

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: TAXOTERE (DOCETAXEL) \* 16-MD-2740  
PRODUCTS LIABILITY LITIGATION \*  
\* Section N  
\*  
Relates to: All Cases \* April 25, 2018  
\* \* \* \* \*

STATUS CONFERENCE BEFORE  
THE HONORABLE MICHAEL B. NORTH  
UNITED STATES MAGISTRATE JUDGE

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computer-aided transcription software.



04:19

1           **MR. CENTOLA:** Thank you, Your Honor.

2           **THE COURT:** I forgot something. Give me a second.

3                   Let's talk about Ms. Earnest's journal. Let me  
4 ask this question because it's not entirely clear. What was  
5 clawed back, the entire second journal or the two entries that  
6 were discussed in your letter?

7           **MR. COFFIN:** Your Honor, Mr. Darin Schanker --

8           **MR. SCHANKER:** Your Honor, this is -- go ahead. Go  
9 ahead. I'm sorry.

10          **MR. COFFIN:** There he is.

11                   I was going to introduce you, Darin. I wanted  
12 to make sure you were on the phone.

13                   Your Honor, Darin Schanker is going to handle  
14 this for us.

15          **MR. SCHANKER:** Your Honor, this is Darin Schanker,  
16 and thank you for letting me appear via phone.

17                   Specifically, what was clawed back were just the  
18 two entries that were inadvertently disclosed. You should have  
19 a copy of the unredacted version of that so that you can see  
20 what exactly was clawed back.

21          **MR. COFFIN:** May I approach, Your Honor?

22          **THE COURT:** Yes.

23          **MR. SCHANKER:** You called it a journal. It's really  
24 an appointment list. The remainder of that has been disclosed.

25          **THE COURT:** I have three pages. There's two pages

04:21

1 that I have been handed from this journal. You all have clawed  
2 back the entirety of both pages?

3 **MR. SCHANKER:** That is not correct, Your Honor. If  
4 you have what I have, there should be a color photograph.

5 **THE COURT:** Yes.

6 **MR. SCHANKER:** There is a highlighted yellow box with  
7 two entries dated 3/26 and 3/28.

8 **THE COURT:** Yes.

9 **MR. SCHANKER:** The yellow box is what has been -- the  
10 entire document was clawed back. Then it has been redisclosed,  
11 along with a privilege log, absent what you have in the yellow  
12 box.

13 **THE COURT:** Okay. I understand.

14 Well, here's the thing. As I understand it, the  
15 argument is that to the extent that Ms. Earnest was sent to  
16 medical appointments with providers that were arranged by her  
17 attorneys, her notes as to those appointments and the identity  
18 of those doctors is privileged. Is that the idea?

19 **MR. SCHANKER:** Correct. Correct, Your Honor.

20 **THE COURT:** I'm not ready to make a call on that  
21 because that's a new one on me. As you know, most of the time  
22 when injured plaintiffs go to see doctors, the defendants are  
23 entitled to all of their medical records, whether a particular  
24 doctor is going to be called to testify or whether even the  
25 treatment is related to the injury or the condition that's the

04:23

1 subject of the litigation. So you all are going to have to  
2 flesh that out for me.

3 What I would like to do is, by May 2, I would  
4 like to have each side give me no more than five pages on that  
5 issue, whether an injured plaintiffs' notes about doctor visits  
6 that she has made that have been arranged by the plaintiffs'  
7 counsel can be shielded from discovery on the basis that that  
8 doctor or those doctors are consulting experts under Rule 26.

9 **MS. BIERI:** Do you want to hear anything further  
10 today?

11 **THE COURT:** Sure, sure.

12 **MS. BIERI:** Kelly Bieri on behalf of Sanofi.

13 Your Honor, we have looked at this law and we --

14 **THE COURT:** You need to speak up.

15 **MS. BIERI:** Your Honor, we have looked at the law on  
16 this issue, and we understand that certain things related to  
17 consulting experts are privileged under 26(b)(4)(B), but the  
18 rule itself, 26(b)(4)(B), and case law in Louisiana suggests  
19 other facts -- such as the identity, type of appointment and  
20 doctor -- are not. We will put that in our briefing to you.

21 **THE COURT:** I want you all not just to shoot out a  
22 brief, but to look at what the law is, particularly on the  
23 plaintiffs' side, and considering the information that you all  
24 are seeking to withhold, which is essentially the identity of  
25 this physician or physicians.

04:25

1           There's not a whole lot there, so give some  
2 thought to whether in this case it's really conceivably subject  
3 to some sort of privilege, because I'm skeptical. I don't want  
4 to make that call now because I haven't had time to do the  
5 independent research on my own.

6           **MS. BIERI:** We will provide that to you.

7           **THE COURT:** So let's handle it that way.

8           **MR. SCHANKER:** Okay.

9           **THE COURT:** I'm going to hold onto these documents.

10          **MR. SCHANKER:** Okay.

11          **MS. BIERI:** Your Honor, may I ask one quick question?  
12 You want separate submissions by each side?

13          **THE COURT:** Yes.

14          **MS. BIERI:** Thank you.

15          **MR. SCHANKER:** Thank you, Your Honor.

16          **THE COURT:** Let me skip to the Wise database. I've  
17 already made the decision and stated on the record last time  
18 that I didn't find that the late identification of the Wise  
19 database was due to any misconduct by Sanofi, whether it was  
20 oversight or intentional. On the other hand, it's my  
21 understanding that whether it was identified shortly before  
22 Mr. Mancini's deposition, at Mr. Mancini's deposition, it was  
23 identified very late in the game vis-à-vis his deposition.

24                   Under the circumstances -- and obviously,  
25 Mr. Oot, I have read your position -- I think it's appropriate



04:26

1 to give some additional time to the PSC to ask Mr. Mancini  
2 questions surrounding that database, what came out of it, to  
3 what extent it is similar/identical to other documents that you  
4 already received. I guess you all either reserved an hour or  
5 didn't use an hour.

6 Mr. Oot has argued at least that the format of  
7 some of this information makes it, in his view, impossible or  
8 very difficult to use to interrogate a witness. I don't know  
9 that that's the case. There may be more than just the  
10 documents themselves. There may be conclusions or questions  
11 about the documents that you all want to ask Mr. Mancini given  
12 his role in all this.

13 The fact that the database was identified  
14 somewhat late in the game, I think it's appropriate and will  
15 let you all ask him another two hours of questions. Those two  
16 hours of questions should be limited in scope to issues, I will  
17 say, surrounding the database.

18 I would admonish you all not to spend much or  
19 any of that time pounding the table and demanding why those  
20 documents weren't already produced because we have been through  
21 that. This should be substantive inquiry into what information  
22 was there and the substance of whatever was ultimately produced  
23 from that database.

24 Mr. Oot, just to address all of the arguments,  
25 as to the fact that they could have canceled the deposition

04:28

1 because they knew that this was important information and they  
2 didn't have it, I'm not going to, I guess, penalize them for  
3 not doing that given that everybody in the case has been under  
4 the pressure of looming deadlines, and they didn't know when  
5 they were going to get what they thought they needed. Under  
6 the circumstances, I think it's appropriate.

7 Obviously, that deposition ought to take place,  
8 I guess, in London around the time that you all have already  
9 got other depositions set --

10 **MR. RATLIFF:** May I address that, Your Honor?

11 **THE COURT:** -- hopefully, subject to the witness'  
12 availability. We don't need lawyers flying overseas for a  
13 two-hour deposition.

14 **MR. RATLIFF:** Certainly, Your Honor. There are a  
15 couple of things I wanted to address with respect to the  
16 additional time for Mr. Mancini.

17 As it relates to next week in London, we have  
18 all-day depositions May 3 and May 4. I don't want to belabor  
19 the point, but getting these witnesses in France scheduled to  
20 London is a Herculean scheduling and logistics task,  
21 particularly for next week. There is a major French holiday,  
22 which the employees at Sanofi in France get off several days,  
23 and so the employees that we are bringing over have forgone  
24 that.

25 I don't think I can make Mr. Mancini available

04:29

1 on such short notice for essentially maybe an hour,  
2 hour-and-a-half deposition. I will certainly reach out to him  
3 and see if that is a possibility. I think, the other thing,  
4 given the limited scope of this deposition and the fact that it  
5 may only be an hour or so merits the thought of trying to do  
6 this via videoconference.

7 **THE COURT:** I'm going to let you all work that out.  
8 What I said was the deposition ought to take place next week,  
9 not that it shall take place.

10 **MR. RATLIFF:** Understood, Your Honor.

11 **THE COURT:** I will let you all work through those  
12 logistical issues. I would agree with you, as a general  
13 proposition, that a deposition by video under these  
14 circumstances would normally be appropriate. There are  
15 documents involved. There's going to need to be someone there  
16 with the witness. I don't know if you all have handled that  
17 already in this litigation, but I'm going to leave that to you  
18 all to work out among yourselves. I'm sure you can do that.

19 **MR. RATLIFF:** Understood, Your Honor. The second  
20 question I wanted to raise about this is sort of the scope of  
21 what you are envisioning as the limitation. My concern, when  
22 Mr. Miceli raised this to me, was whether this was an  
23 opportunity to go back and clean up questions or re-cover  
24 issues that have already been covered extensively as part of a  
25 six, six-and-a-half-hour deposition.

04:31

1 I think Mr. Miceli used 40-plus documents. So  
2 if the scope is going to be limited to the Wise database and  
3 what's in there, we understand that. My concern is that  
4 Mr. Miceli will try to go beyond that to revisit issues.

5 **THE COURT:** If there are a handful of things that he  
6 wants to revisit, that's fine. He has an hour left on the  
7 record, as I understand it, notwithstanding this other issue.

8 There's a lot of time and expense and effort  
9 associated with even putting together another two-hour  
10 deposition. I take him at his word that he wants to question  
11 this witness on the information that he didn't have. If there  
12 are some questions or some time in those two hours that he does  
13 want to clean things up, I'm going to let him do that because  
14 he has an hour left on the record to do that.

15 **MR. RATLIFF:** Okay. Understood, Your Honor. Thank  
16 you.

17 **THE COURT:** Okay. The Google group, the emails, let  
18 me ask this question first, Mr. Oot. I guess the opening  
19 premise of your argument was that you all recently received  
20 these documents from the PSC, from Ms. Menzies. She received  
21 them from this Ms. Kirby, I guess, or from some nonparty to the  
22 litigation. I know that we have a whole other issue that you  
23 raised, which is: What else is out there and why don't we have  
24 it?

25 Ms. Menzies did raise an issue in her letter

04:32

1 that I want to ask you first, which is you should have had  
2 these two documents because they were sent to multiple  
3 recipients at Sanofi. So the fact that you didn't have them or  
4 didn't know you have them, I guess, is an issue with regards to  
5 how you all are getting documents from your clients.

6 Ms. Menzies raised the argument or the issue that you all  
7 should have produced those documents to them in the course of  
8 your producing ESI. What's the status there?

9 **MR. OOT:** If there was a legal hold trigger at the  
10 time -- I mean, there are a lot of different factors that could  
11 go into whether or not those documents would exist at Sanofi or  
12 not. Just as we were arguing on the call about the redactions  
13 on the document that relate to this email, it's not 100 percent  
14 that there was a legal hold obligation -- there was no legal  
15 hold obligation in this case related to that communication.

16 So if we pivot to the whole legal hold issue  
17 generally, does a call from a customer service center or an  
18 email into a customer complaint center count as something for a  
19 legal hold trigger? I think the case law is in our favor there  
20 that it doesn't.

21 I dealt with this issue a lot when I was at  
22 Verizon. We had a lot of people calling and saying, "I'm going  
23 to get my lawyer. I'm going to sue you." If we issued a  
24 litigation hold every time we did that, we wouldn't have --

25 **THE COURT:** I don't want to get down into that

04:34

1 particular tar pit right now, but I thought it was a legitimate  
2 question. If that's the answer, then that's the answer. If  
3 that's an argument for another day, that's fine.

4           The larger question is what to do about what may  
5 still exist out there. Now, I have read what both of y'all  
6 gave me. I have done some research on my own. My  
7 understanding of the way this works is that these are simply  
8 people that are in a group marshaled, I guess, by Google or  
9 some function that Google provides to communicate with each  
10 other by email, and so the resulting information and documents  
11 are emails. That's all I have seen.

12           **MR. OOT:** May I approach, Your Honor?

13           **THE COURT:** Yes.

14           **MR. OOT:** This might be helpful. These are  
15 screenshots of Google groups.

16           So when you go to the Taxotears Google group  
17 site, there is an administrative password and log-in in order  
18 to get there. Obviously we can't see this information, but as  
19 we put in our papers, in footnote 9 in particular, there are  
20 plaintiffs in this case that have said that they are members.  
21 So what I thought to do is go to my Google groups and show you  
22 how Google Groups works from this perspective.

23           The first page you log in, you see your groups  
24 that you are members of. Mine are Drug and Device Law, Sedona  
25 Conference, Brainstorming Group on Cloud Computing. You click

04:36

1 through. The next one just shows what one of those posts looks  
2 like. The following page after that is the archive of messages  
3 inside the Google group that is retained.

4           You will see that I didn't write any of those  
5 messages. Those are messages from other people that are  
6 retained inside the archive of Google Groups, so it's akin  
7 to -- I don't know if, Your Honor, you remember the old Usenet  
8 or bulletin board system. That's really what Google Groups is.

9           So in addition to the actual content of these  
10 messages, the final page is a list of noncontent information  
11 that lists what's the group name, what's the description of the  
12 group, what's the group email. You can see that you can get  
13 this information out via RSS feed, or real simple syndication,  
14 or alternatively Atom is another real simple syndication tool.  
15 You will see the number of members in this noncontent  
16 information, and you can see who can access it. This group is  
17 from 2009, so it was sometime ago that I joined the Sedona  
18 Conference group. You will see that there's a lot of  
19 noncontent information there.

20           So what we are asking, Your Honor, is that -- we  
21 have seen a pattern here. There is a pattern that we are not  
22 getting this highly relevant information, and it's something  
23 that I believe that the PSC has access to. We know that the  
24 PSC has access to at least two of the messages, as we found out  
25 on the call with you last week, Your Honor, but we would like

04:37

1 access to it or we would like it produced to us.

2 So what we are proposing is kind of threefold.  
3 First, we are asking that the Court issue an order for  
4 preservation to Google.

5 **THE COURT:** I'm not doing that.

6 **MR. OOT:** Okay.

7 **THE COURT:** The provision you cited to me is part of  
8 the code of criminal procedure. I'm not doing that.

9 **MR. OOT:** I cited to you the Stored Communications  
10 Act.

11 **THE COURT:** 18 U.S.C. § 2703 --

12 **MR. OOT:** § 2703(f).

13 **THE COURT:** -- is found in the crimes section of the  
14 criminal code.

15 **MR. OOT:** It's the Stored Communications Act,  
16 Your Honor, and the other communications privacy --

17 **THE COURT:** As far as I know, you are not an attorney  
18 for the government. You are not in a position to ask me to  
19 issue that order.

20 **MR. OOT:** That is --

21 **THE COURT:** I'm not going to do it on my own.

22 **MR. OOT:** I'm not asking for a § 2703(f) letter,  
23 Your Honor. What I am asking for is a preservation order. So  
24 what that statute does say is a government agency can issue  
25 that § 2703(f) letter without a court order until a court can



04:38

1 issue the order for that production. So the reason that I put  
2 that in there is to -- I tell the Court that we are not a  
3 government agency, and § 2703 also states that a Rule 45  
4 subpoena to Google is not good enough. So the *FTC* case, the  
5 *Netscape* case, those are all cases that state that if we run to  
6 Google and issue just a plain old-fashioned Rule 45 subpoena,  
7 they would tell us to go pound salt.

8           So we have a serious concern about the  
9 preservation of this material. Ms. Menzies has already said to  
10 the Court that this doesn't exist and it only exists in email.  
11 Well, that's one place that it can exist. So we have a concern  
12 that if the archive is not there, where is it?

13           So the next point of that would be we would like  
14 the access to the noncontent information. We would like to  
15 know who are the members of this group. So if we had access to  
16 the members of the group and that archive is not there, as  
17 Ms. Menzies has already said, we could go and issue third-party  
18 subpoenas again to all of the members of the group. So what  
19 our real concern is is that --

20           **THE COURT:** Why are you interested in issuing  
21 subpoenas to the nonparty members?

22           **MR. OOT:** Because this content, Your Honor -- and  
23 what we put in our papers too -- is that it's highly relevant.

24           **THE COURT:** I'm focused on why aren't we talking  
25 about parties. How many plaintiffs are there in this case?

04:39

1           **MR. RATLIFF:** Your Honor, I can address it. How many  
2 plaintiffs are in this case or as part of this Google group?

3           **THE COURT:** Altogether. Well, you don't know the  
4 answer to the second one.

5           **MR. RATLIFF:** Well, we know that there are at least,  
6 I think, 30 to 35 plaintiffs who have disclosed that they are a  
7 member of this Google group. I think we need to step back and  
8 look at this in a little more simple fashion.

9                       This is a Google group that was set up directly  
10 related to women who believed that Taxotere had caused their  
11 permanent hair loss.

12           **THE COURT:** I know that.

13           **MR. RATLIFF:** There have been productions to us,  
14 snapshot productions from some plaintiffs. What we have seen  
15 from those snapshots is highly relevant, highly probative  
16 information: people talking about the alternative causes to  
17 their hair loss; people talking about their diagnosis for their  
18 hair loss; people talking about when they knew -- when they  
19 knew -- that their hair loss had started and when they believed  
20 it to be permanent. What we are seeing is just a snapshot of  
21 that.

22                       So as part of this group, what we are getting is  
23 the emails that this group distributes out to the members. But  
24 what exists and what we don't have visibility into are all of  
25 the posts -- the message board, if you will -- of everything

04:40

1 that is in this group that people have been talking about, what  
2 they say about these issues, what our plaintiffs may have been  
3 reviewing or at least could have reviewed, which would go to  
4 summary judgment motions, which would go to depositions.

5 The part that strikes me as the fundamental  
6 imbalance is that a plaintiff, a client of some of the  
7 attorneys in this room, could go access this group, look  
8 through it, provide to their attorneys what they find  
9 interesting that their attorneys may want to use, and because  
10 it is a private group we have zero visibility in there.

11 So the plaintiffs and the PSC can access this  
12 information at will. We have no ability to access this  
13 information at all. All it would take is for one plaintiff to  
14 go in, access it, download what exists in terms of the  
15 historical posts about Taxotere, about permanent hair loss,  
16 about potential alternative causes, what is being investigated.

17 We think there is a reason that the plaintiffs  
18 do not want this information disclosed; because based on the  
19 little bit of ESI that's been produced to us so far from this,  
20 it is game-changing. It's the kind of information that will  
21 totally shift the scales of this particular litigation.

22 **THE COURT:** Particularly with the plaintiff, why  
23 isn't the approach to determine every plaintiff in this  
24 litigation that's a member of this group and request them to  
25 download that information that pertains to them?

04:42

1           **MR. RATLIFF:** I think there's kind of two parts to  
2 that, Your Honor, which is they should be doing that anyway.

3           **THE COURT:** They should.

4           **MR. RATLIFF:** We will make that request again, that  
5 we don't want just when they get an email in their Gmail; we  
6 want them to go into the actual portal and pull this  
7 information. If they are only getting what pertains to them,  
8 what we are not getting is everything that these people could  
9 review that maybe were posted by other individuals. We would  
10 be happy to have this submitted, have it produced in full to  
11 us, or to the Court, or to a third party to review to see if  
12 this is information that should be turned over to us.

13                   My concern is, for example, Ms. Menzies said,  
14 "Well, we got this information from a woman named Shirley  
15 Ledlie, who lives in France." That was the nonparty. From  
16 what we have seen, Shirley Ledlie is a prodigious poster on  
17 this Taxotears user group. In fact, upon information and  
18 belief, I believe she is the one who started this user group  
19 and is the owner of this user group.

20                   So if Ms. Ledlie, who lives in France, who we  
21 have no access to, we can't issue the normal type of  
22 third-party discovery to to obtain this -- if she can funnel  
23 information to the PSC that they find beneficial to their  
24 particular legal issues, the litigation hold and the sort of  
25 ongoing drumbeat on spoliation, but we don't have access to the

04:43

1 99 percent of other information that is damaging to their case,  
2 there is a fundamental imbalance. It would be an easy, easy  
3 solution for them to do, but there's a reason they don't want  
4 this information disclosed.

5 So, yes, there may be 30 plaintiffs. Those are  
6 the ones who have disclosed. We have had plaintiffs who in  
7 their 71A disclosure said, "I went and I looked and I searched  
8 these posts." So while Ms. Menzies says it's impossible, this  
9 doesn't exist, clearly the plaintiffs in this litigation are  
10 going to this user group and looking through the posts. So we  
11 are at a point now where I think we deserve and are entitled to  
12 the corpus of information that exists inside this user group.

13 I think the point Mr. Oot was making about a  
14 preservation order is this. If there's no decision made  
15 today -- and you may not. You may deny it. I understand that.  
16 These nonparties then can go back in there. Ms. Ledlie can go  
17 back in there, if she is the owner of this group, and start  
18 deleting things, and we have zero recourse.

19 Maybe we get a ruling from you today, maybe we  
20 get a ruling from Judge Engelhardt in two months, and we find  
21 out that information from a nonparty or a nonparty had gone  
22 through and cleaned up what they know now is damaging, damaging  
23 information about the nature of their claims --

24 **THE COURT:** Let me here from Ms. Menzies.

25 **MR. OOT:** Your Honor, just very quickly, Judge Roby

04:45

1 has ruled on this very issue.

2 **THE COURT:** Look, in the future, if you all want to  
3 hand me things, hand them to me by email two days before the  
4 hearing.

5 **MR. OOT:** The reason I'm giving it to you now,  
6 Your Honor, is Ms. Menzies said that this information doesn't  
7 exist. That struck me to actually research the information  
8 that I did just last night to find out how Google Groups works  
9 to see if that information is there.

10 To answer your earlier question, Your Honor, why  
11 we would seek access to all of the members of this group and  
12 potentially third parties is to remediate that. So if  
13 Ms. Menzies is right and this archive is not there, the only  
14 place that we are going to be able to remediate this from are  
15 the emails that exist in the individual accounts from both  
16 plaintiffs and potentially third parties. So we want access to  
17 the archive. If the archive is not there, the next step would  
18 be to find out where we can find the other information.

19 **MS. MENZIES:** Karen Menzies for the plaintiffs.

20 I think, Your Honor, the entire premise of this  
21 argument is based on inaccurate accusations of what we have or  
22 have access to.

23 **THE COURT:** I know what you all have. I know what  
24 you all have given them. I'm really fed up with the personal  
25 *ad hominem* attacks that are going on in this case between

04:46

1 lawyers and it's going to stop. I'm not going to speak to it  
2 beyond to tell you all that it's going to stop. If the lawyers  
3 in this case can't figure out a way to litigate it  
4 professionally, we will find other lawyers who can.

5 I don't want to read any more personal attacks  
6 among the lawyers in this case. You are going to keep that to  
7 yourselves. What I'm interested in is access to this  
8 information. That's what I'm interested in.

9 **MS. MENZIES:** Thank you, Your Honor, and I appreciate  
10 what you just said.

11 **THE COURT:** Well, it's gone both ways. I'm not  
12 speaking just to one side right now. This is a two-way street,  
13 and it has been for a long time. I'm talking to everybody in  
14 the case. It needs to stop.

15 Go ahead.

16 **MS. MENZIES:** So the fundamental misunderstanding is  
17 that this is postings or some way that we can go to a database  
18 and obtain all this and figure out who was all in it.

19 There is an avenue for counsel to obtain  
20 discovery from Ms. Ledlie. Even though she is a third party,  
21 we named her as a witness, as we told you in our paper. They  
22 can notice her deposition, and they can request everything she  
23 has. I have talked to her about that. We understand that.

24 What we can't do and what she can't do -- and I  
25 have verified -- is go to some Google account and look at all

04:47

1 the -- they are not done like posting. As I explained in our  
2 paper, they get a notice that somebody sent an email through  
3 Taxotears in their personal email. That's it. I have asked  
4 very thoroughly --

5 **THE COURT:** They can go read that post?

6 **MS. MENZIES:** Yes. And the ones in the past -- so  
7 they read it as they go. Then ones from the past, if they kept  
8 their email address, they may be able to find it. Ms. Ledlie  
9 has an old Hotmail account.

10 **THE COURT:** I'm looking at what Mr. Oot just showed  
11 me he pulled up on his own group. There's a list of historical  
12 email exchanges that don't include him. He has printed one out  
13 and that's what I'm looking at.

14 **MS. MENZIES:** This is the first time I have seen  
15 this. I have no idea. I have gone to Ms. Ledlie and we have  
16 gone to our plaintiffs to ask them if they can access this  
17 stuff and how it's set up.

18 Now, I can explain to the Court that it is not  
19 Ms. Ledlie or Ms. Kirby who set up the Google group. It's  
20 another third party from another country. I have never been in  
21 touch with that person, but that's my understanding. I have no  
22 idea if she is able to do it, but I can tell you my  
23 understanding from Ms. Ledlie is that she is off of the  
24 Taxotears and, in fact, the other woman is as well. So if that  
25 woman could do it, because she was the one vetting the women



04:49

1 into the group, that's a whole other issue. I don't even know  
2 where this woman is, but -- or you go to Google.

3 Let me go back to the proper avenue of what we  
4 said. As far as what our plaintiffs have done -- I have looked  
5 at all the ones -- at the plaintiffs in the footnotes in  
6 defendants' submission. There's 13 of them that they list.  
7 Only two of them even were diagnosed with breast cancer and  
8 took Taxotere in a timeframe where they would have access to  
9 those 2010 emails.

10 I don't know when they joined the Taxotears  
11 group, but this is all in the PFS. I got it from the PFS.  
12 Most of these women that they are talking about, they say when  
13 they joined the group. Some of them, even though they were  
14 diagnosed back in 2007, they joined the Taxotears group in  
15 2016. That point is that --

16 **THE COURT:** The PFS requires every plaintiff to  
17 disclose whether they are a member of a group like this.

18 **MS. MENZIES:** Correct. They are answering those  
19 questions, and that's where I got this information. I don't  
20 represent any of these women, so I went to Centrality and  
21 looked at their PFS to see if they are responding now.

22 If counsel has concerns -- now, remember, they  
23 are required to do, under PTO 71, a review of their ESI, a  
24 reasonable inquiry on what they can find and get and produce.  
25 That's what they have been doing. If the defendants have

04:50

1 concerns about deficiencies about what they have produced,  
2 there's procedures for them to do that, but I don't have access  
3 to all that stuff.

4 Mr. Oot says in his footnote 11, "We are not  
5 asking the PSC to provide documents they have obtained through  
6 their investigation." Yes, he is. This is information --

7 **THE COURT:** He is asking for an entirely different  
8 investigation is what he is asking for.

9 **MS. MENZIES:** It's not even within our technical  
10 capabilities. Maybe he could go to Google and get it.

11 **THE COURT:** You probably can't answer this question,  
12 but maybe you can. Can you tell me if there's one lawyer for  
13 one plaintiff in this case that's got access to this group? Is  
14 there a lawyer involved in this litigation that is representing  
15 any plaintiff anywhere in this case that has access to this  
16 group as a member?

17 **MS. MENZIES:** As a current member --

18 **THE COURT:** Someone who can go right in, like Mr. Oot  
19 went into his group, and access all this information.

20 **MS. MENZIES:** That's two different questions. Are  
21 there members who are plaintiffs and they are currently members  
22 of Taxotears? Yes.

23 **THE COURT:** No. I'm asking about lawyers, their  
24 lawyers.

25 **MS. MENZIES:** My understanding from the plaintiffs

04:51

1 and Ms. Ledlie -- when I was trying to address whether we could  
2 even do this, my understanding is there is no place to go find  
3 posts or past emails unless you happen to have them in your  
4 email already, which is being collected through PTO 71.

5 **THE COURT:** You are not answering my question.

6 **MS. MENZIES:** Okay.

7 **THE COURT:** There are how many members that you all  
8 are aware of --

9 **MS. MENZIES:** I have no idea.

10 **THE COURT:** -- from the PFS that are plaintiffs?

11 **MS. MENZIES:** I would have to look at 8,000 claims.  
12 I have no idea.

13 **THE COURT:** No, the ones you just said are in the  
14 footnote, 13.

15 **MS. MENZIES:** So of this group --

16 **THE COURT:** They have access to this group. They are  
17 members of the group.

18 **MS. MENZIES:** Apparently they added these in because  
19 they understand from their PFS that they said they were members  
20 of the group.

21 **THE COURT:** What I want to find out is if there are  
22 any lawyers on the plaintiffs' side of this case who have  
23 access to this group in the same fashion that any of these  
24 ladies have access to this group, who have inserted themselves  
25 into this group. That's what I want to know.

04:52

1           **MS. MENZIES:** If I understand what you are asking,  
2 access, going to their plaintiffs and getting their old emails,  
3 yes.

4           **THE COURT:** No, no.

5           **MS. MENZIES:** Going to a Google group --

6           **THE COURT:** Yes.

7           **MS. MENZIES:** -- and a database and posting, no. As  
8 far as we understand from all of our research, they --

9           **THE COURT:** I don't know that -- can you possibly  
10 know that?

11          **MS. MENZIES:** Okay.

12          **MR. COFFIN:** I think what you are asking, Your Honor,  
13 is do we know if any lawyers who are in this litigation --

14          **THE COURT:** Yes.

15          **MR. COFFIN:** -- representing plaintiffs, if the  
16 lawyers themselves have become members of the Taxotears group.

17          **THE COURT:** Yes.

18          **MS. MENZIES:** Oh.

19          **MR. COFFIN:** I have no clue. I can tell you this.

20          **THE COURT:** I want to know. I want to find out.

21          **MR. COFFIN:** Well, Your Honor, there are -- I don't  
22 know -- 100 different firms or 150.

23          **THE COURT:** How do you communicate with those people?

24          **MR. COFFIN:** Through liaison counsel. We send  
25 messages out to them.

04:53

1           **THE COURT:** Well, that's a message that's going to  
2 get sent.

3           **MR. COFFIN:** Okay.

4           **THE COURT:** If that's the case, I think it changes  
5 how I approach this.

6           **MR. COFFIN:** Well, okay. I'm not sure where you are  
7 going there, but we do have --

8           **THE COURT:** Because I keep hearing about everything  
9 that can't be done by the lawyers: we can't go back; we can't  
10 look for this; we can't collect this; we can't do this. I  
11 don't know if it's because you all aren't members or because  
12 you rely -- I don't know. I'm trying to find out what -- when  
13 I say "you," I mean as attorneys who are not members of this  
14 group, what your relative access to the information that can be  
15 obtained by members of the group is.

16           **MS. MENZIES:** I can't speak for 150 lawyers and if  
17 anybody joined the group, but what I can tell you is Shirley  
18 Ledlie and Pam Kirby set up the support group that eventually  
19 became the Google group. A third party set it up as a Google  
20 group, and my understanding is she was the one who would vet  
21 the women who came in.

22                   I grilled Ms. Ledlie to find out, for  
23 preparation of today, "Can you go back on any website, any  
24 database, anything, as a member of this Taxotears group, and  
25 find previous posts?"

04:54

1 She said, "I have no idea how I would do that."

2 **THE COURT:** Mr. Oot knows how to do it, apparently,  
3 by what he showed me just now.

4 **MS. MENZIES:** How do we even know if that's the same  
5 type of Google group?

6 **THE COURT:** I don't. I'm trying to figure it out.

7 **MR. COFFIN:** Your Honor, can I address one thing  
8 here?

9 **THE COURT:** Yes.

10 **MR. COFFIN:** There is a mechanism for plaintiffs to  
11 answer discovery in this case. It's called the Plaintiff Fact  
12 Sheet. It's incredibly detailed. On the tail of that is  
13 PTO 71A, an ESI order that is incredibly detailed. There is a  
14 certification that Judge Engelhardt has required. These people  
15 are looking through their ESI like I have never seen required  
16 in a case.

17 I think the process is in place to make sure  
18 that the discovery that they are seeking is coming out, either  
19 through the PFS or through the ESI order. With respect, I  
20 can't imagine another layer of discovery on the plaintiffs when  
21 those two documents or certifications are in place. They  
22 should be going to each individual plaintiff.

23 **MR. RATLIFF:** Your Honor, on behalf of Sanofi, we  
24 don't know -- I think one of the very first pages that Mr. Oot  
25 gave you is the link that goes into that Google group. We

04:56

1 don't have access to it, so we have no ability to test the  
2 validity of Ms. Menzies' claims or Ms. Ledlie's claims, what's  
3 in there, what posts exist, what can be searched, what cannot  
4 be searched.

5           What I do know, from looking at what Google  
6 represents, is that it's a way to organize your favorites and  
7 folders and posts. We have one plaintiff who said, "I went to  
8 Taxotears and I searched the online posts." There is a simple  
9 solution. Let's just test the veracity and find out what  
10 exists inside of this Google group. Maybe I'm wrong. Maybe  
11 there's 15 posts and that's it, and we have an answer to our  
12 question.

13           **THE COURT:** How do you propose to test the veracity  
14 of what we are being told?

15           **MR. RATLIFF:** Why don't we have one of the  
16 plaintiffs -- I don't know if any plaintiffs' counsel have  
17 access to it. Their clients certainly have access to it. They  
18 certainly instructed their clients -- or I would hope they have  
19 instructed their clients -- to go to this user group and find  
20 out what's in there so we are not talking about this in the  
21 dark.

22           I think the issue, as it relates to what  
23 Mr. Coffin raised, it's not so much about what an individual  
24 plaintiff posted; it's what is in the corpus of information  
25 that they would have reviewed.

04:57

1           **THE COURT:** I think that's a bridge too far. You are  
2 talking about what could be stream of consciousness blog posts  
3 or thoughts from some person that nobody has ever met before  
4 and has never seen. That's too much.

5           You have nonparties that are either blogging or  
6 sending emails. God knows what's in them. To search for that  
7 kind of information that's probably not relevant -- and if it  
8 is, it's in all likelihood disproportionate to the needs of  
9 this case -- I'm just not going there. To start subpoenaing  
10 third parties?

11           **MR. RATLIFF:** Well, see, I would like to avoid the  
12 subpoena of third parties if we can to see what is in this type  
13 of information, because it gets back to sort of the issue or  
14 point I was talking about. If Ms. Ledlie has access to this  
15 and she can provide plaintiffs' counsel information she thinks  
16 is helpful to their litigation but not all the other  
17 information that's in there, it puts us at a strategic  
18 disadvantage.

19           So I think the solution that Your Honor  
20 suggested is at least a first step to this issue because this  
21 is potentially a massive amount of information that is  
22 directly -- not tangentially. It's not a breast cancer  
23 survivors network. This is a group that is dedicated to people  
24 who believe Taxotere caused them to have permanent hair loss.  
25 That is, I think, what you suggested --



04:58

1           **THE COURT:** I'm not sure that I agree with that. You  
2 don't know what every one of these people were thinking when  
3 they joined this group.

4           **MR. RATLIFF:** You're right. I'm just going on what  
5 the title is and what the organization represents that they  
6 stand for.

7           **MR. OOT:** Your Honor, may I propose a technical  
8 solution?

9           **THE COURT:** Uh-huh.

10          **MR. OOT:** So, as you know, I used to be at the  
11 Securities and Exchange Commission. We dealt with this type of  
12 issue all the time, specifically in front of Judge Oetken,  
13 where he ordered our adversaries in the case to consent to the  
14 disclosure of that material to a taint team. We could do a  
15 very similar type of thing in this case because we know that  
16 there are plaintiffs in this case that have access to the full  
17 archive; not just their posts, but the full archive.

18                 So if we are concerned about nonresponsiveness  
19 or privacy or things that are not relevant to this case, the  
20 Court could order those plaintiffs that are participating in  
21 this case to consent to that disclosure from Google to some  
22 third party, some taint team. That could be an approach to  
23 accomplish the goals that I think Your Honor is thinking about,  
24 avoiding the production of irrelevant or nonresponsive  
25 information, and then also provides us with the ability to find

05:00

1 out what information is there.

2           And then secondly, the noncontact information,  
3 Your Honor, I don't think that there's anything that could be  
4 irrelevant or nonresponsive or secret about the noncontact  
5 information. It's very basic. It's numbers, subscribers.  
6 It's the users in the group. It's the title of the group.  
7 It's really, really baseline things, including the account  
8 holder information. Under the Electronic Communications  
9 Privacy Act, it's something that we would be entitled to if we  
10 were a federal regulator, but it's something that you can order  
11 as noncontent information and Google could provide to us.

12           **MS. MENZIES:** So they want us to do their third-party  
13 investigation for them. Your Honor, they have --

14           **THE COURT:** Hold on a second.

15           **MS. MENZIES:** Your Honor, they have Shirley Ledlie.

16           **THE COURT:** They want to conduct an investigation  
17 that they can't conduct without a procedure similar to the one  
18 that Mr. Oot just suggested. They know that there's  
19 information out there because there are individual plaintiffs  
20 who have testified that they are members of the group and have  
21 access to certain types of information that they are looking  
22 for. They can't get it. You all are putting up a fight.  
23 That's what this is about.

24           **MS. MENZIES:** We are not putting up a fight,  
25 Your Honor.

05:01

1           **THE COURT:** Well, sure you are.

2           **MS. MENZIES:** We are responding to the discovery on  
3 every one of these women. They are admitting that they are  
4 members of the Taxotears group. They are producing the emails  
5 that they have, that they are able to produce through the very  
6 onerous PTO 71 for every one of these women.

7           **THE COURT:** Look, I'm a humble magistrate judge. I  
8 am not an expert in these matters. I have one set of lawyers  
9 telling me this information is accessible to any member of the  
10 group. I have another set of lawyers telling me no, it's not.

11           **MS. MENZIES:** And I'm talking to the members.

12           **THE COURT:** How do I answer that? How do I get to  
13 the bottom of what the truth is?

14           **MS. MENZIES:** What I would suggest, Your Honor, is  
15 that they are trying to avoid discovery against the originator  
16 of the support group, Shirley Ledlie. We have her on our  
17 witness list. We will produce her even though she is in  
18 France. We will produce the documents. They can request  
19 everything she has about the Taxotears group. I can tell you  
20 if anybody has a large number of emails left over that started  
21 back in 2008, 2009, it's going to be her. They have a right to  
22 do discovery against her because we have disclosed her as a  
23 witness.

24                           Now, for them to say to me, "Well, we don't want  
25 to depose her. We want to steer clear of that" --

05:02

1           **THE COURT:** I haven't heard that.

2           **MS. MENZIES:** Mr. Ratliff just said that.

3           **THE COURT:** No, I didn't hear that.

4                     Maybe you did.

5           **MR. RATLIFF:** I have never had this offer made to me  
6 until today.

7           **MS. MENZIES:** She is on the witness list since  
8 March 16.

9           **THE COURT:** Before I start ordering special masters  
10 or whatever it is that I would order, it would certainly be  
11 appropriate for you all to depose this person.

12           **MR. OOT:** If we can have a consent form for access to  
13 the Google group too, that would help us get --

14           **MS. MENZIES:** We need to brief that issue,  
15 Your Honor.

16           **THE COURT:** Yes, I think you do.

17                     Here is what we are going to do. You already  
18 owe me something in a week. So on the same deadline, on  
19 May 2 -- and I guess I have to put a time, too, so that we are  
20 not jockeying to see who files first and who can wait. Let's  
21 say by 5:00, and you all can send me emails 30 seconds apart.  
22 I want to know -- actually, let's do this.

23                     By this Friday, Mr. Oot is going to communicate  
24 with Ms. Menzies as to what it is specifically that you are  
25 proposing. Then I will give you all until next Friday to brief

05:03

1 it. I don't want you briefing in the dark. I want to know  
2 exactly what the specific proposal is, and then I will give  
3 everybody a week to support it or oppose it, as the case may  
4 be.

5 **MR. RATLIFF:** We can do that, Your Honor.

6 **THE COURT:** I will consider some arrangement using  
7 some neutral third party, but I'm not convinced that I'm going  
8 to do it. I'm not convinced, if I do do it, that I'm going to  
9 do it before we have the benefit of the testimony of the woman  
10 who apparently started this whole thing. It's somebody who is  
11 clearly going to be in a position to answer a number of  
12 questions that you all are going to have and that I will have.

13 In all likelihood, that's going to be step  
14 number one, because I don't know if this is a mountain or a  
15 molehill. I don't want to go too far down the road arguing  
16 about something that's ultimately not that big of a deal. You  
17 may be able to get access to what you need by talking to  
18 Ms. Ledlie.

19 **MS. MENZIES:** Yes, Your Honor.

20 **MR. RATLIFF:** Thank you, Your Honor.

21 **MS. MENZIES:** I would like to make a statement for  
22 the record if I could, please. Even after you just admonished  
23 us not to do personal attacks, counsel for Sanofi said that he  
24 doesn't have any way to test my veracity, and I also have a --

25 **THE COURT:** That's not a personal attack.

05:05

1           **MS. MENZIES:** Your Honor, if I may just make a  
2 statement for the record because counsel has inserted  
3 allegations of unethical behavior by me against the rules of  
4 professional conduct in their submission yesterday. They have  
5 put that to a federal court. I take that very seriously.

6           **THE COURT:** So do I.

7           **MS. MENZIES:** I have been doing this for 20 years and  
8 never been accused of that in the past. If Mr. Oot has a  
9 reason to contest my ethical behavior, he should take a  
10 complaint to the bar so I have an appropriate forum to respond  
11 to it. I will leave it at that.

12           **THE COURT:** Well, let me say this. I don't have any  
13 concerns about the ethics of any of the lawyers in this case.  
14 I am beginning to have concerns about the professionalism of  
15 some of the lawyers in this case. I'm not going to continue to  
16 endure some of what has been going on. I just got finished  
17 telling you that. This is the last time that I'm going to fire  
18 a shot across anybody's bow. The next time there will be  
19 consequences. You all should be much better than this.

20                   I understand how you took that comment. I did  
21 not take it that way. The way I took it is that the  
22 information you are being provided, as to how to deal with this  
23 particular platform, is coming from other people. You don't  
24 hold yourself out to be an expert in Google Groups. I think  
25 that what they are concerned about is -- I think they have a

05:06

1 different experience. It's not, I don't think, in this  
2 situation about whether the lawyers are trying to hide  
3 something. It's what does the technology allow. That's what  
4 I'm interested in getting to the bottom of.

5 **MR. OOT:** Your Honor, I will apologize for my comment  
6 to Ms. Menzies, but it had nothing to do with the Google group.  
7 It had to do with a submission to Your Honor that we didn't  
8 have the opportunity to respond to.

9 I apologize to Ms. Menzies for referencing the  
10 Northern District of California rules, but it really took us  
11 aside where we didn't have an opportunity to file a very  
12 similar document. We weren't copied on the message right after  
13 I got off the phone with her. We were --

14 **THE COURT:** I'm going to say this for the last time.  
15 Emails that are late, those are my problems. If I have a  
16 problem with that, you all will know it. I don't need to just  
17 keep being re-fed everything that I'm trying to talk to y'all  
18 about. I know what the rules are. I know what the parameters  
19 are of how we are running these conferences.

20 I don't think I've been shy about telling you  
21 all if I have a problem, so I don't need to be reminded.  
22 Let's, as they say, keep it in between the lines. All right?  
23 I don't want to have to go down this road anymore. Enough is  
24 enough.

25 **MR. COFFIN:** Your Honor, on the briefs you just

05:08

1 mentioned, five pages each side?

2 **THE COURT:** Yes, let's limit it to five pages. On  
3 the Earnest brief, we are going to push that deadline to Friday  
4 at 5:00 as well so I'm getting everything at once.

5 **MR. COFFIN:** Okay.

6 **THE COURT:** The next conference is May 10 at 10:00  
7 a.m.

8 **MR. COFFIN:** Is that up for discussion? I think I'm  
9 fine with it.

10 **THE COURT:** I'm inclined to say no because once I  
11 open it for discussion, then we are never going to get -- this  
12 happened last time.

13 **MR. COFFIN:** It's just a long pause. I just wanted  
14 to make sure.

15 **MR. MOORE:** DRI's drug and medical device conference  
16 is that day in New York. A lot of us are already committed to  
17 the meeting in New York that day.

18 **THE COURT:** Okay. That's a fair point. I want to do  
19 it that week. How about 4:00 on the 8th?

20 **MR. MICELI:** Is that Monday?

21 **THE COURT:** It's Tuesday.

22 **MR. RATLIFF:** Your Honor, I will be here available  
23 for Sanofi.

24 **THE COURT:** Let's do 4:00 on the 8th.

25 **MR. COFFIN:** We will have somebody here.



05:09

1           **THE COURT:** I want some of y'all to be here because  
2 we are going to be addressing the issues that y'all are  
3 briefing.

4           **MR. COFFIN:** Absolutely, Your Honor.

5           **THE COURT:** I really don't want to do that over the  
6 phone.

7           **MR. RATLIFF:** Could I respectfully make one  
8 scheduling suggestion?

9           **THE COURT:** Uh-huh.

10          **MR. RATLIFF:** One of the things -- I may be speaking  
11 somewhat on behalf of the plaintiffs too, but something that I  
12 have seen that has occurred is -- I understand the Court's  
13 interest in having these conferences every two weeks to move  
14 the ball along, but I think one of the things that I have  
15 noticed that is happening that I think may be frustrating the  
16 Court is we leave these conferences essentially on a Wednesday  
17 or a Thursday, and our submission for the next conference is  
18 due by that next Friday, which means that the parties -- I  
19 would assume plaintiffs likewise -- are already starting to  
20 work on their next submissions essentially two or three days  
21 later. I sometimes don't know if it allows for breathing room  
22 to maybe actually have meaningful meet-and-confers to take some  
23 of these issues off your plate. That's a practical --

24          **THE COURT:** What I would suggest is that we go back  
25 to the way that we started. I haven't found a period of time

05:11

1 recently where I thought it was okay not to have one of these  
2 hearings because of how they are going. So what I would  
3 suggest is that you all seriously discuss whether we need to  
4 have a hearing on that day, a week later, two weeks later, but  
5 that's up to you all.

6 **MR. RATLIFF:** Understood, Your Honor.

7 **THE COURT:** Because every two weeks I'm getting  
8 submissions. People are coming in here and arguing about  
9 things, so I assume that means they are important. Certainly  
10 when the schedule was what it was -- I don't know that it's  
11 been changed yet, but it's going to be changed -- I think that  
12 was more of a problem. If breathing room is what you think you  
13 all need to try to work some of these things out, I think maybe  
14 that you have some of that now, and you all can let me know.

15 We are going to schedule it for that day. I  
16 don't need to have you all here to make decisions, necessarily,  
17 on those issues; but if we are going to meet anyway, we are  
18 going to talk about those issues since you all are here.

19 **MR. RATLIFF:** Absolutely, Your Honor. I didn't  
20 necessarily mean for the May 8 date. I just meant going  
21 forward. I'm not trying to interfere with how the Court wants  
22 to run the courtroom. It was just something that I have  
23 noticed and I think our team has noticed over the past couple  
24 of weeks is that there's sort of a knee-jerk reaction, "Well,  
25 we have to get started on the next ones."



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**CERTIFICATE**

I, Toni Doyle Tusa, CCR, FCRR, Official Court Reporter for the United States District Court, Eastern District of Louisiana, certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of proceedings in the above-entitled matter.

/s/ Toni Doyle Tusa  
Toni Doyle Tusa, CCR, FCRR  
Official Court Reporter