendants'
7 side, we could probably go ahead and dispense with this being in
8 the report next time -- or just put in there there's nothing
9 further than what we've previously put in, rather than
10:31:04 10 reiterating it.

11 MR. LAMBERT: Yes, Your Honor. The report is somewhat
12 lengthy at this point so good idea.

13 THE COURT: That's what I'm saying, it's a section that
14 we could probably omit at this point.

10:31:15 15 MR. LAMBERT: As previously mentioned, there is a
16 stipulation. It's Record Document 1072. And it's related to
17 dismissal without prejudice of the French sanofi entities, and
18 those are sanofi S.A. and Aventis Pharma S.A.

19 THE COURT: Right.

10:31:33 20 MR. LAMBERT: Section 11, Product Identification Order.

21 We've already talked somewhat in detail about the
22 order. It's intended to assist counsel with a specified
23 procedure for obtaining product identification. I don't think I
24 need to go through in detail exactly what's in it, but I want to
10:32:01 25 mention that, in addition to your obligations of trying to obtain

1 the product identification initially from the particular
2 facilities involved, you should make sure to keep that data, the
3 letters and correspondence and whatnot, so you can provide that
4 to defendants and comply with Paragraphs -- I believe it's 2 and
5 3 of the pretrial order.

10:32:29

6 Once you get through the first few steps of the
7 pretrial order, and the requests of the plaintiff and the
8 requests of the defendants does not result in knowledge of the
9 particular defendant, then you have the right to issue a subpoena
10 to the facility that administered the docetaxel.

10:32:55

11 At that point, once the subpoena is issued, that
12 triggers a period of limited discovery for that particular case.
13 It's 75 days in order to do whatever additional discovery is
14 necessary to obtain product ID.

10:33:19

15 THE COURT: Okay.

16 MR. LAMBERT: I will just report to the Court that we
17 believe the process is working here, and that it is resulting in
18 plaintiffs identifying the defendant, for the most part, and that
19 the dismissals of the defendants not identified are occurring.

10:33:38

20 THE COURT: Well, this is such a critical inquiry for
21 so many reasons in the MDL. First of all, it relates to matching
22 a plaintiff with a particular product, which obviously you want
23 to know even before you file if you can find that out. If you
24 can't find it out, here is the procedure here in Record
25 Document 1506, the Case Management Order No. 12. Here is the

10:33:59

1 mechanism for you to find that out.

2 It also relates to the work of our settlement
3 committees who are still grappling with the very threshold
4 inquiry of how many cases are there and how many cases are there
5 against each defendant. In order for that conversation to go
6 beyond that, we've got to have some product identification.

7 So this is another of these orders that if you are on
8 the plaintiffs' side and you're listening in, you must be
9 familiar with this order unless you have already made a match
10 with certainty of the product involved on your claim.

11 MR. LAMBERT: Thank you, Your Honor.

12 And I'll mention later when I get to the section, but
13 once you have identified the particular manufacturer, there is
14 also an obligation to amend your responses to Amended PT0 60
15 related to the census that the settlement committees are working
16 on.

17
18 Section 12, Preservation Order.

19 Counsel are reminded to familiarize themselves with the
20 terms of PT0 1 -- that's Record Document No. 4 -- Paragraph 12,
21 regarding the preservation of evidence.

22
23 Section 13, Protective Order.

24 Judge North entered a protective order in this case on
25 July 5, 2017. That's Pretrial Order No. 50, Record Documents

1 612-1 and 613.

2

3 Section 14, Electronically Stored Information
4 Discovery.

10:35:40 5 Judge North entered the ESI protocol on July 5, 2017,
6 as Pretrial Order No. 49. And then on December 15th, the Court
7 issued Pretrial Order No. 71 regarding plaintiffs'
8 responsibilities relevant to ESI. That order was amended by
9 Pretrial Order No. 71A.

10:36:04 10 MR. COFFIN: Your Honor, Chris Coffin, co-lead counsel
11 on behalf of the plaintiffs.

12 If I could just highlight, especially for those on the
13 phone, this Section 14 of the draft report involving the ESI
14 discovery.

10:36:24 15 As Mr. Lambert noted -- or I think he just noted that
16 March 30, 2018, coming up here in a few weeks is an initial
17 deadline. We on the leadership have heard from many plaintiffs'
18 lawyers around the country who have had difficulty in obtaining
19 all of the information that is required by this order.

10:36:45 20 We'd encourage them to reach out to us. We are trying
21 our best to help them meet these deadlines, but we can't help if
22 we don't know what the issues are.

23 We have done it with our own plaintiffs so we
24 understand the burden, and it hasn't been easy for us, either.

10:37:02 25 So we would like to be able to be helpful and try to

1 make sure that everyone is able to meet that March 30th deadline.

2 THE COURT: Okay. Thank you, Mr. Coffin.

3 Please take his advice to heart, those of you on the
4 phone -- or even those of you who are here. If you are not
5 here -- perhaps those of you who are here can advise those who
6 are not present either on the phone or in person.

7 But this has got to be done, and there are people that
8 can give you good advice on how to do it in a way that's a little
9 less burdensome than you might imagine, so I appreciate that.

10 MR. LAMBERT: Thank you, Your Honor.

11 And we'll also emphasize to folks on the phone and
12 plaintiffs' counsel in this room that Ms. Barrios and I do the
13 best we can to get out guidance and suggestions and help to
14 people. Our e-mails generally are available on the MDL
15 centrality portal to all plaintiff counsel, but please reach out
16 to us if there are issues that you need help with.

17
18 Section No. 15, Discovery of Defendants.

19 I mentioned earlier in connection with CMO 3, the first
20 trial pool, approximately 40 depositions have been conducted over
21 the last two and a half months. Depositions of corporate
22 witnesses are underway in connection with Sanofi.

23 The general merits discovery, written discovery, has
24 been served on Sanofi and on the 505(b)(2) defendants who are
25 subject to discovery under CMO No. 7, and those are related to

1 the defendants identified in CMO 8A. Those are Accord Health
2 Care Inc., Hospira and Pfizer defendants, and Sandoz, Inc.

3 And as mentioned, I believe in the last conference, we
4 appreciate Judge North handling those disputes and assisting the
5 parties in moving forward on discovery in depositions.

6 THE COURT: Okay.

7 MR. LAMBERT: Section 16, Motion Practice.

8 We mentioned, I believe, earlier on that there is a
9 motion to remand pending. That's Record Document No. 473. And
10 it's really limited to issues related to the severance of
11 multiple plaintiffs filed together in cases that originated in
12 California state court.

13 The second motion that's referenced in the draft report
14 has been withdrawn. That was a motion to dismiss cases for
15 failure to comply with the service order, Pretrial Order No. 9.

16 THE COURT: Uh-huh.

17 MR. LAMBERT: Section 17, Settlement Committees.

18 Mr. Gordon is here but he's provided me with a couple
19 of comments to make.

20 The settlement committees obviously continue to do
21 their -- exercise their duties under Pretrial Order No. 6, and
22 Mr. Gordon wanted me to remind everybody on the phone to comply
23 with Amended Pretrial Order No. 60. That's Record Document
24 No. 870. And to also update your census information in that on a
25 quarterly basis pursuant to the order.

1 Even if you do not know your particular manufacturer,
2 as long as you've confirmed the docetaxel use, you should be
3 listing those cases.

4 THE COURT: Along those lines, any formation that can
5 be gathered that would provide insight -- and Mr. Gordon I know
6 has been working very hard on this, but any information that can
7 be gathered that would provide insight as to the number of total
8 claimants out there, even if you haven't yet filed but you have a
9 client who has retained your services, that would be helpful
10 information.

11 It would be really helpful, as I said earlier, if you
12 not only had the claim -- knew of the claim and disclosed it to
13 Mr. Gordon pursuant to that pretrial order, but also if you knew
14 the proper defendant manufacturer, that would be extremely
15 helpful.

16 It's just a critical threshold inquiry to know what the
17 field of cases are here for the purposes of our settlement
18 committees to continue a constructive dialogue. The sooner we
19 know that with some degree of certainty, the better off we'll be.

20 MR. LAMBERT: And just to add to that, Your Honor,
21 there's a slight amendment to the draft here. The settlement
22 committee chairs actually met with the Court yesterday. We'll
23 change the language there.

24
25 Section No. 18, Special Master for Plaintiffs' Time and

1 Expenses.

2 Special Master Dejean I don't believe is here today,
3 but he was appointed in Pretrial Order No. 20, and we want to
4 remind everybody to comply with the terms of
5 Pretrial Order No. 19 as far as submission of common benefit time
6 and expenses to the special master for review.

7

8 Section 19, Next Status Conference.

9 We discussed briefly potential dates, and we will get
10 back to Your Honor on whether April 26th will work for our
11 respective.

12 THE COURT: The date that we had focused on is
13 Thursday, April 26th, at the same time. That date is clear for
14 both Judge Milazzo and me, so we would ask you-all to please
15 circulate that date and check your calendars. We'll try to
16 accommodate as many people as we can.

17 If that for some reason winds up not being suitable,
18 we'll try to find some alternative dates for you, but that is the
19 date that seems to be working that way. I know it works for
20 Judge Milazzo and me, and hopefully it will work for enough of
21 you that we can proceed on that day with our next liaison
22 committee -- I should say our liaison counsel meetings, our
23 committee meetings, and our general status conference.

24 MR. LAMBERT: I believe that takes us to the end of the
25 report.

1 THE COURT: Okay. Mr. Moore, would you like to add
2 anything to what Mr. Lambert has covered in the report?

3 MR. MOORE: No, Your Honor.

4 THE COURT: All right.

10:44:10 5 Mr. Olinde?

6 MR. OLINDE: No, Your Honor. Thank you.

7 THE COURT: Yes. Mr. Ratliff, go ahead.

8 MR. RATLIFF: Thank you, Your Honor. Harley Ratliff on
9 behalf of Sanofi.

10:44:18 10 I just wanted to cover one quick point just for the
11 clarity of the broader audience, and it comes to me because I've
12 been fielding inquiries from other attorneys that I know -- no
13 one in this room -- asking about the settlement committee, what
14 that's about.

10:44:32 15 I know in our leadership meetings, and talking to Jon,
16 and knowing Mr. Strongman and Mr. Gordon, that the settlement
17 committee is working hard. They're trying to make progress.
18 They're talking about a framework.

10:44:46 19 But I also don't want to leave the impression for the
20 folks who may be on the phone or who don't -- are not privy to
21 our leadership meetings, that that doesn't mean there's something
22 imminent that's going to happen anytime soon. And as we start to
23 see -- or continue to see cases sort of flood in on a daily
24 basis, 20 to 30 cases, I don't want to leave that impression for
10:45:04 25 the broader audience that this is something that's going to

1 happen tomorrow, next week, or in several months.

2 THE COURT: Let me be clear -- and I'll reiterate that
3 for the benefit. I appreciate you bringing that up here.

4 Let me be clear on the record, and for those of you who
10:45:19 5 are listening in, either in person or on the phone, the
6 settlement committees are simply a mechanism that the Court had
7 asked for attorneys to serve on to explore the parameters of what
8 an agreement would look like if one could be reached.

9 I will state, after having spoken with the settlement
10:45:41 10 committees yesterday, that although they're working very hard and
11 very constructively, we are nowhere close to this MDL being
12 settled. In fact, we do not have an agreement on the parameters
13 of a settlement even if one were so desired at this point by
14 either side.

10:46:00 15 We have a lot of litigating to do in this case. We
16 have a bellwether coming up in approximately six months. That
17 will tell us a lot about whether the case can even possibly be
18 settled.

19 So, no, do not assume that because there are settlement
10:46:16 20 committees that are working, that this MDL is going to settle. I
21 would say at this point as we sit here today, it's just as likely
22 that the MDL will run its course and the cases will be remanded
23 as it is that the case will settle.

24 As the presiding judge -- and I think I can speak for
10:46:35 25 myself as well as Judge Milazzo -- the goal and what we like to

1 do as the presiding judge is to get all of the cases resolved in
2 one forum, which is, in my mind, a successful MDL.

3 But if we resolve all of the common issues in the MDL
4 and we cover a lot of ground and we remand cases back to the
5 courts from where they came, that is also a successful MDL in
6 that we've accomplished the task that the JPML has assigned to
7 us.

8 So the very mention of the term "settlement committee"
9 should not be interpreted as an imminent agreement being reached
10 so that you must be in the case in order to participate in it,
11 because there may not be one.

12 I have all the respect for -- Mr. Gordon has worked
13 very hard on it. You know, Mr. Strongman has worked very hard on
14 it. Ms. Cohen. The players are there to discuss what a
15 settlement might look like, even this early, without any
16 assurance or even any type of inclination at this point that the
17 case can be settled.

18 I just don't want us to get to that point and then have
19 to invent the wheel, as it were. If there's a desire on both
20 sides eventually to discuss settlement, hopefully we'll have all
21 that ground plowed if we get to that point.

22 So I appreciate your comments and I want to be clear on
23 the record that the fact that there's a settlement committee, the
24 fact that they're meeting, the fact that they're discussing with
25 each other these things, and the fact that they're meeting with

1 me should not in any way be interpreted as an imminent settlement
2 being on the horizon. We've got a long way to go still and we're
3 going to cover that ground and we're going to constantly
4 reevaluate where we are in terms of what is known about these
10:48:27 5 cases, the success rate, the consumption of resources, and the
6 desire of the parties to continue to litigate the cases.

7 So I'm glad you brought that up just so that we can be
8 clear on it.

9 Does anybody have any questions about anything that's
10:48:44 10 covered in this report that Mr. Lambert and Mr. Moore and
11 Mr. Olinde have spoken about up to this point?

12 (No response.)

13 THE COURT: Any questions?

14 (No response.)

10:48:54 15 THE COURT: As promised, I will open the floor for any
16 questions about anything else about the MDL that you would like
17 to discuss.

18 Any questions for counsel or questions for me?

19 (No response.)

10:49:04 20 THE COURT: Anybody?

21 (No response.)

22 THE COURT: Let's check on the April 26th date. And
23 assuming that that works for you-all, we'll see you then, on
24 April 26th.

10:49:16 25 Thank you.

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(Proceedings adjourned.)

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CERTIFICATE

I hereby certify this 8th day of March, 2018, that the foregoing is, to the best of my ability and understanding, a true and correct transcript of the proceedings in the above-entitled matter.

/s/ Mary V. Thompson

Official Court Reporter