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1 (The following was heard in open court at
2 9:39 a.m.)

3 THE COURT: Good morning, everyone.

4 ALL: Good morning, Your Honor.

5 THE COURT: Please be seated. So, good
6 morning. This is the rescheduled November status
7 conference, and I am happy to see those of you that are
8 here that are so integrally involved. That's more than
9 I expected, and that's wonderful.

10 We are working off of the joint proposed
11 agenda that was submitted for the November 19th status
12 conference. I will just refer to it and anything else
13 counsel would like to discuss and address, if not
14 entertain oral argument on any matters outstanding.

15 We do have a new report from the state court
16 coordinator, Bryan Aylstock. It's dated November 30th.
17 We haven't even had a chance to review that, but it is
18 an update as to where the additional cases that are
19 being filed across the country in state courts may be
20 located.

21 I keep handy the chart that had been prepared
22 as of November 8th, and that is potentially to keep my
23 abreast of which judges I have contacted and which I
24 haven't had personal contact with.

25 We did have a telephone conference with Judge

1 Bernadette Clark from New York State several weeks ago,
2 which went very well, and I think that conference was
3 left with Judge Clark saying she would be more than
4 happy to coordinate discovery. But, just as we would
5 expect any state judge to say, and believe and position
6 themselves and their cases, they would not subjugate
7 themselves.

8 I assured her that that was exactly why we
9 were having personal contact, so she would know that
10 that was not our intention, but very interested in the
11 work of the MDL. So, Judge Clark, I consider her a
12 colleague and an ally as of that moment.

13 Now, where would counsel like to begin?
14 Shall we hear from liaison counsel first?

15 MR. CORR: Sure.

16 THE COURT: Mr. Corr.

17 MR. CORR: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. CORR: Just to report, we as liaison
20 counsel exchanged lists of cases with Pfizer in the
21 past month to make sure that we were all working off
22 the same spreadsheets. We have matched up and did
23 that, and then we forwarded it on to Ms. Herman so that
24 she could see what we were working off of.

25 She sent us the Court's list and we compared

1 that. I think there were two on the Court's list that
2 we did not have on ours, and we will get back and forth
3 and keep doing that with Pfizer so that we make sure we
4 are all on the same page.

5 I believe -- I didn't bring my notes with me,
6 but I believe it's 258 cases that are currently pending
7 in the MDL. There may have been a transferor order
8 that came through more recently that I missed in that
9 number, so that's give or take a couple.

10 Coordination has been continuing, and I think
11 Mr. Aylstock will address, you know, his report, but I
12 can report to the Court that we received on Friday
13 cross-notices of depositions for the 30(b)(6)
14 depositions that are scheduled. I believe they were
15 cross-noticed in every state court case is what we
16 received from Pfizer.

17 THE COURT: Really?

18 MR. CORR: So, I believe that is every state
19 court, I think it was. So, there were, and I don't
20 remember the number, but it was about 14 or so separate
21 cross-notices that we received with multiple cases on
22 each.

23 Also, I wanted to report to the Court that I
24 started with a new firm on last Monday with Stark &
25 Stark. I did send an e-mail to your clerks and I have

1 also been in touch with Mr. Dempsey, and I will get
2 something onto the docket so that all counsel of record
3 will know my new address.

4 THE COURT: Good luck to you.

5 MR. CORR: Thank you. I think that's about
6 all I have for that report.

7 THE COURT: Thank you.

8 MR. CORR: All right.

9 THE COURT: Mr. Cheffo, would you like to add
10 anything on the general broad topics of liaison?

11 MR. CHEFFO: I think Mr. Corr accurately
12 summarized, and I don't know if this gets into the
13 liaison counsel, but I'll just -- so I don't have to
14 stand up again, Your Honor.

15 There haven't been -- he's correct, we have
16 cross-notice, which I think has been very helpful and I
17 thank the PSC folks and the state court lawyers. I
18 think there's been a good level of cooperation there.
19 To my knowledge, there hasn't been any new state court
20 filings.

21 One of the issues, there have been a number
22 of folks who have filed motions to dismiss their cases
23 in the MDL without prejudice, and again I don't
24 certainly not appropriate to argue it, because I don't
25 think those counsel are here, but I just want to at

1 least flag that for Your Honor.

2 Our general view, and this is what we said in
3 our papers, is obviously we want to take those on an
4 individual basis, but we have largely agreed, as you
5 might expect if folks want to dismiss their cases, to
6 do that without prejudice.

7 We have just said that we think having filed
8 in the federal courts that there should be a
9 requirement if they get refiled that they have to be
10 refiled here. We don't think that that's much of a
11 burden since they were initially filed here. It does
12 avoid any issues later of selection and things like
13 that.

14 Again, I think that hasn't been fully
15 briefed, but that is just something I wanted to bring
16 to the Court's attention. Beyond that, I think Mr.
17 Corr covered it.

18 THE COURT: Thank you.

19 MR. CHEFFO: Thank you, Your Honor.

20 THE COURT: I saw one such motion this
21 morning. I assume you are talking about more than I
22 know about. This one is dated November 30th. Perhaps
23 you know more that are coming.

24 MR. CHEFFO: I think there was two or three
25 cases. I have had conversations with some folks that

1 they intend to dismiss cases, and I think at least in
2 the conversations that I have had, and they will have
3 to speak for themselves if they disagree, but they have
4 basically said that that term was agreeable going
5 forward. In other words, if they dismiss they will
6 agree to refile in the federal court if they ultimately
7 do refile.

8 THE COURT: I can't tell from the actual
9 motion that that is a term, and we will seek
10 clarification on this from all counsel.

11 MR. CHEFFO: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. CORR: Your Honor, if I may? I also
14 failed to mention, but you may have seen also that
15 there was a motion to withdraw several remands, and I
16 think counsel on those motions are here, so there are a
17 number of cases that were subject to motions for remand
18 that are now withdrawn. They will stay here in the
19 MDL.

20 THE COURT: Okay. That is quite a number of
21 them.

22 MR. CORR: I think it was about 48, I think
23 it was.

24 THE COURT: I haven't seen 48, but I do have
25 a document in front of me that's about 20.

1 MR. CORR: 39 or 40, I am told.

2 THE COURT: Okay. That takes care of quite a
3 few of the motions to remand that are pending from the
4 CCP, but not all of them.

5 MR. CORR: Right.

6 MR. CHEFFO: I think that's right, Your
7 Honor. I think Mr. Freese is here today, actually, and
8 he may want to address the Court, so I don't want to
9 steal his thunder. But, my understanding is there was
10 about 47 or 48 cases that were subject to the remand,
11 and about 40 of them are Mr. Freese and his colleagues'
12 cases. Those are now pending before this Court, Your
13 Honor.

14 MR. CORR: I have no problem stealing his
15 thunder.

16 THE COURT: Apparently. Perhaps we could
17 give him the floor at this time. Mr. Freese, good
18 morning.

19 MR. FREESE: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MR. FREESE: I have been welcomed back
22 hardily by all of my colleagues.

23 THE COURT: I bet.

24 MR. FREESE: It's good to be back in front of
25 you. I won't go into a long explanation, other than

1 since the time that we argued our motions to remand, we
2 stayed in close contact with the lawyers for Pfizer and
3 the PSC for a number of reasons, and not the least of
4 which was that it came obvious to us that we were
5 probably recreating a wheel that didn't need to be
6 recreated.

7 We have a lot of faith in the PSC that you
8 have established here. My firm works with many if not
9 all of these lawyers on other cases, and it just seemed
10 to us that we would be better off just leaving our
11 cases here that were removed.

12 There is a case in St. Louis called Lancaster
13 which is a 21 plaintiff case. 15 of those cases are
14 mine, or are my firm's clients. We have agreed to
15 dismiss the Lancaster case, and Mr. Cheffo and I have
16 agreed that those cases can be directly refiled here if
17 we so choose, or also not be refiled at all, but if we
18 do refile them they will be filed in Your Honor's
19 Court.

20 With respect to the cases that were subject
21 to the remand that we argued, the same situation that
22 will obviously stay in front of Your Honor unless we
23 chose to dismiss them for any reason, and with the
24 understanding that if they ever do get refiled we will
25 refile them here.

1 THE COURT: All right. That's an agreement
2 between you and Pfizer that the Court would honor
3 without passing judgment on the ultimate legal ruling
4 that I might be pressed to make in any other case.

5 MR. FREESE: Yes, Your Honor.

6 THE COURT: You are free to make that
7 decision on behalf of your clients. I do have 35 or 36
8 listed on your plaintiffs' notice of withdrawal of
9 motions to remand.

10 MR. FREESE: Yes, ma'am. The number always
11 changes, so I hate to always say what an exact number
12 is because I'm always wrong, I'm off by one or two, but
13 that sounds about right.

14 THE COURT: It's potentially quite enough.
15 We will note, however, that the reasons for the motions
16 to remand in each of the local cases was the addition
17 of Wolters Kluwer to the defendants. That does not
18 show up across the country in other state court cases.

19 MR. FREESE: That's correct.

20 THE COURT: If they remain, defendants in
21 remaining cases in Philadelphia, then that just says
22 that we'll be doing the same discovery.

23 MR. FREESE: That is correct, Your Honor, and
24 I should have said that earlier. Our intention is to
25 continue to prosecute our cases against Wolters Kluwer.

1 The cases could have been filed in federal court to
2 start with, they just weren't.

3 THE COURT: They could have, yes.

4 MR. FREESE: So, it doesn't affect Your
5 Honor's jurisdiction and we intend to prosecute those
6 cases.

7 THE COURT: Good, thank you.

8 MR. FREESE: So, thank you for having me
9 back, Your Honor.

10 THE COURT: Thank you very much, and thank
11 you for working that out. My law clerk thanks you
12 also, because we've been quite far along on those
13 cases. But, that would explain why we delayed, because
14 if there's a potential for removing legal decisions
15 from our list of things to do, we can find other things
16 to do. So, I thank you very much for settling that,
17 and we'll see what happens with the rest of them.

18 All right. As to any other matters, I am
19 going to turn now to the plaintiffs' steering
20 committee. Ms. Nast, Mr. Robinson, what would you like
21 to say today or report to the Court?

22 MS. NAST: Good morning, Your Honor.

23 THE COURT: Good morning.

24 MS. NAST: Through your encouragement, we
25 have agreed upon a joint discovery scheduling plan

1 which Your Honor signed on November 15th. It's a
2 pretty ambitious plan. It sets a trial date subject to
3 the Court's convenience of the week of September 12,
4 and you will let us know I'm sure whether or not that
5 works.

6 THE COURT: Well, right now it's open.

7 MS. NAST: Excellent.

8 THE COURT: It's open for the Zolofit MDL
9 trial pool, but a lot has to happen before then.

10 MS. NAST: A lot has to happen before that,
11 and a lot has been happening. This has been a very
12 busy month for the steering committee. We had our
13 ski-in/ski-out meeting in Denver, but unfortunately
14 there was no skiing involved, but there was lots of
15 good work.

16 We met last -- maybe it was this week. We
17 met recently on Houston for the day and did a lot of
18 work on science issues. We have the 30(b)(6)
19 depositions scheduled for the -- the first 30(b)(6)
20 deposition scheduled for this coming Friday and then
21 one later in the month.

22 As soon as we leave here we are going to Mr.
23 Heim's office to meet with Mr. Cheffo and Mr. Heim on
24 working out many of the issues that we left in this
25 order to work out, such as how to choose the discovery

1 pool, the trial pool, subject to whatever Your Honor
2 may want to direct us on that.

3 I suspect maybe you would like to hear what
4 our ideas are, and then tell us where to go with
5 respect to that, figuratively speaking.

6 THE COURT: Your ideas are based on your
7 knowledge, acquired knowledge of the issues in the
8 case, and I think that throws us back to what was
9 discussed at our last in court status conference, and
10 that was science does matter. It does matter how we
11 categorize cases, it does matter to know of the cases
12 that are remaining available for trial pool selection,
13 what those cases are based on.

14 I would need, as I would in any event, to
15 know what are the issues in each case besides the whole
16 panoply, because we know that that will narrow down
17 somewhat after we get through Daubert, specific Daubert
18 hearings. But, the general science we do have to
19 address.

20 Mr. Cheffo, you had pushed for that last time
21 and I'm not putting that cart before the horse, I see
22 this as a dual approach, which is what your submission
23 gave me and I am very pleased about that. But, I do
24 not want to ignore the fact that it's going to be
25 pretty difficult to pick without knowing more of the

1 science.

2 MS. NAST: Well, that's absolutely true, and
3 the guidance that you gave us at the last hearing I
4 think helped us reach this sort of compromise position
5 where we have more discovery, perhaps, than Pfizer was
6 encouraging at the moment, and we have earlier Daubert
7 hearing than perhaps we were encouraging at the moment,
8 so we've kind of compromised on that.

9 THE COURT: All right.

10 MS. NAST: But, we are fully cognizant that
11 we have to group these cases in accordance with what
12 type of science is involved.

13 The expert reports, the general causation
14 expert reports are due, it's hard to believe, but in
15 six months, and we are just beginning to do the
16 discovery, so that will be a challenging task for both
17 parties.

18 THE COURT: Would counsel, all counsel
19 consider the need for the expert reports -- how shall I
20 put this? I don't want it to be interpreted as if this
21 is what I want, but I do think it's an issue that needs
22 to be addressed, and I throw it out for your discussion
23 between yourselves and with each other more than to
24 satisfy the Court.

25 Seeing the motions to withdraw without

1 prejudice, because there are no pending statute
2 problems that there is ongoing treatment alleged,
3 seeing those motions which I believe will also pop up
4 more in this particular MDL, in this kind of litigation
5 because of the nature of the plaintiffs' injuries that
6 are claimed here, the science is so broad and the work
7 of this MDL is going to be so long in terms of time.

8 I wonder if once you start with the
9 discovery, specific cases as well as general, if you
10 might come to a point where you see a benefit in
11 pursuing one, or two, or three primary areas as opposed
12 to all of them, and also depending on how many of those
13 case are actually viable and available for trial pool
14 status. It may be the full court press isn't wise,
15 but it may only be unwise because of the nature of the
16 timing.

17 MS. NAST: Well, I think that is something
18 that we will be considering when we talk about how to
19 choose the discovery pool, how to choose the trial
20 pool, will it make sense to break it up into pieces or
21 not. That is one of the things, as I said, that's on
22 the table for discussion today.

23 We're also going to be talking about really
24 exciting things like ESI and things that we have to
25 agree to fairly soon.

1 THE COURT: Right.

2 MS. NAST: But, the discovery pool/trial pool
3 issue is something that's very important, and I think
4 that is something that will certainly come into the
5 discussion.

6 THE COURT: Also, have the PSC members, and
7 executive committee primarily, given more thought to a
8 discovery master, or is there any present need for
9 that?

10 MS. NAST: Your Honor, I don't think there is
11 a present need there is a present need for it, but
12 there has been substantial discussion with Pfizer and
13 with the PSC about a person or persons that we would
14 recommend, and while we haven't concluded those
15 discussions, it's certainly on our mind.

16 THE COURT: Okay.

17 MS. NAST: Because we fully recognize that
18 there could come a time when we might need a special
19 master.

20 THE COURT: I think the time would be when
21 you are in the middle of discovery disputes, and
22 especially privilege objections. I can see them
23 happening, and I think it would be valuable to have
24 someone on board early on.

25 Not to do what you're doing now because

1 you're perfectly capable of working out a common
2 schedule to propose to the Court, which looks quite
3 reasonable and is recognizable as the result of
4 compromise, which I appreciate but it doesn't always
5 have to be that way.

6 MS. NAST: It's a rocket docket schedule.

7 THE COURT: It is.

8 MS. NAST: Would Your Honor like us to
9 consult and present a recommendation or recommendations
10 on the special master?

11 THE COURT: Yes. I have someone in mind, but
12 you certainly should do that amongst yourselves first.

13 MS. NAST: Okay.

14 THE COURT: We'll see if it matches up.

15 MS. NAST: We'll be happy to do that.

16 THE COURT: I'm going to write it down on a
17 little piece of paper, put it in my pocket, and date
18 it.

19 MS. NAST: We have so far been pretty
20 successful in working out grievance, and we may be able
21 to work that one out, as well. Whether or not it meets
22 with your approval is obviously up to you.

23 THE COURT: Okay. Thank you.

24 MS. NAST: I think that's it. We're busy.
25 January, I joked to one of my colleagues that we might

1 as well drop all the rest of our cases, because January
2 is Zoloft month. I think it's going to continue to be
3 Zoloft month all the way for a number, quite a good
4 number of months. But, everything is going well. This
5 may go down in history as one of the most congenial
6 pretrial conferences in history.

7 THE COURT: Well, it may very well be the
8 most congenial MDL in history but, you know, time will
9 tell.

10 MS. NAST: Indeed.

11 THE COURT: I always enjoy the work that all
12 of us do, and I enjoy it more when it's congenial but,
13 you know, we don't actually have the ability to order
14 that. So, if you are of that ilk, God bless you and
15 thank you for being in my courtroom.

16 MS. NAST: But, we are very helped, for
17 example, in reaching agreement on this order by the
18 comments that the Court made at the last hearing,
19 letting us know your views about the various issues
20 that were discussed. It was very helpful in helping us
21 to reach agreement.

22 THE COURT: Thank you.

23 MS. NAST: Both sides came out with a much
24 clearer position of where we better go. So, that was
25 good, even though it wasn't ordered.

1 THE COURT: Thank you very much.

2 MS. NAST: Thank you.

3 THE COURT: Mr. Cheffo?

4 MR. CHEFFO: Now I feel almost bad to say I
5 agree with everything Dianne said. We should have a
6 little acrimony here, I guess, to spice it up, but I
7 think there may be a time and place for that and I
8 don't think today is the time or the place for that.

9 You know, I second what a of what Dianne
10 said, and we really -- I think you, in reading the
11 order, it was short but to the pint. There were
12 clearly, you know, compromise efforts that probably
13 would have been different had we not had Your Honor's
14 guidance, and I think we were able to reach agreement.
15 So, that was helpful.

16 You know, I think you heard and you
17 identified some of the areas that we really need to be
18 working on, so it's the top of mine for us, as well,
19 which are, you know, which cases, because there's
20 really three stages.

21 There's the filed cases now and the fact
22 sheets which are due in a few weeks, then we have to
23 basically present to Your Honor what the discovery pool
24 cases are going to look like, and each one of those
25 cases could potentially have to up to eight

1 depositions, and that has got to be finished by
2 November.

3 From there, there has to be some discussion
4 about what the follow-on cases, whatever you call the,
5 trial pool cases, bellwether, so we are going to be
6 meeting and talking about that, but those are really
7 all of the detailed points that we're going to have to
8 talk about.

9 I think it is important to find out what the
10 pool is going to look like, you know, make sure that we
11 kind of call out any cases that are not going to
12 continue early in the process, right, we don't want to
13 basically -- neither side wants to spend time, effort,
14 money, put people through the difficulties of discovery
15 if they are ultimately, you know, nine months from now
16 going to say we're not interested in proceeding.

17 So, those are the conversations, and I don't
18 think I'm saying anything that the plaintiffs wouldn't
19 disagree with. You know, the other thing that we will
20 be talking about are a number of things. The discovery
21 master you hit on, as well. I think we can make a
22 proposal. Obviously, if Your Honor has a position on
23 this --

24 You mentioned the complexity of the science.
25 You know, if this is something that the parties think a

1 science day helps, certainly I suspect they would be
2 willing to do it, we certainly would be willing to do
3 it. You know, we can get some direction from Your
4 Honor on that.

5 Maybe that's something that we can all take
6 up on the January -- again, I don't want to presuppose
7 these positions because we haven't had a chance to talk
8 about it, but those might be some things, and if so
9 what that would look like and what the expectations
10 might be.

11 So, I think we are all mindful of we have a
12 lot of work, there is a lot of unknowns with respect to
13 how the science is going to play out in terms of having
14 it presented to the Court, and then I think there are a
15 number of unknowns, doable unknowns, but unknowns with
16 respect to what the kind of complexion of the discovery
17 and number of cases are going to look like.

18 I am relatively hopeful on these. I think
19 we've, perhaps famous last words, but I think we
20 accomplished the harder issues in the last order, you
21 know, where there was really a little more bifurcation
22 of views. I think going forward this is to some extent
23 a lot of the important nuts and bolts, but nuts and
24 bolts.

25 I am hopeful that when we actually -- that

1 come January that we'll have, you know, much more to
2 report about how we think, and you will obviously weigh
3 in, think that we should proceed from January, you
4 know, through the rest of the year.

5 THE COURT: Thank you, Mr. Cheffo. That's
6 encouraging. The ESI issue that was briefly argued, it
7 was brought to my attention the last time we were in
8 court, I thought that I would be getting some
9 paperwork. That is, not necessarily a memorandum of
10 law, but some explanation as to why there were these
11 differences, what is the difference. When I didn't, I
12 have grown to expect that you are working on it.

13 MR. CHEFFO: I think we are, but not only are
14 we working on it, but I think, you know, we're working
15 towards a situation where we could reach agreement on
16 that, as well.

17 THE COURT: Yes.

18 MR. CHEFFO: So, again I don't want to
19 presuppose that or I don't think we've signed the
20 document, the agreement, but I think the reason why you
21 haven't heard from us is certainly it hasn't fallen off
22 the radar screen but, you know, as we've kind of gotten
23 together we've tried to figure out, you know, what the
24 plaintiffs need and we've tried to say what, you know,
25 we can do and what are needs are, and we are hoping

1 that we will ultimately have a alignment there so we
2 can just kind of --

3 That's an issue that I think we would all
4 agree if we don't have to spend, you know, months and
5 special masters on just what the protocol should be and
6 we could just start producing documents in an agreed
7 format that works for the plaintiffs and works for
8 Pfizer, that's obviously the goal.

9 THE COURT: All right. Thank you very much.
10 Mr. Robinson?

11 MR. ROBINSON: Thank you. Good morning, Your
12 Honor.

13 THE COURT: Good morning.

14 MR. ROBINSON: Just a couple of things.
15 Number one, the order really was the compromise, as you
16 can see, because as Mr. Cheffo and Mr. Heim emphasized
17 the science was important to them, and that Daubert
18 hearings were important to them.

19 Frankly, we understand that is part of this,
20 their case, is to try and figure out which, if any,
21 categories or types of injuries may not be on the
22 table. Frankly, I think that the core part of the
23 order that we've agreed to, really, of discovery, and
24 there is two aspects to discovery.

25 Number one is the order itself, and number

1 two is getting the documents and the depositions. But,
2 I think the first order of business is getting the
3 documents. So, I am really hopeful that we don't have
4 to come back here and go to a special master to get
5 these documents. But, if we do, we do.

6 That's what we're hoping, with this very
7 aggressive schedule, that we get these documents soon,
8 because for us to be doing expert reports and the like
9 in six months without documents would be nearly
10 impossible. So, when we come in January we are really
11 hoping to have a process going for Your Honor.

12 THE COURT: Well, I have a question, Mr.
13 Robinson, since you have or did have so many state
14 court cases separate from the MDL, wouldn't that be a
15 similar problem in those jurisdictions?

16 MR. ROBINSON: Your Honor, in the state
17 jurisdictions?

18 THE COURT: Right, because the science
19 matters no matter where the cases are, right?

20 MR. ROBINSON: That is true.

21 THE COURT: Okay.

22 MR. ROBINSON: But, some state courts have a
23 Kelly-Frye type standard or Frye standard, Your Honor,
24 and other have Daubert. So, for example, there's been
25 some MDLs in California that had a Kelly-Frye ruling

1 one way, and then the federal Daubert ruling was
2 different.

3 THE COURT: Sure, but getting the information
4 first is identical.

5 MR. ROBINSON: Yes, right.

6 THE COURT: Instead of how do you decide the
7 motions based on the pertinent law. So, I am just
8 seeing more coordination there. What happened with the
9 St. Louis cases?

10 MR. ROBINSON: Right now, as I understand it,
11 Your Honor, they are happy that we agreed on this order
12 and they are waiting for us to get the documents in
13 discovery, and they are hopeful that we're going to do
14 that. I mean, I could speak to Mr. Niemeyer, who Mr.
15 Tracey and I are working with. You know, I think from
16 our standpoint we are happy and we'll parallel the MDL
17 track in those cases, as well.

18 So, a lot depends on whether or not we're
19 going to get these documents. I think that is -- you
20 know, because it's great to do an order like that, but
21 getting the documents are where the rubber hits the
22 road, and that's my number one thing now for the next
23 six months, is to get the documents.

24 If we get the documents, I think other people
25 are going to come into this MDL. I think there are

1 other cases out there --

2 THE COURT: Actually, I remember hearing --
3 I'm not picking on you.

4 MR. ROBINSON: Yes.

5 THE COURT: I hope you don't think that.

6 MR. ROBINSON: Yes.

7 THE COURT: But, you are standing right
8 there, so I'm asking you because you have this
9 experience, okay?

10 MR. ROBINSON: Yes.

11 THE COURT: I remember saying we need an
12 order, we need an order, and that will bring cases into
13 the MDL. Number one, let me clarify. I'm not trying
14 to solicit cases to the MDL, but I am trying to set an
15 example for our litigation, the federal litigation that
16 will also be able to coordinate with the state
17 litigation, whether it comes in or not.

18 So, I am hopeful that we can provide the
19 leadership, which is what I wish the MDL to stand for,
20 but not necessarily to keep using the state court as a
21 competitor. I don't see it that way. I just don't see
22 it that way.

23 MR. ROBINSON: Right.

24 THE COURT: I know that there was some flavor
25 of that in Avandia with Philadelphia, we were never

1 competitors, we were always racing to the same goal,
2 but not against each other. In the end, it turned out
3 pretty beneficially for everyone. So, we'll do the
4 same here.

5 I just would like to know the status of state
6 cases that the MDL attorneys are involved in, because
7 it seems to me that you are entitled to do that, but I
8 just don't want that to be a source of competition.

9 MR. ROBINSON: For example, as I understand
10 it, I think I have five cases right now in the state
11 court that --

12 THE COURT: Multiple plaintiffs, right?

13 MR. ROBINSON: No, I have five plaintiffs.

14 THE COURT: Okay.

15 MR. ROBINSON: Mr. Tracey has five
16 plaintiffs, as well. Both Mr. Tracey and I are going
17 to be filing some more cases to the MDL, probably
18 within the next six weeks on a rolling basis. So, you
19 know, we are both here with you and we are committed to
20 the MDL. I think that we will be talking to our state
21 court friends and trying to get them to come to the
22 MDL.

23 But, what I am saying is is that I also
24 believe that we really need to be productive on our
25 discovery. I think that that's going to be the

1 important thing. I'm trusting that we're going to do
2 that, and that's why I'm filing more cases, and I
3 believe Mr. Tracey is going to be filing more cases as
4 well, Your Honor.

5 THE COURT: Okay.

6 MR. ROBINSON: But, I am hopeful that with
7 this aggressive schedule that the document production
8 is, you know, at the top of the list here for us all,
9 because once we get that we can really do all this
10 stuff, we can do the Daubert hearings, we can get the
11 early trial settings, you know, the discovery pool, et
12 cetera. But, I think really that we've got to get the
13 discovery against Pfizer. I don't mean to be beating
14 this thing, but I think that is so critical here.

15 Your Honor brought up ESI, and we are going
16 to talk about that today. You heard Mr. Cheffo say
17 that well, we don't want this to go on for months. I
18 think what I took from that and from other
19 conversations with him is that they do not want to give
20 us the documents, except for some certain types of
21 documents in native format, though they give us
22 metadata fields.

23 So, we're going to meet with them today to
24 try and work some of that out, as well, Your Honor. I
25 think that that -- we'll have to see what Pfizer is

1 wanting to do and hopefully was can come to some
2 compromise on the ESI, as well.

3 THE COURT: Thank you.

4 MR. ROBINSON: Okay. I would say that, you
5 know, I just think this. At least for the people that
6 you put on this committee, for example myself and Mr.
7 Tracey, we intend to file our cases in this Court, but
8 I am concerned that there's a larger group out there
9 that we need to bring into the party here. So, that's
10 my goal.

11 THE COURT: Thank you.

12 MR. ROBINSON: Thank you.

13 THE COURT: Mr. Cheffo.

14 MR. CHEFFO: Mr. Robinson went a little
15 beyond our script for today, so let me just respond to
16 a few things. The first is, you know, we're all --
17 let's just clear the air, we're all mindful that there
18 could be other state court cases.

19 But, I will tell you almost every person who
20 has come to us and asked for a tolling agreement, and
21 there are a number of them including some folks sitting
22 behind me, they are all with the condition that they
23 file in federal court. That's kind of condition
24 precedent for us, and there's a large potential number
25 of those.

1 We have also, as you can see from the
2 reports, there aren't a lot of filings in state court.
3 In fact, we just saw Mr. Freese tell us that, you know,
4 while he had a case that was perfectly viable from a
5 jurisdictional perspective in St. Louis, for any number
6 of reasons, I would hope part of it is because he has
7 confidence and trust in the Court, the PSC, the way
8 things are going.

9 So, in fact, I am not standing here saying I
10 don't think there could or will be any other state
11 court cases, but I do think this is a little bit of a
12 red herring at this point. You know, I think we need
13 to move ahead with the MDL, not worry about everything,
14 and if we look at the facts, the facts are the state
15 courts are shrinking and, in fact, because of I think
16 the good efforts that Your Honor has made, we're not
17 facing what we were very early.

18 Remember, I had reported we were getting
19 motions to compel, and depositions, and people didn't
20 want to coordinate. That's all essentially, you know,
21 knock on wood, gone by the wayside. So, I think for
22 purposes of we have enough to do to coordinate and make
23 sure this MDL, and I'm firmly committed to doing that,
24 as is my client, and I think once we do that we're not
25 going to have to worry about if someone files a case in

1 West Virginia and so on.

2 The only other things I would say is, you
3 know, I'm not really sure if there was an implication,
4 but we agree documents are important. We're
5 litigators, they are important on both sides, all
6 right, so they want documents from us and we have given
7 a million plus pages. There would be a lot more in
8 this MDL. We're going to continue to do that.

9 By the same token, there are documents that
10 we need from the plaintiffs. So, this is kind of a
11 bilateral joint exercise, and I think that we will
12 continue to meet our obligations. If we have disputes
13 and we need a discovery master we will appoint that.

14 But, I'm not sure the idea that if there was
15 an implication that somehow we've been not kind of
16 meeting with our obligations, I would kind of reject
17 that because we are kind of at a point where we've
18 given a lot of documents, we're going to continue, and
19 that's what I thought our meeting is this afternoon, is
20 to figure out what to give.

21 THE COURT: All right. Thank you.

22 MR. ROBINSON: Your Honor, I would just say
23 that I definitely agree with Mr. Cheffo that we are
24 meeting and we haven't had any document production
25 deadlines or anything like that, so we're going to work

1 on that. I was just making a point that I would like
2 to get that done as soon as we can so we can get to
3 trials and Daubert hearings.

4 THE COURT: Yes, time is certainly of the
5 essence in this contemplated schedule. Thank you. Are
6 there some gaps to fill in here? I know I want to hear
7 from you, Bryan Aylstock, my state coordinator, but,
8 Mr. Zonies, did you have anything you wanted to add in
9 terms of the ESI issue or anything? I saw you like
10 move to stand up, and I just want to be sure we keep on
11 track and collect all the comments.

12 MS. ZONIES: I appreciate that, Your Honor.
13 If something was going to come up on the ESI I just
14 wanted to be clear that we're talking about that this
15 afternoon. Mr. Cheffo will wisely back out and let his
16 team do it.

17 MR. CHEFFO: That's very true, Your Honor.

18 MS. ZONIES: We're very happy to have our
19 state friends, and we anticipate more of our state
20 friends coming.

21 THE COURT: Good, thank you.

22 MS. ZONIES: Thank you.

23 THE COURT: All right. Mr. Aylstock.

24 MR. AYLSTOCK: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MR. AYLSTOCK: I think a lot of what I had
2 intended to say has already been covered by others
3 aptly. There are 258 or some-odd cases in this MDL,
4 and now that Mr. Freese has agreed to withdraw his
5 motion to remand on the Wolters Kluwer issue those 40
6 or so that he has will remain here.

7 My understanding is that Mr. Clark has four
8 that remain pending, and I think there's maybe four
9 others in that Wolters Kluwer bucket that at this point
10 still would need a resolution.

11 THE COURT: All right.

12 MR. AYLSTOCK: I would say that I do think
13 the coordination efforts are going well. As Your Honor
14 is aware, we had the telephone call with Justice Clark,
15 and I haven't heard any statements from any of me
16 compatriots on the state court side about a lack of
17 coordination or anything like that.

18 To the contrary, as was indicated, all of the
19 depositions have been cross-noticed. I haven't seen
20 any objections to any of those cross-notices, and
21 hopefully don't anticipate any. Now, with Mr. Freese
22 also agreeing for the Lancaster case to be in this
23 Court, the Missouri litigation out of St. Louis will
24 really just have the Foster case which has 23 plaintiff
25 families in it.

1 The West Virginia case had a development in
2 it, in that the state court judge denied a
3 (indiscernible) motion. So, as Your Honor may recall,
4 there is 19 total cases that were filed there, 18 were
5 removed and remanded, but that decision on remand went
6 up to the Fourth Circuit and everything continues
7 there. So, there's really only one case in West
8 Virginia until the Fourth Circuit rules.

9 So, there have not been a lot of filings
10 either in federal court or state court. I think the
11 holidays may be one reason, but also I think that folks
12 are seeing, I believe, the leadership by this Court and
13 by this PSC, and are willing to let us continue to
14 lead.

15 THE COURT: I agree with that, because this
16 isn't a typical product liability that has received a
17 fair amount of press, and yet it's not the quick add me
18 onto your list kind of litigation, and it shouldn't be
19 because this is so case specific, individually specific
20 that I am happy to hear that the state courts are
21 treating it as gently as the MDL. They are looking to
22 us again for some leadership and coordination.

23 I appreciate your efforts there. I'm going
24 to be drafting a personal letter to each of the judges
25 that you have given me the information on just to make

1 sure that they know what we told Justice Clark in New
2 York State about the ability of the judges to give me a
3 phone call or write me an e-mail, or contact you.

4 Of course, I make everyone aware that the
5 state coordinator for the MDL is still a plaintiffs'
6 counsel, so he speaks -- he is delivering messages that
7 the Court asks him to deliver, but not necessarily a
8 plaintiffs' message. We do keep those lines clear, and
9 whenever it is blurred please speak up. I don't want
10 you to be in that position.

11 MR. AYLSTOCK: I have tried to make that, and
12 I believe I have made that clear to every judge that I
13 have spoken with.

14 THE COURT: I think you have. Of course, the
15 defense has the same right and responsibility to be in
16 contact. I like the way you are working together on
17 those. Thank you very much.

18 MR. AYLSTOCK: Thank you, Your Honor.

19 THE COURT: All right. Is there any other
20 matter to address right now? I think we do have a
21 January conference scheduled already. We'll keep that
22 on track unless there is a reason to change it.

23 MS. NAST: No, it's six weeks. That seems
24 like it's perfect.

25 THE COURT: Good. I think six weeks is good.

1 I think 30 days doesn't give you quite enough time to
2 get everything done. Six weeks is better, but we have
3 to intersperse the variety of court dates to do actual
4 work like oral argument and hearings.

5 MS. NAST: Particularly, this period of time
6 when we have the two holidays intervening.

7 THE COURT: Good. All right.

8 MR. CORR: Your Honor, if I may?

9 THE COURT: All right.

10 MR. CORR: One comment that was made to me,
11 and I didn't go back and check the dates that we had
12 scheduled the future status conferences, but as far as
13 if there is going to be a lot of people traveling in
14 there an issue with them being scheduled on Mondays,
15 maybe it was.

16 So, I am just bringing that to Your Honor's
17 attention so that you know that at some point, because
18 the PSC sometimes will have meetings surrounding the
19 conferences, and the travel sometimes is more
20 difficult.

21 So, it was raised, and I will look at the
22 dates and bring it up at a general meeting of our group
23 to see if it is something that we want to bring up to
24 you to change those dates.

25 THE COURT: Why don't you discuss that and

1 also deal with Pfizer on it, because we're happy to
2 change it.

3 MR. CORR: Right.

4 THE COURT: I am probably scheduled on just
5 about every day for criminal speedy trials up into
6 April.

7 MR. CORR: Okay.

8 THE COURT: I can still change things,
9 though.

10 MR. CORR: It wasn't a major issue. It was
11 brought to my attention and I was asked that I raise it
12 to you, and I actually forgot about it until it just
13 came up.

14 THE COURT: We thought a Monday or a Friday
15 was a good idea, no, for all of you that are flying in?
16 Is Sunday worse, Saturday worse?

17 MR. ROBINSON: I actually like -- I come from
18 California, I like Monday.

19 MR. CORR: Okay.

20 MR. ROBINSON: I like flying in on Sunday.

21 THE COURT: I'm not the traveler here, so you
22 have to let me know, okay?

23 MR. CHEFFO: It's easy for us, we're a train
24 away, or actually less. The only thing, and I wasn't
25 going to bring it up, but I'm glad they did and Your

1 Honor did, the March date I actually think may well be
2 over a lot of spring breaks of people, so that may be
3 something. Again, I don't want to take up too much of
4 the Court's time.

5 THE COURT: No, that's all right.

6 MR. CHEFFO: But, if we need to maybe ask to
7 move that date so it doesn't conflict with holidays. I
8 think other than that we'll be pretty much guided by
9 what they think is easier for dates.

10 THE COURT: Please let me know if that's too
11 close to the holidays in March. We don't have to
12 interfere with that, we have plenty of work to do
13 before that and after that. We'll figure that out.
14 Let me know, but it is good that everybody has the
15 schedule well out.

16 MR. CHEFFO: Right.

17 THE COURT: I don't know if we ran it out
18 into June. Perhaps that would be a better idea. I
19 think we're up until March, but I'm not sure we're
20 scheduled after that. If you want to give me a list of
21 dates that you know are palatable to the leadership,
22 we'll work from there. I still have a little bit of
23 time.

24 I understand that you will be meeting this
25 afternoon. You are welcome to use the jury room, the

1 witness rooms, because I know we have a court
2 proceeding in here at two which will take about an
3 hour, but that is the only use of the courtroom, so you
4 can remain here is that's helpful to you until that
5 time. All right.

6 MS. NAST: Your Honor, you are correct, you
7 went into March, March 25.

8 THE COURT: But, it's probably a good time to
9 extend it to June so you can give me prospective dates.
10 All right. Thank you very much. I am very, very proud
11 and heartened by all of your work. Thank you.

12 ALL: Thank you, Your Honor.

13 (Proceedings adjourned at 10:26 a.m.)

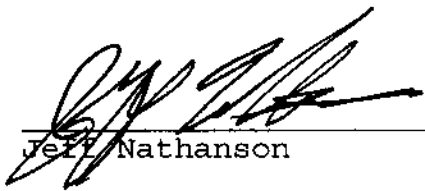
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CERTIFICATION

I, Jeff Nathanson, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

1-5-13
Date



Jeff Nathanson