

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: TAXOTERE (DOCETAXEL) * 16-MD-2740
PRODUCTS LIABILITY LITIGATION *
* Section N
*
Relates to: All Cases * August 7, 2017
* * * * *

ORAL ARGUMENT BEFORE
THE HONORABLE MICHAEL B. NORTH
UNITED STATES MAGISTRATE JUDGE

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1 take roll call of the folks on the phone -- so we don't spend
2 20 minutes with everyone talking all over each other, I'm going
3 to list everyone that we have on the phone. If I miss you,
4 just speak up.

5 I have Chris Coffin.

6 **MR. COFFIN:** Yes, Your Honor.

7 **THE COURT:** Kathleen Kelly.

8 **MS. KELLY:** Yes.

9 **THE COURT:** Mara Gonzalez.

10 **MS. GONZALEZ:** Present.

11 **THE COURT:** Peter Rotoło.

12 **MR. ROTOLO:** Present.

13 **THE COURT:** Michael Suffern.

14 **MR. SUFFERN:** Present, Your Honor.

15 **THE COURT:** Brandon Cox.

16 **MR. COX:** Present.

17 **THE COURT:** Beth Toberman.

18 **MS. TOBERMAN:** Present.

19 **THE COURT:** Kyle Bachus.

20 **MR. BACHUS:** Present.

21 **THE COURT:** André Mora.

22 **MR. MORA:** Present.

23 **THE COURT:** Did I miss anyone?

24 **MR. MOORE:** Douglas Moore, Your Honor.

25 **THE COURT:** Okay. Douglas Moore. Gotcha.

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1 We are here on plaintiffs' motion to compel
2 responses to requests for production, at least part of it.
3 This matter has to some extent been bifurcated or trifurcated
4 by Judge Engelhardt in terms of what's before me and what's
5 before him. You all are well aware of other issues on French
6 law and the Hague Convention and the service issues that
7 Judge Engelhardt is presiding over. I'm presiding over
8 essentially the scope of the discovery requests that have been
9 propounded.

10 I don't think that we have had an actual motion
11 hearing yet in this case in my court. So just by way of
12 background, when I have these discovery hearings, having
13 reviewed everything that's been presented by way of the
14 pleadings and any other part of the record that I think is
15 appropriate, I usually come in with some sense of what I want
16 to do in the case and what I think the right result is.
17 Oftentimes I have questions for counsel, to either or both
18 sides. What I will usually do is rather than have an oral
19 argument in the traditional sense, I usually have questions.

20 In this case what I'm going to do is ask the
21 defendants if they have anything they want to add to the
22 arguments they have made that aren't in the pleadings because
23 the plaintiffs did file a reply memo. Then I'm going to tell
24 you all what I think about the motion and what I'm inclined to
25 do. Then I will give you all the opportunity to address those

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1 comments once I'm finished with that.

2 Mr. Ratliff, the first thing I want to ask is:
3 Do you have anything to add to the submissions? As I said, I
4 know the plaintiffs filed a reply memo. This is sort of an
5 opportunity for you to have the last word, so to speak.

6 **MR. RATLIFF:** Thank you, Your Honor. I will try to
7 keep it brief, at least as it relates to some of the issues
8 that they have raised in their reply memo.

9 One of the things that you will see throughout
10 their reply memo is the, I guess, complaint that the two French
11 defendants -- Sanofi S.A., the holding company, Aventis
12 Pharma S.A., another French company -- and the two U.S.
13 defendants have not responded to the request for production
14 where they mentioned the interrogatories on behalf of what they
15 called the predecessor entities.

16 Now, the predecessor entities, as defined in
17 their discovery, is essentially all 350 of the subsidiaries in
18 the Sanofi group of companies -- the parent companies, the
19 affiliate companies, the sister companies, former companies,
20 lawyers, officers, directors -- a fairly broad scope. In
21 support of that they say, well, any time a successor company is
22 the, quote, mere continuation of a predecessor company, their
23 liabilities and acts are relevant and can be imputed.

24 The one part that I feel like that Your Honor
25 needs to understand is there is a clear, logical misstep on

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1 their part which is, one, there is nothing in their complaint
2 that alleges that any of these successor companies are the mere
3 continuation of these undefined predecessor companies. So it's
4 not part of any of the allegations in the complaint.

5 The other part of this, Your Honor, is that
6 whether a successor company is a, quote, mere continuation of a
7 predecessor company -- same company, new path -- is a legal
8 determination that has to be made by the Court. That's exactly
9 what the case that they cited to -- I think it's the *Patin*
10 case -- says.

11 So it's not just an assumption. It's not just a
12 given that predecessor entities automatically -- their contacts
13 or their liabilities pass on to the successor entities. That's
14 a separate legal determination, a separate evidentiary legal
15 determination that has to be made. That part of it, I think,
16 is what takes us so far afield from really the issue at hand,
17 which is: Is Sanofi S.A., the global parent corporation in
18 France, the alter ego of these two U.S. defendants?

19 That is the allegations that are in their
20 complaint, paragraphs, I believe, 17 and 18. They don't allege
21 that the French entities sell or market in the U.S. They
22 allege that they are the alter egos of these two U.S.
23 defendants.

24 So that is one of my concerns, as I read through
25 the reply brief, that it seems to take what we think is already

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1 expansive discovery and expands it even further out beyond what
2 is sort of the narrow issue at hand.

3 Your Honor, one of the things that you said to
4 me at the last hearing that kind of stuck with me is you said,
5 "Mr. Ratliff" -- and I'm paraphrasing, Your Honor. You said,
6 "There may be things you don't think they are entitled to, but
7 there's probably some wiggle room." I think that goes both
8 ways, Your Honor.

9 There may be things they think are interesting,
10 things that in an ideal world they would like to have, but what
11 it really is is: What are the facts that are necessary?
12 That's the term the Fifth Circuit uses. That's the term the
13 Eastern District of Louisiana uses. What are the facts that
14 are necessary to rule upon the limited issue or the discrete
15 issue of personal jurisdiction as put forth by the plaintiffs?
16 So in that case it is are these entities -- Sanofi up here, the
17 foreign company, their two indirect U.S. subsidiaries -- are
18 they one and the same? So that is where I think the crux of
19 this dispute lies.

20 **THE COURT:** So the issue you are raising is an issue
21 that I did want to talk to you all about. That's the ultimate
22 question. To answer that question, certain facts are required,
23 the development of certain facts are required, and the
24 plaintiffs are entitled to develop some of those facts. So
25 what I'm wondering is the issue you have raised with the

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1 predecessor companies -- so whether a successor company is a
2 mere continuation is a legal determination, but it has to be
3 made on facts.

4 **MR. RATLIFF:** Correct.

5 **THE COURT:** And whether the successor corporation is
6 the mere continuation of a predecessor may be relevant in this
7 case if the answer to that question is "yes" and the
8 predecessor company had sufficient relationships here. Then
9 that's relevant to the ultimate determination of whether
10 there's personal jurisdiction over the French defendants in
11 this case.

12 How is the legal question of whether the
13 successor is the mere continuation of the predecessor answered
14 without any information from the or a predecessor company?
15 That's Part 1 of the question. Part 2 is I think the answer is
16 they are entitled to some information, but how do we reasonably
17 limit the scope of that request?

18 **MR. RATLIFF:** I think how you limit the scope of that
19 request -- well, let me step back a little bit. I think to
20 make that determination, the mere continuation determination as
21 I'm going to call it, would literally require the review of
22 every sort of -- how one particular company was acquired, what
23 were the terms and agreements of the merger, did one company
24 take on the liabilities or contacts of another company.

25 **THE COURT:** Did they ask for that information?

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1 **MR. RATLIFF:** Of course not, Your Honor.

2 **THE COURT:** I didn't think so.

3 **MR. RATLIFF:** Of course not. It's also not part of
4 their allegations. There is nothing in their master complaint,
5 which Judge Engelhardt gave them three months to put together,
6 that says these predecessor companies had some sort of
7 jurisdictional contacts that would give rise to specific
8 jurisdiction. There is nothing in their master complaint that
9 says these predecessor companies are, guess what, also the
10 alter ego of these two U.S. defendants.

11 They are bound by the allegations that they put
12 in. Those are the allegations they chose to make. The
13 allegations they made were Sanofi S.A. is the alter ego of
14 these two U.S. defendants. In responding to discovery, I think
15 that's what we were guided by.

16 **THE COURT:** There are ways to prove that that go
17 beyond -- I don't know that they are required to allege those
18 specific facts in a complaint. If they are alleging that the
19 Court has personal jurisdiction over the French defendants and
20 they are alleging that the French defendants are the alter ego
21 of the U.S. defendants, they are making those allegations. The
22 specific factual elements to get from Point A to Point B, I
23 don't think they are required to allege every single
24 possibility.

25 **MR. RATLIFF:** Maybe not, Your Honor, but I think

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1 there has to be something in the master complaint that speaks
2 to that. So this morning, when I was reviewing the master
3 complaint, the things I looked for were: Is the term *mere*
4 *continuation* used anywhere in the master complaint? It's not.
5 Is *successor in interest* or that these were all one and the
6 same mentioned in the master complaint? No. Is there any
7 allegation that these predecessor entities were also the alter
8 ego of the U.S. defendants? That's nowhere in the complaint.
9 So most of their reply focuses on the successor predecessor
10 entity.

11 Then I went back and I looked at how they
12 defined that in their discovery, and it literally talks about
13 everybody, all subsidiaries. So I don't even know -- and this
14 is a conversation I had with Mr. Lemmon, who I have had very
15 good discussions -- we have talked a lot about this. I said,
16 "I know you probably don't believe me. I want to help you find
17 what you want, but I can't just go back to my client and say,
18 'Give me all communications for all of your companies for the
19 last 20 years.'"

20 **THE COURT:** Based on the definition in the discovery
21 request.

22 **MR. RATLIFF:** Yeah, for the last 20 years. "Give me
23 an idea of what are you looking for and that will help me" --
24 it's like "Tell us everything about how you allocate profits
25 and losses." I wouldn't even know where to start in talking to

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1 my client about where you go down that road. So I said, "Tell
2 me what are the things that you want to know."

3 I know one of the complaints is that they are
4 not happy with what they think are generalized interrogatory
5 responses. The discussion I had with Mr. Lemmon after those
6 were served is, I said, "Look them over. This is the best we
7 could do based on how this interrogatory was phrased." He said
8 just describe this process, so we described it in general
9 terms. "If there's additional information that you want to
10 know, tell me what that additional information is so I have
11 something actionable that I can go back to my client and find
12 out how I go about getting it."

13 To me, it's a practical standpoint on my side,
14 which is I need to be able to send something to my client
15 besides "Give me all your intercompany loans that you have ever
16 made for the last 20 years." They wouldn't even know where to
17 start with that. So that is, I think, sort of the crux of the
18 problem as we talk about how we get to, I guess, a solution to
19 this.

20 I think the other part is you have to look at
21 what are the factors for making an alter ego determination.
22 Some of those factors are stock -- they are the *Hargrave*
23 factors.

24 **THE COURT:** I'm going to interrupt you because part
25 of the issue that I have with where we are in the briefing is

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1 that you all spent a lot of time in your opposition memorandum
2 trying to relitigate their entitlement to personal jurisdiction
3 discovery in the first instance. That's the impression I got
4 when I read it, and it's clearly the impression that the
5 plaintiffs' lawyers got when they read it because they came
6 right out of the gate in the reply memo. I took it the same
7 way.

8 In large part we can discuss how to further
9 limit some of the requests and to, I guess, narrow the scope,
10 but I believe, based on what I've been reading, that the
11 plaintiffs' counsel has made a good-faith effort to narrow and
12 tailor their requests to establish what they needed to
13 establish to prove personal jurisdiction under the
14 circumstances in this case. I don't think -- and I'm
15 generalizing. I don't think, generally, that you have provided
16 what I think are responsive responses.

17 Now, what you are telling me now is that you're
18 having difficulty -- and you have tried to negotiate, I guess,
19 some narrowing with plaintiffs' counsel. You are having
20 difficulty responding fully to some of these requests because
21 you think they are too broad. For instance, a request for
22 production asks for all documents about --

23 **MR. RATLIFF:** Your Honor, I will give you an example.
24 One of them is we submitted a sworn declaration that said these
25 two French entities have never sold or marketed this product in

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1 the United States. They don't allege otherwise. One of their
2 requests for production is all communications from 1997 to 2011
3 about marketing and Taxotere with the French defendants. What
4 that would require me to do --

5 **THE COURT:** I don't want us to be here all night.
6 Your response to that request was to refer to the affidavit or
7 the declaration.

8 **MR. RATLIFF:** Correct, Your Honor.

9 **THE COURT:** This may be overly technical, but that's
10 not an appropriate response. The response is to affirmatively
11 state in an objection or a response that is directed in direct
12 response to that request, whatever the response is, not to
13 direct their attention to another document that is executed
14 broadly to cover many other topics and issues and say your
15 answer to this specific request is covered by this general
16 statement, whether it's under oath or not.

17 That's not going to work, and it's not going to
18 work for a lot of reasons, one of which the plaintiffs pointed
19 out in their original motion and reply. It's not responsive to
20 the specific request. You have to read between the lines on
21 that declaration to get to the answer that they are looking
22 for. Whether it's an interrogatory response or a response to a
23 request for production, they are entitled to responsive
24 information in the pleading that is directed at that specific
25 request or interrogatory.

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1 **MR. RATLIFF:** I understand that, Your Honor. I
2 think, again, a little bit of the difficulty that we have had
3 is when I have met and conferred with plaintiffs' counsel and I
4 said, "I need you to narrow this request," and the general
5 answer is -- I would respectfully disagree about who has been
6 doing most of the giving on this. The general request I have
7 had is "Okay. No, we are not going to do that. We are not
8 going to narrow these."

9 **THE COURT:** I'm not taking a position on who has been
10 doing most of the giving or any giving. All I have ever said
11 was it's my impression that you all have a productive
12 adversarial relationship and that you have made a lot of
13 progress without Court intervention. I'm not judging whether
14 they have not given, whether you have not given, because I
15 don't know. I'm not in those meet-and-confers. I have had
16 cases in the past where I have ordered the parties to hire a
17 court reporter at every meet-and-confer they have because they
18 always disagree about what happens. I'm not going to do that
19 here --

20 **MR. RATLIFF:** I don't think we want to do that.

21 **THE COURT:** -- because that's not what's going on.
22 All I can glean is what I can glean from the pleadings. I
23 don't know what you all talk about in the meet-and-confer. I
24 do know that there was an indication in your opposition
25 memorandum that you were going to meet further and you were

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1 going to try to resolve what you could. I heard nothing beyond
2 that from either side, whether all of these things are still in
3 dispute; and, if so, why haven't we been able to make any
4 progress. I don't know what happens in those meetings.

5 **MR. RATLIFF:** Understood, Your Honor. So we did meet
6 and confer for probably an hour and a half the Friday before
7 last -- me, Mr. Lemmon, and two of his colleagues -- on all of
8 these. We made it through, I think, two or two and a half of
9 the requests for production before we essentially ran out of
10 time. Ultimately it was decided that they would just file
11 their reply. We would get a chance to look at it.

12 We have not had time to have a substantive
13 meet-and-confer about the individual requests for production,
14 their responses that they have outlined in their reply. That
15 just hasn't happened, and some of it is a by-product of time,
16 Your Honor. They're traveling, I'm traveling, and now it's
17 Monday and we had to be back here before Your Honor on that.

18 So one of the things I was going to tell them
19 and I will say now is there are a number of these requests for
20 production, now that I have seen their replies, where I think
21 they could be answered in a more fulfilling way by giving them
22 a detailed interrogatory response, now that I know what they
23 are looking for, that explains the foreign exchange risk
24 management system -- how it's used, how often it's used, when
25 it's used, why it's used -- versus just telling them what it

04:01

1 is, as opposed to me having to go through 20 years worth of
2 documents that maybe -- transactions that literally happen
3 every single day for 20 years.

4 So there's the burden part and the sort of just
5 practical standpoint of what I can give them versus what would
6 be almost impossible to give them.

7 **THE COURT:** Why doesn't somebody from the plaintiffs'
8 side kind of advise me where things are.

9 Here's my concern. I could order the defendants
10 to do all kinds of things and respond without objection. You
11 all have two issues: (1) Time; and (2) You want to get to the
12 bottom of whatever it is that you want to get to the bottom of,
13 and you want responses and information that make sense and that
14 are not thousands or tens of thousands of pages of documents
15 that counsel has been able to go, with a targeted request, to
16 go obtain what it is that you need.

17 I can say, "Give them everything they ask for,"
18 and it sounds to me like you're not going to like what you get.
19 I can understand if that's the result because either you or
20 they are going to be casting too broad a net. And that's not
21 going to address the first problem, which is time.

22 **MR. LEMMON:** Right.

23 **THE COURT:** It's going to take more time, perhaps, to
24 do it that way than less.

25 **MR. LEMMON:** That may well be right. I would like to

04:02

1 start kind of where Mr. Ratliff left off, which is an offer to
2 prepare a fulsome interrogatory response to address the
3 questions that we ask. That will not satisfy us.

4 We would like to see -- we need to see the
5 documents to be able to traverse whatever it is that they say.
6 What we have seen so far, which they have represented as being
7 fulsome responses, is very general, as you identified in your
8 preliminary remarks.

9 **THE COURT:** I will tell you all again I think they
10 are general responses. I really am not saying this to be
11 critical. I think that they are dancing on the head of a pin,
12 and in some cases they are answering questions that weren't
13 asked. I'm hoping that we can get beyond that because, as I
14 have already stated, I think that, with some exceptions, the
15 interrogatories and requests for production are narrowly
16 tailored enough.

17 I have already stated I have some issues with
18 all documents related to -- we may have some other issues in
19 terms of the breadth of the request that I will speak to.
20 Generally speaking, I think that the information that the
21 plaintiffs are seeking, that is apparent to me in these
22 discovery requests, is information they are entitled to.

23 I am only interested in ensuring that counsel
24 for the defendants understands exactly what it is that you all
25 are looking for and can get it. So I'm agreeing with you that

04:04

1 these are not full responses. I do not believe that they are
2 full and complete responses. In some cases I think they are
3 too general, and in some cases I think that they are rewriting
4 your request. I'm going to tell y'all that up front. I agree
5 with that proposition.

6 What I'm trying to figure out is -- I mean,
7 obviously you all are trying to resolve these issues. There's
8 only so much time I can give you all to do that among
9 yourselves. I'm just concerned that dropping an order that
10 they respond fully and without objection to all of these
11 requests is going to turn into a larger problem than we even
12 have now.

13 **MR. LEMMON:** Your Honor, that was fair enough.
14 That's the reason why in the reply we attached the Exhibit A,
15 which gave sort of our suggestion as to the ways that we could
16 agree to narrow stuff. When we had the meet-and-confers, from
17 the very beginning the issue that you raised, I think, is fair,
18 and Mr. Ratliff raised the same issue. He said, "How can I
19 produce all documents that have to deal with this?" We
20 understand that so from the very beginning acknowledged that
21 and gave suggestions as to how some of it could be narrowed.

22 It can't be narrowed by just giving us a general
23 description of what it is and not producing documents that show
24 the scope of whatever it is. The cash pooling agreement is the
25 first time that it comes up in Request for Production No. 2.

04:06

1 They give a very general description of what that cash pooling
2 agreement is, but in order to prove what we need to prove --

3 **THE COURT:** I don't even know that that was a general
4 description. In some cases it's practically a restatement of
5 what was in the disclosures.

6 **MR. LEMMON:** Right.

7 **THE COURT:** It's like saying, "Describe the cash
8 pooling system or arrangements," and the response was, "We have
9 one." There's hardly any detail associated with the response,
10 so that's one of the issues that I have with the responses. We
11 know there is one because the defendants disclosed it to any
12 number of governmental entities. It's obvious they are looking
13 for more information.

14 **MR. LEMMON:** It's not just the information that we
15 are looking for because, you know, we asked that question in
16 both interrogatories and in the requests for production. We
17 need to see documents that actually show what -- not their
18 description of what this particular agreement is, but documents
19 that we can dig into and make our own determinations of whether
20 or not it's important to prove in the jurisdiction of the
21 Court, and then to be able to know the scope of that, to be
22 able to know who is in control of the cash pooling agreement.

23 Can Sanofi, the French entity, tell the U.S.
24 entity to put the money up? I don't know the answer to that.
25 I would like to see all of the instances when it has come up.

04:07

1 I would like to see the correspondence back and forth
2 instructing them how it goes.

3 So we tried. Maybe we could do better or maybe,
4 you know, we could talk about it further, but we tried to put
5 all of that into the Exhibit A. That was after meeting and
6 conferring, after having their side to the story of why they
7 were objecting to it, after going through the case law to
8 figure out exactly what we needed out of the requests. Then we
9 tried to put that in sort of at least categorically so that
10 they can go back to their client and say, "This is what we
11 need," or they can do a search using search terms or however
12 they go and pull the documents.

13 We started with only 15 requests for production.
14 A lot of them deal with specific issues from their specific
15 filings, and we targeted them from the beginning. We spent a
16 lot of time on the front end drafting the discovery requests in
17 a way that it would be narrow and that it would be meaningful.

18 **THE COURT:** I agree with that. I agree with almost
19 everything you have said. I am saying that for everyone's
20 benefit, that I agree with almost everything that's been said.

21 The boilerplate-type objections that I saw in
22 both the interrogatories and requests for production are just
23 not sufficient. They are not sufficient in any case, and they
24 are certainly not going to be sufficient here.

25 I understand that you all are fighting a battle

04:09

1 over limited discovery because it only goes to jurisdiction.
2 Frankly, I don't see -- or at least it's not striking me in any
3 obvious way that there's a lot of overlap between what might be
4 merits discovery in this case and what is being propounded
5 right now as jurisdictional discovery. Of course, there's
6 always the potential for some overlap.

7 I can't imagine what motivation plaintiffs'
8 counsel in this case would have for intentionally conducting
9 discovery outside the scope of what they think they need to
10 prove their case on the jurisdictional side. I don't see any
11 of that reflected in their requests. I think that what they
12 have asked for is reasonable, and I think they are entitled to
13 it.

14 The thing that concerns me is something like
15 what Mr. Ratliff mentioned right out of the bat, which is --
16 and it may be an example or it may be the only major issue, and
17 it's an issue that I was going to talk to you about anyway --
18 an overly broad definition of *predecessor*. That is a real,
19 actual, legitimate objection. It may not have been stated
20 particularly well or in detail in the responses, but it's a
21 problem.

22 You all are entitled to learn whether, I guess,
23 relevant predecessor companies, the successors of which might
24 be mere continuations, had or have the sort of interactions or
25 relationship with the forum that would support your claim that

04:11

1 you have jurisdiction over the French defendant. But to throw
2 out the typical definition of all successors, agents, lawyers,
3 whatever, just isn't going to get you to the finish line.
4 That's not a controllable sort of request. There has to be
5 some sort of limitation on the information that you are looking
6 for.

7 **MR. LEMMON:** Right. We do understand that. I think
8 it's a lot of who the predecessors were, who the active
9 participants were, were presented during the Science Day or
10 whatever you will, Economics Day, whatever it was called, with
11 Judge Engelhardt.

12 **THE COURT:** Science Day, is that what it was?

13 **MR. LEMMON:** Information Day.

14 **MS. MENZIES:** I don't mean to interrupt, Mr. Lemmon.
15 My only point -- and I apologize. We had talked
16 about this earlier. One of the concerns we have, we appreciate
17 350 -- many, many entities concerned. In our very first
18 interrogatory on this issue, we asked for better understanding
19 of what are the predecessor entities -- we are also trying to
20 nail it down -- and the responses we got were very vague. If
21 we get more meaningful responses, perhaps we can do that.

22 **THE COURT:** Have you had an opportunity to look at
23 the exhibit to the reply memo that Mr. Lemmon is talking about?

24 I guess which is sort of your proposal as to how
25 to limit your own discovery.

04:12

1 **MR. LEMMON:** So it's really in two places that we are
2 willing to limit it pretty much across the board. There are a
3 couple places where it doesn't make logical sense, and you will
4 come across that. I think it will be obvious. We are willing
5 to limit it to a certain time period in 1997 to 2011. That
6 particular time period is the time when there would have been
7 things going on with the predecessor entities, and much less
8 went on later on.

9 Now, you will see what I'm talking about with
10 one of the last questions. It's a statement that happened in
11 2015 regarding the HR system. That's something, obviously,
12 that wouldn't be restricted to 1997 and 2011. Other than that,
13 we are generally willing to restrict it to those time periods.

14 The other restriction that we suggested is
15 appropriate is the predecessor entities. So it is something
16 that we don't disagree with what you are saying. We understand
17 that we are not looking for a thousand different entities and
18 every lawyer who was ever involved and all that kind of stuff,
19 but there is significant activity that took place by specific
20 French entities: Rhone-Poulenc, for example, Rhone-Poulenc
21 Rorer S.A. There's specific activities that took place that
22 involved specific U.S. predecessors to the entities who were
23 the defendants to this litigation now.

24 So I think we all know what we are looking for.
25 The discussion hasn't been had between us to specifically

04:14

1 identify exactly which entities it applies to. Frankly, we may
2 not know all of those entities. So that's part of the reason
3 why the interrogatories request for identification of those
4 entities.

5 Mr. Miceli had something he wanted to add.

6 **THE COURT:** Hold on. Mr. Ratliff wants to say
7 something.

8 **MR. RATLIFF:** Before I have to respond to three
9 attorneys, I would just like to address a couple of points.

10 **THE COURT:** Right.

11 **MR. RATLIFF:** The first point, which is when you were
12 talking about the cash pooling and we gave what you said was
13 maybe too general of a description of how that cash pooling
14 worked --

15 **THE COURT:** That was one of the responses. There's
16 another one. Is there a risk management question?

17 **MR. RATLIFF:** A foreign exchange risk management
18 system.

19 **THE COURT:** Right.

20 **MR. RATLIFF:** When we start talking about the timing
21 issue, that's my concern, Your Honor. When I went back to them
22 a month ago and said, "Tell me what you want more," I heard
23 nothing back from them until I got their reply and the
24 Exhibit A to it.

25 Let me give you an example on the cash pooling.

04:15

1 I went back to my client and said, "Here is the information
2 they want to know. Can I give them a more detailed
3 interrogatory? What could we conceivably be able to produce to
4 them that would illuminate that this is a pretty basic
5 process?"

6 Every single day the U.S. subsidiaries, if they
7 have a cash surplus, pool those together, send them to another
8 U.S. subsidiary, and then put them in a bank account. Every
9 single day. If one of those U.S. subsidiaries is at a loss,
10 then they get a loan at an interest rate. That happens
11 literally every single day, so you are talking about thousands
12 and thousands and thousands of transactions that go on every
13 single day for what they are saying is for 15 and 20 years.

14 **THE COURT:** I don't think that's what they are
15 looking for.

16 **MR. RATLIFF:** But that's what I don't know,
17 Your Honor. I can give them a more fulsome description. It is
18 what it is. We are fine with it. It's the document part of
19 it.

20 **THE COURT:** Here's how we got here, because you
21 didn't give them much of anything. I'm hearing what you just
22 told me for the first time. I don't know if these guys over
23 here are or not. I don't know if you have had that
24 conversation as part of your meet-and-confer. I don't know,
25 but I certainly haven't heard it.

04:16

1 **MR. RATLIFF:** Right.

2 **THE COURT:** I'm going to go out on a limb and say
3 this, based on what you just told me for the first time, so I'm
4 making this up as I go along. I would think that they would
5 like to have as detailed an explanation of that system as you
6 can give them, which would be more detailed than what you just
7 gave me, and what you just gave me is way more detailed than
8 what you gave them the first time.

9 So, as a starting point, I would think that they
10 are entitled to however that system works. I don't think that
11 they wanted daily transaction documents going back 20 years.
12 On the other hand, all of these entities are operating the way
13 they are operating on the basis of some set of rules, some
14 direction, some policy, some something. They are entitled to
15 that information.

16 **MR. RATLIFF:** Right.

17 **THE COURT:** That's the information that you should be
18 marshaling and giving to them --

19 **MR. RATLIFF:** Absolutely.

20 **THE COURT:** -- to explain systematically how and why
21 those things happen.

22 **MR. RATLIFF:** Absolutely, Your Honor. In our
23 opposition we had our own Exhibit A and we said, "These are the
24 things that we could produce to you that we think would be
25 helpful. We will produce documents that are illustrative, that

04:18

1 explain what this process is," without having to get into the
2 nuts and bolts of "Here is a million pages of transactions that
3 happened over the course of 20 years" and "Here is every single
4 communication where somebody is sending an email to the bank."
5 That part of it I'll tell you right now -- and you may order me
6 to do it.

7 **THE COURT:** I'm not going to order you to do it.

8 **MR. RATLIFF:** It's going to be difficult to comply
9 with it.

10 **THE COURT:** No, I think I just made it clear. Not
11 only am I not going to order you to do it, I think that they
12 would not be happy if I ordered you to do that because I don't
13 think they want that.

14 **MR. RATLIFF:** It would be the same for the foreign
15 exchange risk management system. I will give them a far more
16 detailed response now that I have seen what they are really
17 looking for, what they are interested in, how it's used, how
18 often it's used. I'm happy to do that with something that's
19 sort of -- if there's a standard operating procedure or a
20 policy that said this is how this process works. The process
21 is what it is. My concern is more of a burden of what all do I
22 have to try to find and hunt down in a relatively short amount
23 of time.

24 **THE COURT:** Let me go back to the beginning because I
25 think where this is headed is -- I'm going to do what we have

04:19

1 been doing in the past. I'm going to tell you what I think
2 needs to happen. I'm going to give you all a brief opportunity
3 to work through making it happen or agreeing on what that's
4 going to look like, and it's not going to be long. If we have
5 to do this again by phone or in person, then we will. Okay.

6 Let me go back to the beginning so everyone
7 understands how I am viewing this overall. I said what I said
8 at the beginning of the hearing for a reason. We are not going
9 to relitigate the plaintiffs' entitlement to jurisdictional
10 discovery. I feel it's important to say that because the
11 defendants' opposition memoranda went down that road.

12 There are even arguments as to scope in which
13 you all rely on cases that concern themselves -- the decisions
14 themselves were the ultimate decisions on whether the court had
15 jurisdiction over a particular party, and there were statements
16 in those cases such as a close relationship or intertwined
17 relationship standing alone is not enough. There are
18 statements in those cases as to what is sufficient and what
19 isn't sufficient, but that's not what I'm concerned with.

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

21 **THE COURT:** No one can prove their position in this
22 case, irregardless of who has the burden of proof, without the
23 facts that they need.

24 The defendants and the plaintiffs in those
25 cases -- you cited many of them; the *Jackson* case in the

04:20

1 Fifth Circuit, for instance. The Court can't get to the
2 ultimate question unless the necessary facts are presented to
3 the Court to be able to make the case-by-case determination
4 that has to be made. So what I'm concerned with is the
5 plaintiffs' opportunity, ability, and right to obtain the
6 information they need to make their case.

7 **MR. RATLIFF:** Understood. Your Honor, one of the
8 things I had suggested in one of our meet-and-confers -- and
9 it's still an open offer to the plaintiffs -- is there are
10 certain things on here that we will streamline for them by just
11 stipulating that they are true or not true.

12 So one of their questions asked about
13 operational policies. They want operational policies for
14 labeling or operational policies for marketing, etc., etc. If
15 what they are looking for -- and this is what I would be
16 looking for -- is are there operational policies that are
17 corporationwide, do they cut across all subsidiaries, we will
18 stipulate that, yes, there certainly are operational policies
19 that cut across all of the various subsidiaries and there are
20 some that do not. That seems to be a way to try to cut through
21 some of this and particularly given the timing mechanism.

22 **THE COURT:** Maybe that is a way. I'm seeing
23 legitimate requests in terms of subject matter. I understand
24 the issue when we talk about predecessor companies and we talk
25 about the pooling arrangement and the daily transactions.

04:22

1 Again, I understand the objection and the
2 concern, even though it wasn't stated particularly clearly in
3 the responses. If this was a garden-variety two-party case, we
4 might be talking about waiver of objections and all of that,
5 but it's not. I'm not going down that road because it's only
6 going to make matters worse, frankly, which is why I'm saying
7 I'm not ordering you to produce a bunch of stuff that nobody
8 wants or needs or is going to help anyone, including the Court.

9 What I do want is for you all to sit down one
10 more time and go through these requests with an eye toward
11 plaintiffs' counsel actually informing defense counsel exactly
12 what it is you need. It may be broader than you think they are
13 entitled to, but I doubt it, because I'm telling you --

14 Well, I don't think they are entitled to
15 20 years of daily transactions on something that happens on a
16 daily basis. I think that the information that they have asked
17 for generally, in their discovery requests, they are entitled
18 to. I'm only concerned with how you are going to marshal the
19 information that they need. That's the conversation I want you
20 all to have.

21 So I'm already telling you you owe them a bunch
22 of information, and I want you all to take one more stab at
23 figuring out how you are going to give it to them and what it
24 is that you are going to give them.

25 **MR. RATLIFF:** I understand, Your Honor. My concern

04:24

1 is marshaling that information too. So I guess the only
2 request I have -- and certainly from the plaintiffs' side -- is
3 that we not go back to a meet-and-confer and then they just dig
4 in their heels and say, "Look, you lost that hearing. We are
5 going to get everything we want. Produce all of it," and then
6 I'm back in front of you. That's my concern. I think that's
7 probably what will happen.

8 I want to make sure that when we do meet
9 again -- and I can meet on Wednesday. I get back late tonight.
10 I need to talk to my client tomorrow -- that there is at least
11 some understanding of "Give me what you really need or what you
12 really want."

13 **THE COURT:** Does somebody want to respond to that?

14 **MR. MICELI:** Let me take a couple of stabs at it
15 first. Your Honor, David Miceli. I'm a member of the PEC. I
16 want to talk about a couple of issues that have been raised
17 during the discussions with you today.

18 I think one way that we can identify who we are
19 looking for documents from and who might be relevant is how the
20 defendants hold themselves out to the public in the history,
21 including the argument today from Mr. Ratliff about what might
22 be relevant. I'm going to take some of this in reverse order.

23 Mr. Ratliff said, "In order for us to respond on
24 these predecessor companies, we would have to go back
25 20 years." Well, clearly Sanofi has not been the registered

04:25

1 market holder of this drug for 20 years. There's been a
2 predecessor company, Rhone-Poulenc Rorer. There are public
3 documents that demonstrate that Rhone-Poulenc Rorer S.A. had a
4 U.S. representative, not a company. There was a U.S.
5 representative, Rhone-Poulenc Pharmaceuticals U.S. That's the
6 way it was held out to the FDA. Who is the patent holder?
7 This French company. Who submitted the NDA? The NDA was
8 submitted through their U.S. representative.

9 So that predecessor interest -- I think
10 Your Honor might have alluded to it earlier. There may be
11 companies that are predecessor companies that held themselves
12 out differently than Sanofi holds themselves out today, and I
13 think that might be just one case.

14 **THE COURT:** If we just started with predecessor
15 companies and got rid of all of the other folderol in the
16 definition of *predecessor* that brings in a world of other
17 people and entities, that would be a good place to start.

18 **MR. MICELI:** I would agree with Your Honor, but the
19 web that is created is not created by the plaintiffs' counsel.
20 The web that is created is by the French entity and the various
21 entities they maintain here in the U.S.

22 We have to have the opportunity, I think, to
23 have a fair and thorough sifting through that information and
24 the facts, as Your Honor has pointed out, of how that works. I
25 think that's what we are really asking for.

04:26

1 Secondly, how does Sanofi hold itself out today,
2 something as simple as going to their website and seeing where
3 they take credit for all of the innovations of this worldwide,
4 global medical scientific company, and it starts out, at least
5 in 1996, with inventing Taxotere. That's not Sanofi's
6 invention. That's their predecessor's invention, Rhone-Poulenc
7 Rorer.

8 So there are items of fact that we have looked
9 at to try to come up with our requests that take us back
10 farther than 1996, that take us back to the innovators of the
11 product here in the U.S. and in France. So there are facts and
12 there are pieces of evidence that are out there that are
13 required that came to the U.S. in order to get this product on
14 the market here. We have included all that in our submissions.

15 Those are two of the things, how they hold
16 themselves out, how they have held themselves out, what they
17 take credit for --

18 **THE COURT:** It shouldn't be difficult to identify
19 those entities.

20 **MR. MICELI:** It shouldn't.

21 **THE COURT:** So now that you have them identified, now
22 what happens?

23 **MR. MICELI:** Well, we have to find out what their
24 involvement was. Some may fall by the wayside, but certainly
25 there are those that will remain. And we know that because

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1 those are the people that dealt with the Food and Drug
2 Administration here in the U.S., the French individuals that
3 are from those companies, both Sanofi and from Rhone-Poulenc
4 Rorer, its predecessor, where they interacted on this product
5 with the FDA. That's why we have that out there.

6 **THE COURT:** Mr. Ratliff, I'll say like I did with
7 Mr. Lemmon when he was arguing. I agree with everything he
8 just said in terms of what they are entitled to learn. I agree
9 with that. Now, the only question I'm having is: How do we
10 gather that information, and how do we make sure that the net
11 is wide enough, but not too wide, to capture what it is that
12 I'm saying they are entitled to?

13 **MR. RATLIFF:** Sure, Your Honor. I assume that
14 whatever website Mr. Miceli has gone to will be one of the
15 exhibits in the opposition and it will be all in there.

16 **THE COURT:** But that's not evidence.

17 **MR. RATLIFF:** Right.

18 **THE COURT:** They can't traverse a website. They are
19 entitled to gather the information that they have identified
20 that's out there. What I'm trying to do is say: You all are
21 all smart. You know this business better than I do. I am
22 telling you what I think they are entitled to, and I am trying
23 to reasonably limit it so that they don't gather too much, they
24 get what they need, and we do it without an excess of waste of
25 time. I'm talking about the next step in the process.

04:29

1 **MR. RATLIFF:** Right.

2 **THE COURT:** That's the kind of information that I'm
3 saying to everyone they are entitled to.

4 **MR. RATLIFF:** I guess my concern, Your Honor, is what
5 does any of what Mr. Miceli just said -- which is not set forth
6 in any of their requests for production in the way Mr. Miceli
7 said. What does any of that have to do with whether one
8 entity, Sanofi S.A., is the alter ego of these two U.S.
9 entities?

10 So I agree they are probably going to be
11 entitled to that in terms of merits discovery -- who these
12 people are, what they do, who invented the product -- but we
13 are talking about a more narrow issue of --

14 **THE COURT:** So when does evidence as to alter ego
15 stop? How far back can you go? You can only go back to when
16 your client's company came into existence?

17 **MR. RATLIFF:** I would need to go back farther, but I
18 wasn't looking at that because that's not what these requests
19 were asking for. Again, from my perspective, Your Honor, it
20 becomes the same issue we have talked about, which is the
21 practical --

22 **THE COURT:** It's not just about requests for
23 production. It's about interrogatory responses.

24 **MR. RATLIFF:** Right.

25 **THE COURT:** The information that I think I was just

04:30

1 provided by Mr. Miceli did not come from you. It didn't come
2 in an interrogatory response. That's part of the problem. We
3 are not just here on requests for production. We are here on
4 interrogatory responses that are insufficient.

5 They don't even have a starting point of actual
6 real information that was provided in discovery, in a response,
7 to be able to refine their document requests. That's the way I
8 see it.

9 **MR. RATLIFF:** Okay.

10 **THE COURT:** Everything I'm hearing right now I'm
11 hearing for the first time. I ought to be able to read it in
12 an interrogatory response somewhere.

13 **MR. RATLIFF:** I guess, Your Honor, I'm also hearing
14 it for the first time from them in terms of what they want
15 because that's not what their interrogatories or requests for
16 production are asking. That's what I've been guided by, and
17 that's what I've been guided by in my discussions with
18 Mr. Lemmon. So I feel a little bit from -- what Mr. Miceli
19 said is what I'm hearing for the first time.

20 **THE COURT:** All right. Well, let me say two things.
21 First of all, are you saying that they have never asked for
22 that sort of predecessor company information in discovery?
23 They have not asked for that information in some form or
24 fashion in discovery?

25 **MR. RATLIFF:** In their merits discovery, in the

04:32

1 merits discovery that they just served. In terms of their
2 actual interrogatories, I believe it's: Who are your
3 subsidiaries in the U.S.? Where are they located? How were
4 they formed? That's the information they have asked in terms
5 of the corporate structure. We actually give them a very
6 detailed response about that. We say for the U.S.
7 defendants -- I mean, what does it matter what all the other
8 subsidiaries -- where they are formed, what they do?

9 **THE COURT:** Well, predecessor companies of either the
10 U.S. defendants or the French defendants could be relevant to
11 the alter ego theory. There are certainly conceivable
12 arguments to be made there.

13 I haven't memorized all of these interrogatories
14 and requests for production, so I don't know if that
15 information was specifically requested or if it was assumed in
16 a request or a request for production. I don't know the answer
17 to that.

18 I'm trying to make it as clear as I possibly can
19 what I think they are entitled to. I'm trying to set you all
20 on a very short path to have that open communication, with the
21 benefit of what I'm saying today, to get responses that are
22 meaningful. That's what I want you all to do.

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

24 **THE COURT:** Mr. Miceli.

25 **MR. MICELI:** If I can just add a few things. From

04:33

1 the beginning of this case -- Mr. Bachus, who is on the
2 telephone, filed the first case back towards the end of 2015,
3 and he alleged allegations against Sanofi and its predecessor,
4 Rhone-Poulenc Rorer. That has been a continuous issue on
5 identifying who the defendants are.

6 We know that Sanofi wasn't around in '96 when
7 this was submitted on an NDA or it was approved on an NDA. We
8 know there were a series of companies. That's why we have
9 these documents. We used the documents that were in our
10 possession to fashion the requests that we did. We didn't
11 spell out for Mr. Ratliff what our theory of recovery is in a
12 memo that says, "Please, this is why we are asking."

13 **THE COURT:** Okay. I have already heard Mr. Lemmon
14 say --

15 **MR. MICELI:** Right.

16 **THE COURT:** -- he has already offered to limit the
17 scope going back temporally to 1997.

18 **MR. LEMMON:** Yes, sir.

19 **THE COURT:** Mission accomplished.

20 **MR. MICELI:** Okay.

21 **THE COURT:** Notwithstanding the one issue that you
22 have raised, the 2015 -- I usually have a pretty good memory,
23 but I can't remember what the specific issue is.
24 Notwithstanding that, that's already on the table.

25 **MR. MICELI:** Understood. With regard to going

04:34

1 forward, we have been involved in this MDL since October of
2 last year, and we have had many, many discussions with the
3 defendants. We want to move forward with discovery as quickly
4 as possible, on all meaningful discovery -- on the
5 jurisdictional discovery, on the merits discovery that does not
6 involve right now the French, until that issue is resolved --
7 but there are many fronts we are moving forward on and desire
8 to move forward on. In the responses that were offered by the
9 defendants, it says there's some things they will do, but
10 there's no time limit for when they are going to start
11 producing things. That's an issue for us.

12 **THE COURT:** That's going to be soon.

13 **MR. MICELI:** Okay. There's an issue of the Court
14 wants us to have a meet-and-confer so that we can come and
15 bring these things to a head. We are going to be back before
16 Your Honor next Friday. We would like a deadline that we can
17 inform Your Honor -- before we leave the courtroom today, we
18 can talk and set deadlines to have that, because we want to
19 have hard deadlines so we can ultimately have a hard deadline
20 for our documents.

21 **THE COURT:** I'm going to give it to y'all right now.
22 This is how I want to proceed. You all are going to be back
23 here on August 18.

24 **MR. MICELI:** Yes, Your Honor.

25 **THE COURT:** I gave this some thought before we

04:35

1 started, and I wasn't sure if I wanted to go this route. Once
2 y'all started talking, I immediately decided this was the most
3 prudent thing to do.

4 Y'all are going to be here on August 18. We are
5 going to resolve this finally by that day. The reason that I
6 think that it's acceptable to put off the final resolution
7 until August 18 is because at this point, regardless what I
8 order, nothing is actually going to happen until
9 Judge Engelhardt decides whether there's this entirely
10 different obstacle to conducting this discovery.

11 So anything I was going to do today was going to
12 be subject to how he rules on the other issues. He hasn't done
13 that. I suspect that he will do that or at least he will have
14 some sort of telephonic hearing or something with you all
15 before the 18th. But because it hasn't happened yet, I don't
16 think that it causes a problem timewise for me to have you all
17 try to at least limit what's left in this dispute. So that's
18 how I want to handle it.

19 I want you all to take what I have said and sit
20 down and try to resolve as much of this as you can. The
21 interrogatory responses need to be more robust and detailed. I
22 don't want references in any of the responses "See the response
23 to Interrogatory No. 1" or so-and-so's declaration. This is a
24 big enough case -- it involves enough parties and enough
25 lawyers and two judges -- everyone needs to take the time to do

04:37

1 everything technically correct and match responses to the
2 specific requests that are requesting that information so that
3 no one has to read between the lines.

4 If information is being withheld on the basis of
5 an objection, that needs to be stated. That wasn't clear to me
6 in the responses. That's clearly the rule now under Rule 34.
7 It's less clear whether you have to do that with regard to
8 interrogatories, but I expect you all to do that on both sides.
9 If you are objecting and then responding to an interrogatory,
10 you need to make an indication that you are withholding
11 information, if indeed you are, subject to that objection.

12 As I said, I think that the information that the
13 plaintiffs are looking for is grist for the mill. I think they
14 are entitled to it. There are some scope issues in terms of
15 overbreadth that we have already discussed that I want you all
16 to try to address between yourselves.

17 For the most part, I think the plaintiffs are
18 entitled to conduct the discovery that they are attempting to
19 conduct. I have no qualms currently that this is merits-based
20 discovery. None. My only concern is potential overbreadth,
21 and that's what I want you all to talk about.

22 When I say "potential overbreadth," I mean
23 things like going back 50 years. I mean things like
24 definitions of terms that are overbroad. I mean things that
25 are going to make it overly burdensome for the defendants to

04:39

1 try to marshal a response. That's what I mean by overbreadth.

2 Hopefully you all can come back on the 18th --
3 I'm not Pollyanna. I'm not going to necessarily predict we
4 won't have any issues left, but I'm hopeful that you all can
5 take this conversation and make good use of it and come to some
6 agreements and accommodations as to what's going to be produced
7 by way of information and documents.

8 If not, we will hash it out some more and I will
9 issue an order. Timewise, I'm going to give you all a short
10 leash. For the record, I'm referring to the defendants. I'm
11 going to give you all a short leash to respond, but the clock
12 won't start ticking until and unless Judge Engelhardt says you
13 have to respond, because there is the potential that he is
14 going to say you don't get to conduct any discovery at all and
15 we are talking about the scope of discovery that won't be
16 conducted.

17 In any event, if he does rule that it's going to
18 go forward, then whatever time period I give the defendants to
19 respond is going to go from then, but it's going to be short,
20 because I've not been given any indication or any permission or
21 anything else to suggest to anyone that any of these deadlines
22 are going to move. We are a little bit more than a month away
23 from the deadline.

24 I want you all to try to get this solved. If
25 you can't, you can't. That's fine. You're making a record.

04:41

1 You have already made a record. We will make whatever
2 additional record is necessary on the 18th. If you all want to
3 give me an update by way of letter -- joint letter, separate
4 letters -- to let me know before we get to the 18th what's left
5 to be decided, I would appreciate it, and we can have a more, I
6 guess, enlightened discussion if I know where things stand.

7 I've lost my train of thought. There was one
8 other thing I was going to say.

9 Go ahead, Mr. Ratliff. Everybody wants to say
10 something.

11 **MR. MICELI:** I wasn't concluded myself yet, and I
12 think there are some things I may want to say that Mr. Ratliff
13 is going to want to respond to.

14 **THE COURT:** Okay. What's left?

15 **MR. MICELI:** Well, you made the statement that
16 everything that you can do for us is going to be put on hold
17 until Judge Engelhardt rules on the jurisdictional rights of
18 the parties.

19 **THE COURT:** Right.

20 **MR. MICELI:** There are some things, however, that we
21 see that we wanted to address to the Court and perhaps just
22 give you a preview for what we would like to discuss with you
23 again on the 18th.

24 **THE COURT:** Okay.

25 **MR. MICELI:** One thing that was brought up in some

04:42

1 letters -- and you probably understand we talk and we
2 correspond regularly -- is the discovery plan. You will recall
3 when we were here 10 days ago, I believe Mr. Oot said that some
4 of their deadlines are triggered by the entry of a discovery
5 plan. We have provided them with our draft. We are waiting
6 for their redlines, and then we want to have a meet-and-confer.
7 We need to get that entered because --

8 **THE COURT:** That's what we are talking about on the
9 18th.

10 **MR. MICELI:** That's what we are talking about on the
11 18th. We want to make sure that that is what we are talking
12 about on the 18th.

13 **THE COURT:** Just to be clear, when I'm talking about
14 ruling subject to Judge Engelhardt's order, I'm talking about
15 jurisdictional discovery on the French defendants --

16 **MR. MICELI:** Right.

17 **THE COURT:** -- that the French defendants have said
18 they are not subject to for reasons that have nothing to do
19 with the Federal Rules of Civil Procedure.

20 **MR. MICELI:** I understand. We understand that, I
21 should say, but we want to make sure we are before Your Honor
22 on the 18th with a clear understanding that we will be ready to
23 address the entry of a discovery plan on or shortly after that
24 date that will begin triggering the timeline.

25 **THE COURT:** That's my expectation.

04:43

1 **MR. MICELI:** Okay.

2 **THE COURT:** That's the discussion we had the last
3 time you all were here.

4 **MR. MICELI:** That's Issue No. 1. Issue No. 2 -- and
5 it's my final issue, so I will sit down in a moment.

6 **THE COURT:** It usually works the other way. There's
7 usually 15 lawyers on the defense team and two lawyers on the
8 plaintiffs' team.

9 **MR. MICELI:** I understand, Your Honor. The other
10 thing is we were here last 10 days ago, I believe, and we
11 talked about this informal discovery. In the meantime, we have
12 sent a letter to defendants. They have responded to us
13 concerning 26(a) issues. That's an issue that I came prepared
14 to talk with you today, but it doesn't sound like the Court
15 is -- that may be something the Court wants to discuss on the
16 18th.

17 **THE COURT:** Well, I'm not prepared to discuss it
18 today.

19 **MR. MICELI:** Exactly. Okay. There are obligations
20 that go beyond a discovery plan, and Rule 26(a) disclosures are
21 just such a thing. The rule clearly says --

22 **THE COURT:** We are going to talk about that on the
23 18th.

24 **MR. MICELI:** We'll talk about that on the 18th.
25 Thank you, Your Honor.

04:44

1 **THE COURT:** Let Mr. Ratliff say something.

2 **MR. MICELI:** Thank you, Your Honor.

3 **MR. LEMMON:** I'm sorry. I didn't hear you.

4 **MR. RATLIFF:** Your Honor, I am not going to try and
5 belabor this anymore because it's getting late, and I feel like
6 you have made it abundantly clear what your position is. The
7 one sort of practical standpoint that I wanted you to think of
8 is you said, "I don't care whether their jurisdictional
9 discovery is merits discovery or jurisdictional discovery." I
10 guess the one part from just a --

11 **THE COURT:** Wait. Are you saying you don't care or
12 you think I said I don't care?

13 (Phone rings.)

14 **THE COURT:** Boy, don't let that happen in
15 Judge Engelhardt's courtroom.

16 **MR. RATLIFF:** I understand your position. You
17 said --

18 **THE COURT:** I don't think that this is mixed. If
19 there is some overlap, it's not hitting me in the face.

20 **MR. RATLIFF:** Okay. The one issue I see is on some
21 of these, these documents are going to be rolled out in merits
22 discovery, but they are going to be voluminous documents that
23 don't really have a bearing on jurisdiction.

24 So, for example, one of them is "Produce all
25 your communications with a regulatory agency in the

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1 United States regarding Taxatere." They are certainly going to
2 get that from the U.S. defendants. We are working on that now.
3 In fact, I would like to get those out sooner rather than later
4 so they don't come back here every time and complain about it.
5 I don't want to be in that position.

6 **THE COURT:** Okay.

7 **MR. RATLIFF:** That really has no bearing on
8 jurisdictional discovery and so there's my concern. If I can
9 get some of that out, I will, but when there's that overlap --
10 I mention it only because the timeline for jurisdictional
11 discovery is this (indicating). The timeline for the merits
12 discovery is going to be a little bit broader. So I guess
13 that's where I would ask ultimately you and at least the
14 plaintiffs, when I talk to them, for a little bit of leeway
15 when they think about what do they really need for the
16 jurisdictional discovery.

17 **THE COURT:** What was the specific request you just
18 used in the example?

19 **MR. RATLIFF:** "Produce all your communications with a
20 regulatory agency in the United States regarding Taxotere."

21 **THE COURT:** Let me just say that to say that that
22 request can't seek information that's germane to the
23 jurisdictional argument from the French defendants, I do not
24 agree with that.

25 **MR. RATLIFF:** That I understand Your Honor, but as it

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1 relates to all the communications the U.S. defendant had with
2 that regulatory agency --

3 **THE COURT:** We are talking about the requests that
4 are directed to the French defendants.

5 **MR. RATLIFF:** There lies the rub. They have sent
6 this discovery to all four of the defendants, so now I have to
7 figure out who I respond and who they are asking the documents
8 from.

9 **THE COURT:** Hold on. This motion to compel is a
10 motion to compel responses from the French defendants. That's
11 the issue in front of the Court today. They have not moved to
12 compel responses from the U.S. defendants. That's not an issue
13 I'm concerned with. That's not to say they can't conduct
14 jurisdictional discovery against the U.S. defendants to try to
15 close the loop --

16 **MR. RATLIFF:** I understand, yes.

17 **THE COURT:** -- but that's not been briefed. Nobody
18 has complained about it. There was a statement that the U.S.
19 defendants haven't responded as they agreed to do in a status
20 conference with Judge Engelhardt, but that's the limit of what
21 I have seen in terms of a complaint about the U.S. defendants'
22 responses.

23 **MR. RATLIFF:** So, for example, on the regulatory
24 communications from the French defendants, there are going to
25 be no documents, and I will tell them there are no documents.

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1 But as it relates to the U.S. defendants, that's probably going
2 to be 2 million pages of documents.

3 **THE COURT:** Well, that's a legitimate concern, but
4 then again I'm asking you all to talk about the responses of
5 the French defendants to this discovery. That's what we are
6 talking about.

7 **MR. LEMMON:** Your Honor, there is -- well, it's
8 complete overlap because it's the same questions asked to all
9 four entities.

10 **THE COURT:** Right. It's identical.

11 **MR. LEMMON:** Judge Engelhardt made clear in the
12 July 12, or whatever it was, call that they were required to
13 answer those requests on behalf of all of the entities,
14 including the U.S. entities. The only reason why it's not
15 before you on a specific motion to compel is that we didn't get
16 those answers until last week. Now, we have gotten those
17 answers now. They are basically identical to the answers we
18 got from the French entities. So I think it is fair that it
19 would be included across the board.

20 **THE COURT:** The discussion I want you all to have
21 should include that topic.

22 Now, having said that, Mr. Ratliff raises a
23 perfectly legitimate concern.

24 **MR. LEMMON:** No doubt. I understand that. That
25 certainly will be part of the conversation. To the extent that

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1 I think you have identified, Your Honor, specific things that
2 might be pertinent to jurisdictional discovery, we can limit it
3 to that for present purposes, although we still want those
4 documents at some point. We can work together on that --

5 **THE COURT:** What we are working toward is a
6 production and a set of responses that allow the plaintiffs to
7 support -- I know you don't want them to, but this is
8 discovery -- to support their motion by September 18, which
9 means we can't fool around with a bunch of stuff that's merits
10 discovery. You shouldn't have an interest in that right now
11 anyway. Because if Judge Engelhardt says September 18 is the
12 deadline and the deadline is September 18 and y'all are fooling
13 around with merits discovery, you are the ones who are going to
14 pay the price ultimately.

15 **MR. LEMMON:** We understand that. I wanted also to
16 bring up sort of another issue because now we are here on
17 interrogatories and requests for production. That's what we
18 are talking about. The requests for production were pretty
19 fully briefed. The interrogatories, we really didn't, and I
20 think from the plaintiffs' side sort of expected that more to
21 be covered on the 18th.

22 So what I would suggest and ask is that the
23 interrogatories -- not just the 22, or whatever number it was,
24 that they answered, but all of the interrogatories be part of
25 the discussion that we have between now and the 18th. And to

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1 whatever extent we are unable to come to a resolution on it, we
2 would bring it before the Court at that time.

3 **THE COURT:** For me to resolve it on the 18th, I need
4 to know what the specific concerns with every interrogatory
5 are. I certainly read the first 22. In fact, I read them all.
6 What I want you all focused on is what you need by way of
7 jurisdictional discovery.

8 **MR. LEMMON:** Yes. We understand that.

9 **THE COURT:** I'm just trying to get you all to the
10 finish line on September 18 so that the schedule is not upset.
11 If we can't get there, we can't get there. I just don't want
12 to be here every week arguing about what you all have produced.
13 I think, after sitting here now for an hour or so, you all have
14 a pretty good idea. The defendants may think I'm allowing the
15 plaintiffs to cast too wide a net, and I don't think that I am.

16 I think, as I said, generally speaking, the
17 information they are requesting is potentially relevant to or
18 germane to the arguments they are making. Regardless of
19 whether they pleaded every single element of fact that they
20 needed to to get to the finish line, I think they are
21 positioned to ask those questions and to get those answers, and
22 Judge Engelhardt has said they can do it. The Fifth Circuit,
23 in the *Jackson* case that you cited to me, it's implicit in the
24 result of that case that this is the kind of information that
25 is grist for the mill in jurisdictional discovery.

04:53

1 **MR. RATLIFF:** Your Honor, I think one thing that
2 would be helpful -- and certainly we will talk about this, and
3 I have asked the plaintiffs this before -- is as we go through
4 the interrogatories or we go through the requests for
5 production, if they could let me know who they are directing
6 that request for production to. Like I said, they identified
7 all four of the defendants, but in my mind some of them seem
8 clearly targeted to one defendant --

9 **THE COURT:** That's quite possible. If that's the
10 case, that's part of what you all should be talking about.

11 **MR. RATLIFF:** That would be helpful.

12 The response I have received is "Well, how do we
13 know?"

14 I said, "Well, just give me your proof."

15 *Help me help you* is sort of the mantra I'm
16 trying to get to because I don't want to be back here arguing
17 these. My client certainly wants to get this resolved, the
18 jurisdictional issue resolved.

19 **THE COURT:** The message I'm trying to send is the
20 jurisdictional issue is going to get resolved. It's going to
21 get resolved according to the law, and it's going to get
22 resolved with Judge Engelhardt having every single relevant
23 fact that either party can put before him to make the
24 determination he needs to make in this case on these
25 defendants. That's going to happen. I want everyone to

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1 understand that.

2 **MR. MICELI:** We understand that, Your Honor. I think
3 that part of what Mr. Ratliff just raised is -- I don't want to
4 say a hollow argument, but much of this is going to be
5 determined by a simple timeline. Sanofi didn't exist as the
6 market holder for the -- for the registered market holder, so
7 that's not an issue. Who answers the question is going to be a
8 calendar-driven item.

9 **THE COURT:** You guys keep arguing about a
10 meet-and-confer that you haven't had yet.

11 **MR. MICELI:** Right.

12 **THE COURT:** You get to come back here on August 18,
13 hopefully, and tell me that you've got it resolved, which won't
14 happen. I have given everybody their marching orders. We
15 don't need to keep beating it to death.

16 **MR. MICELI:** I understand, Your Honor. Just so we
17 are clear, we want the Court to know when we come, we are going
18 to sit down in good faith and go through these topics with
19 them. We don't have the crystal ball that tells us what the
20 documents are. So when we say to Mr. Ratliff we don't know
21 because we haven't seen, what we are not asking for is
22 Mr. Ratliff's considered and researched summary of what Sanofi
23 and Rhone-Poulenc Rorer did.

24 We want to judge what the documents tell us and
25 what the documents that were filed here in the U.S. -- and

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1 perhaps there's some in France that tell us about what these
2 companies did. Because I can assure you I have never stood up
3 in front of a jury and said, "The defendants have explained
4 this to me. This is what they say, and this is why you should
5 find for our clients." It is the documents that will tell the
6 story in this case, it's the documents that will prove their
7 liability, and it's the documents that we want to see.

8 **THE COURT:** We are not talking about proving
9 liability. We are talking about jurisdiction.

10 **MR. MICELI:** Correct.

11 **THE COURT:** We are also talking about a situation
12 where no documents have been produced yet and we have a
13 September 18 deadline.

14 **MR. MICELI:** No documents have been produced by any
15 defendant in this case other than some labels. Lots of
16 documents have been produced and obtained so far from the
17 plaintiffs.

18 **THE COURT:** I'm just telling y'all when we get here
19 on August 18 and I start ordering things to be produced or
20 responded to, it's not going to be 30 days. It's going to be
21 on a much shorter timeline. It has to be.

22 **MR. MICELI:** Thank you, Your Honor.

23 **MS. MENZIES:** Thank you, Your Honor. Just a couple
24 maybe somewhat housekeeping items.

25 So it sounds like just foreshadowing for the

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1 18th -- and if you recall, we are a little bit concerned about
2 the amount of things that will be covered that day. I just
3 want to make sure we get our submissions to you in time for you
4 reviewing all of it.

5 We had talked before about the general discovery
6 plan. We would submit, to the extent we can't agree, we will
7 make our submissions three days before, which would be the
8 15th. If we have issues on this front -- so what we may be
9 faced with in court are, I guess, both the jurisdictional
10 interrogatories and the requests for production -- should we
11 make submissions to you on that same day? Do you want those
12 sooner?

13 **THE COURT:** I don't need them sooner than that.

14 **MS. MENZIES:** Okay. So we will have that one also on
15 the 15th.

16 **THE COURT:** What I don't want -- and I'm not picking
17 on anybody. I don't want: "We have to give the judge a
18 submission by this date, so we are going to stop talking
19 because we have to give him something three days before." If
20 it takes another day, take another day.

21 **MS. MENZIES:** I appreciate that.

22 **THE COURT:** I want y'all to work as close to the
23 hearing as you can. I am familiar with this part of the
24 dispute, so I just need to know what's left. If it's
25 everything, it's everything, and we will deal with it, but I

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1 need to know what's left. As to what's left, I would like to
2 know what you have talked about and why you can't resolve it
3 and what the sticking point is so that we can be focused when
4 we get together on the 18th.

5 **MS. MENZIES:** Okay. One issue, since we are still
6 focused on the timeframe of the jurisdictional discovery -- and
7 we appreciate that. We served last week, I guess a week ago
8 from today, the 30(b)(6) notice related to the jurisdictional
9 issue. We have not received a response on that.

10 I raise it only because I'm concerned that
11 before they have told us they would not be producing anybody.
12 So I don't know if we need to have an accelerated time to sort
13 that out. We noticed it for August 22. I'm not sure what
14 their position will be.

15 **THE COURT:** I doubt that the defendants' position is
16 that they are not going to produce a 30(b)(6) witness.

17 **MR. RATLIFF:** Your Honor, no. We received their
18 30(b)(6). I looked at all of the topics. I was waiting,
19 frankly, to have this hearing before I fired off some sort of
20 missive to the other side about what I would or would not do.

21 The other part, on sort of my standpoint, is
22 finding the witness or multiple witnesses, which I'm trying to
23 avoid because, as phrased, I may have to find five, six, seven
24 witnesses to address these. I'm hoping that's not the case. I
25 would like that to be part of our meet-and-confer, in terms of

04:59

1 how do we narrow some of those, so that I can get one witness
2 or two witnesses on this 30(b)(6) and then give them dates.

3 I can tell you August 22, Karen, is not going to
4 work, but I assume given --

5 **MR. MICELI:** We are good the 23rd.

6 **MS. BARRIOS:** Or the 21st.

7 **THE COURT:** I'm going to encourage you all to discuss
8 as much of this as you can. We don't need formal motions to
9 resolve everything, as you all know. When y'all come on the
10 18th, we can talk about all these things. We can talk about
11 what issues y'all are having in terms of the areas of
12 examination of the 30(b)(6). We can do that on the 18th as
13 well. If you all have those conversations before then, all the
14 better.

15 **MR. RATLIFF:** Okay.

16 **THE COURT:** I know that the 18th is, in large part,
17 about the discovery plan, but I want the time that you all
18 spend on discovery between now and then to be primarily aimed
19 at trying to solve the jurisdictional discovery problems. It's
20 easy for me to come in here and say to the defendants you're
21 going to do this, this, and that. I'm trying to avoid creating
22 more problems by doing that than would be created if we talk
23 about what the real problems are and try to solve them that
24 way.

25 We are going to get to a point where I'm just

05:00

1 going to have to order you all to produce things and respond to
2 interrogatories. That's what I'm going to have to do because
3 I'm as beholdng to the schedule as you all are.

4 **MR. RATLIFF:** We will do everything to avoid that
5 happening.

6 **THE COURT:** See you all next week. Thanks.

7 (Proceedings adjourned.)

8 * * *

9 **CERTIFICATE**

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

15
16
17 s/ Toni Doyle Tusa
18 Toni Doyle Tusa, CCR, FCRR
19 Official Court Reporter
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