

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: : MDL NO. 12-2342

ZOLOFT :
(SERTRALINE HYDROCHLORIDE) : Philadelphia, Pennsylvania
PRODUCTS LIABILITY : January 17, 2013
LITIGATION : 10:04 a.m.

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE CYNTHIA M. RUFE
UNITED STATES DISTRICT JUDGE

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1 (The following was heard in open court at
2 10:04 a.m.)

3 THE COURT: Wow, what a noisy courtroom.
4 Good morning.

5 ALL: Good morning, Your Honor.

6 THE COURT: Lots of spirit in here. Please
7 be seated, everyone. Happy New Year again. I am
8 pleased to have received the joint proposed agenda
9 which we are using from January 3rd. There may be some
10 changes, but I am happy to deal with those.

11 Fortunately, it gives me time for the backed
12 up criminal trial I have. The jury will be back and we
13 will be starting at 11:30, 12:00, so I am hoping that
14 our matters can be concluded by then. There is more of
15 you here today than I am used to seeing, so welcome
16 whoever some of you are. I have not met all of you.

17 P. All right. So, let's proceed with a status
18 or review of the cases in the MDL. Good morning, Ms.
19 Nast.

20 MS. NAST: Good morning, Your Honor. Since I
21 am not addressing the jury I am going to move this. We
22 have had a busy month. Three 30(b)(6) depositions,
23 everybody is working on their fact sheets, or at least
24 should be working on their fact sheets and I believe
25 they are, the discovery has been going forward, the

1 documents are being produced.

2 We have, of the 30(b)(6) depositions were
3 corporate structure, ESI, and Greenstone. We have more
4 30(b)(6) depositions that we're working with Mr. Cheffo
5 to schedule, and they will be scheduled in the next few
6 weeks.

7 We have had many long meetings, 12 and a half
8 hours yesterday, actually, not with Mr. Cheffo, but
9 with this group, which is why we today have such a
10 large group, because we had many, many meetings
11 scheduled to accomplish what it is that we are trying
12 to accomplish.

13 There have been a number of cases dismissed
14 that are going to be refiled in the MDL. We anticipate,
15 and I think Mr. Robinson will address this, we
16 anticipate some new filings in the coming month. I
17 have a hard time saying Mr. Aylstock, but Mr. Aylstock
18 will be reporting on that when he gives his report.

19 MR. AYLSTOCK: My dad is not here.

20 MS. NAST: So, basically the bottom line to
21 keep it simple is everything is moving along.
22 Everybody's flights have been cancelled. I don't know,
23 who knew? I mean, there is --

24 THE COURT: So, you are stuck here working in
25 Philadelphia?

1 MS. NAST: There's not even any snow.

2 THE COURT: There is going to be snow,
3 though.

4 MS. NAST: There is going to be snow, yes.
5 So, we will be around probably longer than we
6 anticipated. But, everything is fine in terms of the
7 way the case is moving at this point. Let me see if
8 Mr. Robinson has anything he wants to add.

9 THE COURT: All right.

10 MR. ROBINSON: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. ROBINSON: I just want to say this, that,
13 you know, I think that, and maybe this is something
14 that might help others, I have those five plaintiffs in
15 St. Louis and I talked to Mr. Cheffo, that I'm going to
16 put them here in the MDL. I think that's important
17 that my cases are all in the MDL.

18 So, right now those five come. I also filed
19 five more, I think last Friday. So, I think we're
20 trying to, you know, get everybody encouraged to keep
21 doing this thing. We're talking to others. There is
22 other people we have talked to in Texas about filing
23 cases here. So, I think there is some good momentum.

24 We had a great meeting yesterday amongst all
25 the plaintiffs' bar. It was very positive, and I think

1 the litigation is moving. So, I think that's good
2 news. Now, I just wanted to share that with you.

3 THE COURT: Thank you.

4 MR. ROBINSON: One other thing. Ms. Nast is
5 filing five cases this week, I can report that. So, I
6 think that we are --

7 MS. NAST: Next week.

8 MR. ROBINSON: Next week, yes, so that is
9 going ahead. As you know, I think Sean Tracey filed
10 three last week. So, we're trying to talk to people
11 about their cases on file.

12 THE COURT: All right. Well, I appreciate
13 that because I keep thinking of several meetings ago
14 when Mr. Cheffo said we need to address the science,
15 and until you know the range of cases you have it's
16 hard to categorize and get to the science in an orderly
17 manner.

18 I thought that was one of the issues that you
19 must have struggled with in the selection of the
20 initial discovery group as I reviewed that pretrial
21 order that was submitted.

22 MR. ROBINSON: I would say this, Your Honor,
23 to be fair we had a good meeting, a three hour meeting
24 with Mr. Cheffo on --

25 MS. NAST: That was a different meeting.

1 MR. CHEFFO: Tuesday afternoon.

2 MR. ROBINSON: It was Tuesday afternoon.
3 There is some good news and bad news. The bad news is
4 that we have to go out into the field and get people to
5 upgrade their fact sheets. There was a group that
6 didn't have their fact sheets filed, there were groups
7 that didn't attach the medical records. We are on
8 that.

9 Mr. Blizzard is heading up a committee and
10 doing a good job. We had meetings yesterday on all of
11 the cases yesterday, and we are all going to try and
12 help call people to get their cases in.

13 Now, there are people that we now have
14 started to call and they say that look, these are young
15 kids and we just got our cases, and apparently they
16 filed the cases maybe thinking they were part of the
17 MDL or whatever, and they didn't have the medical
18 records.

19 So, we're going to have to deal with that
20 issue, Your Honor, but we are, we are trying to work
21 with them.

22 THE COURT: It makes a lot of sense to me in
23 this case, dealing with minors' injuries that are
24 alleged, that many people will have chosen not to file
25 at all, and if they have think a slower pace would suit

1 them better.

2 I think that's where plaintiffs have to come
3 to grips with the speedy schedule that has been
4 outlined, and I don't know if this is a topic of mutual
5 discussion --

6 MR. ROBINSON: I would say this, that Mr.
7 Cheffo has been very cooperative with us. I have to
8 say we had a great -- the meeting on Tuesday was really
9 a friendly meeting and, you know, just I have been --

10 THE COURT: I expect they are all pretty
11 friendly and happy.

12 MR. ROBINSON: Yes.

13 THE COURT: Especially after a while.

14 MR. ROBINSON: But, it's before we go for
15 drinks.

16 MR. CHEFFO: Okay. Let's not overdo it, Your
17 Honor.

18 THE COURT: I feel left out, actually.

19 MR. ROBINSON: The bottom line is this, Your
20 Honor. I mean, I'm not going to get into, you know,
21 the Pfizer discovery either, but I do think there are
22 some issues for a special master on both sides. But, I
23 think that Mr. Cheffo has cause for concern, and we do,
24 too.

25 But, I do think that on both sides we're

1 trying to work to get closer on these issues. Mr.
2 Cheffo, I am sure he will address his problems with the
3 fact sheets, a little bit.

4 MS. NAST: I don't think he intended to do
5 that.

6 MR. ROBINSON: Thank you.

7 MS. NAST: But, anyway --

8 THE COURT: Thank you, Mr. Robinson.

9 MS. NAST: We are finding in terms of the
10 fact sheets Your Honor's impression in that it is
11 difficult to get the medical records. Some of these
12 injuries, or alleged injuries, or whatever we should
13 politely say go back a long way.

14 But, we are finding that sometimes the
15 doctor's offices, and the pharmacies, and so forth do
16 not keep records for so long, but we are working on
17 that. Does the Court have any questions on this?

18 THE COURT: No.

19 MS. NAST: Okay.

20 THE COURT: Except to say I thank each side
21 for the new discovery, the supplemental, I will call
22 it, discovery schedule that I haven't signed before, I
23 wanted it to be addressed today.

24 When I first read it I had some concerns
25 about the timeline, but it does not refute or

1 contradict the initial discovery order in any way,
2 which I still think is very ambitious, and I love that
3 because it sets high goals for all of us, and we should
4 not be tinkering with that schedule.

5 But, I was concerned about how the updated
6 plaintiffs' fact sheets could be put together in such a
7 short time. So, I thought that that would come up
8 today.

9 MS. NAST: That impacts both plaintiffs and
10 defendants, because we each have to make picks and we
11 rely on the fact sheets to make the picks. Mr.
12 Blizzard and his committee have been hard at work with
13 that. I think we met three hours yesterday on case
14 selection. It's a long thing.

15 MR. ROBINSON: The only thing I wanted to
16 say, Your Honor, that I was reporting about my five
17 cases from St. Louis coming here, Mr. Blizzard told me
18 yesterday that his case from the Southern District --

19 MR. BLIZZARD: St. Clair County.

20 MR. ROBINSON: -- the county is coming here
21 also.

22 THE COURT: Okay.

23 MR. ROBINSON: So, I think there's a lot
24 going on there.

25 THE COURT: Well, coordinating the discovery

1 in each of these matters certainly helps to identify
2 what are the primary issues to focus on initially.
3 They are all important issues, but we have to start
4 somewhere.

5 MS. NAST: And we are.

6 THE COURT: Thank you.

7 MS. NAST: Thank you.

8 THE COURT: Thank you very much. Mr. Cheffo,
9 good morning.

10 MR. CHEFFO: Thank you. Good morning, Your
11 Honor. A few things. One is I am not sure if I should
12 be happy hearing plaintiffs' lawyer saying we're filing
13 more cases against your client with my client sitting
14 here.

15 But, in all seriousness, you know, to the
16 extent that they are going to be filed, you know, as we
17 have said all along we think is the place they should
18 be filed.

19 THE COURT: Okay.

20 MR. CHEFFO: I don't have a whole lot to add.
21 I would really echo the level of communication. I
22 think, you know, we have tried and hopefully we will
23 keep doing is, I think what we are trying to do on both
24 sides is to not kind of use the typical game plan of,
25 you know, we don't do something and a motion to compel

1 gets filed, and they miss a deadline by a day and we
2 file it.

3 You know, what I think we are trying to do on
4 both sides is to reach reasonable resolutions, because
5 we ultimately know what's going to happen is, you know,
6 you may grant it and then you will leave to supplement,
7 and I think we're trying to work that out. So, that's
8 all good.

9 You know, I won't spend a ton of time. Just
10 to reiterate a little bit of the documents. There have
11 been a bunch of depositions, more will be scheduled.
12 We're collecting custodial files, there is going to be
13 several hundred boxes of paper materials that we are
14 making available. All of this I went through adverse
15 event reporting. We had a very good meeting I think on
16 Tuesday.

17 So, we're continuing to kind of in addition
18 to the million plus pages that we already produced, we
19 expect this to be, you know, continuing to feed the
20 channel of documents that I know that the plaintiffs
21 have indicated that they want.

22 I do want to turn for a minute to the fact
23 sheets and, you know, I would say that I do feel that
24 there's kind of a good faith effort on the part of the
25 steering committee to address this because I think we,

1 and the Court, and the plaintiffs frankly have a shared
2 goal of figuring out what the cases are about.

3 I think this does tie into, you know, Your
4 Honor's comments. We do have an aggressive schedule
5 and I don't think any of us are here today to say we
6 should move it. But, I think it is somewhat of a
7 cascading issue.

8 You know, we have to do X, and then we have
9 to do Y, and if things then fall out of place it does
10 ultimately make some of the later dates difficult. I
11 am hopeful we are not there, but here is where we are.

12 December 15th or so, there is about 284 cases
13 right now as I can tell in the MDL, probably around 30
14 or so, thereabouts, are still subject to remand. So,
15 you know, let's say between 250 and 260 cases. We
16 received fact sheets in 171 of the cases.

17 Now, that's a little deceiving in terms of it
18 sounds lower than the number. There is about 60 or 70
19 of the cases where we have either given extensions or
20 they are not due.

21 Okay. So, realistically there was about 30
22 to 40 cases where we didn't receive any fact sheets or
23 records, and we have kind of given those to the
24 plaintiffs and they really, through Ed, have been
25 manning and womaning the phones to, I think, follow up

1 on those issues.

2 Then, there is, you know, another list of
3 cases. There is about 60 or so, and I admit that this
4 number is somewhat arbitrary where we basically said
5 well, we have less than 50 pages.

6 There's no magic to that number, but it just
7 seemed to be a litmus test of if we have 50 pages it
8 means that there's not a lot of records, because in
9 some of these cases we have 10,000, you know, records
10 some of the plaintiffs have provided us, and we have
11 given that list.

12 So there is 60 cases, and again I understand
13 that they are working diligently to, you know, kind of
14 identify where folks are in the process and get those
15 to us.

16 Again, this all culminates to the, you know,
17 to, I think, circling back to this agreed order that we
18 submitted, and if you have any questions we can talk
19 about that, but it does contemplate the plaintiffs
20 picking their 12 cases on or about, I think, February
21 15th. I think our date was February 22nd.

22 I think what we all agree in fundamental
23 fairness and just, you know, from an idea before we
24 embark down this path of picking discovery pool cases
25 which we hope will have some significance to the

1 litigation, you know, we need to know what the cases
2 are about before we can pick, just like the plaintiffs
3 do, as well.

4 So, that's kind of a status report. I think
5 it's hopeful and positive thinking that we will get
6 these records and materials and fact sheets such that
7 we can, you know, do what we need to do, which is to
8 evaluate them and pick cases that we think are
9 appropriate.

10 THE COURT: I see that as it is laid out
11 here, but can you tell me what is the thought as to
12 later filed cases that may very well be a better model
13 for a certain division of alleged injury than the ones
14 that are currently filed?

15 MR. CHEFFO: It's a very fair question and,
16 you know, the only thing I can say is it's kind of the
17 nature of the beast a little bit because, you know, if
18 we wanted to have later dates, and there was an
19 agreement, so I'm not here to kind of redo them.

20 THE COURT: Right.

21 MR. CHEFFO: But, one of the issues is --
22 well, I would say two things. One is to the extent a
23 case, we hope that we don't see a flood of cases, as
24 soon as we pick, you know, they all get dismissed.

25 But, to the extent a case gets dismissed it

1 can be replaced by a case that is subsequently in the
2 pool, right, so that doesn't answer completely the
3 question, but that's an option.

4 You know, I suppose at some point, you know,
5 we can always have this discussion and if Your Honor
6 decided that we needed different cases we can certainly
7 try and do that. If schedules ultimately get moved, we
8 can then add some cases.

9 But, I do think you raise a fair question.
10 The schedule contemplates really picking and working on
11 discovery pool cases based on the cases that are
12 currently before the Court.

13 THE COURT: Right, and I trust that don't
14 have lexicon problems. If they are going to be tried
15 here, I can't necessarily deal with anything unless
16 it's waived.

17 MR. CHEFFO: Exactly, and I think that's
18 something -- the trial pool cases are something that's
19 clearly on top of mind for all of us, but I will tell
20 you we really haven't -- you know, we have kind of
21 picked bite-sized issues.

22 I mean, I think ultimately I am hopeful, like
23 we have in the past, we'll come to some agreement.
24 But, this schedule really contemplates just the
25 discovery pool. We haven't really presented anything

1 to Your Honor that I'm aware of on the trial pool.

2 But, you highlighted a point that's exactly
3 right, which is that we have not lost sight of the
4 ultimate schedule, right, so that the deadline to
5 complete this is coordinate with the trial pool and
6 with some of the expert deadlines.

7 So, we are hopeful from this schedule we will
8 get to a point where we could actually pick those
9 cases, but we will probably have to submit another
10 agreed or partially agreed order on how the trial pool
11 cases are going to be selected and the order.

12 THE COURT: All right. I appreciate that
13 very much. Do you think that the, and I will ask this
14 question of both sides, the deadline for plaintiffs in
15 the initial discovery group to respond to the expanded
16 plaintiffs' fact sheet is a good date, March 14th?

17 MS. NAST: Your Honor, there is no reason
18 to --

19 THE COURT: There is no automatic extension
20 built in there.

21 MS. NAST: Right. We have no reason to think
22 that that won't work. I just want to make one comment
23 about the lexicon issue. We obviously on both sides,
24 are considering that and thinking about that, and I
25 haven't discussed this with Mr. Cheffo, but when there

1 is a lexicon issue there are -- and it's pushed by the
2 defendant, many times the Court has traveled and sits
3 on the bench in that particular district, and we know
4 you like to travel.

5 THE COURT: Well, that depends on where it
6 is.

7 MS. NAST: Of course.

8 THE COURT: I can think of a few places I
9 would rather not try cases in.

10 MS. NAST: Right, understood. But, my point
11 is is that we have considered it and we are going to
12 discuss some solutions.

13 THE COURT: Let the record be clear that in
14 this age of fiscal responsibility we wouldn't be
15 seeking too much of that.

16 MR. CHEFFO: And those are considered -- I'm
17 sorry, go ahead.

18 MS. NAST: No, it's okay.

19 MR. CHEFFO: Those are considerations
20 obviously we know are top of mind and, you know, to the
21 extent we talk about them, you know, we also are very
22 mindful that, you know, this Court is going to want to
23 have some significant involvement going forward.

24 We have to balance that against, you know, is
25 that a few cases and what happens with all the other

1 cases, but those are kind of client issues, and I'm
2 comfortable on those types of issues we're probably
3 going to work it out.

4 THE COURT: All right. Well, thank you very
5 much.

6 MR. CHEFFO: Thank you, Your Honor.

7 THE COURT: I will turn to Mr. Aylstock for
8 our coordination with these dates. Thank you for your
9 report.

10 MR. AYLSTOCK: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. AYLSTOCK: You have heard about some of
13 the refilings, dismissals and refilings in state court.
14 They are not yet reflected on the report because those
15 have not yet happened.

16 Mr. Blizzard has five cases in St. Clair
17 County that will be dismissed and refiled here. Mr.
18 Robinson has about the same number in Missouri. Mr.
19 Robinson you probably saw also withdrew his motions to
20 remand in California.

21 THE COURT: Yes.

22 MR. AYLSTOCK: So, the good news is there is
23 coordination and certainly commitment to this MDL. We
24 have had, as was reported, 30(b)(6) depositions. They
25 were cross-noticed. There was a little bit of an issue

1 on one of them. We were able to work that out with Mr.
2 Cheffo and with counsel in St. Clair County who was
3 objecting to that cross-notice, so that is a positive,
4 and so they are being cross-noticed.

5 The state court attorneys are not only
6 getting notice, some of them are appearing and
7 participating in the deposition preparation and so
8 forth.

9 Justice Huff in New York did dismiss five
10 cases on forum non conveniens grounds. I don't think
11 they have been refiled yet, but we understand they may
12 be being refiled in California State Court by those
13 attorneys, and other than that, the state court report
14 remains the same.

15 THE COURT: Thank you. I trust there will be
16 more movement as we march forward and there is more and
17 more awareness of the Zolofit litigation, which is bound
18 to happen.

19 MR. AYLSTOCK: Right.

20 THE COURT: I thank you very much for
21 continuing to coordinate so well and so professionally
22 with the state judges, who I have yet to find the time
23 to call each personally, but we will manage that as
24 soon as I know where these cases are still
25 remaining.

1 MR. AYLSTOCK: Thank you, Judge.

2 THE COURT: Thank you.

3 MR. CHEFFO: Your Honor, I would just add
4 there was an issue with one of the cases, and really
5 Mr. Aylstock and his team resolved that. I said I was
6 going to just note that to the Court. I was told that
7 I was being a brown-nose, but I'm going to do it anyway
8 because they really did resolve the issue, and we
9 appreciate that.

10 THE COURT: Well, even if you were, it is
11 okay. All right.

12 MS. NAST: Your Honor, I think we have
13 already covered item number three, and really number
14 four on the agenda.

15 THE COURT: I think so, too.

16 MS. NAST: On the initial discovery group
17 Your Honor has the order there. Is there any questions
18 that you have about that?

19 THE COURT: Not any longer.

20 MS. NAST: Okay.

21 THE COURT: No, we have discussed those, too.

22 MS. NAST: Okay. So, that moves us then to
23 pending motions. That's you.

24 MR. BARNICKOL: Thank you. Good morning,
25 Your Honor. Karl Barnickol for defendant Wolters

1 Kluwer Health.

2 THE COURT: Good morning.

3 MR. BARNICKOL: Your Honor, back in September
4 I had told Your Honor that we have this issue with a
5 couple -- the cases that involve my client still have a
6 motion to dismiss issue.

7 By agreement with the plaintiffs we kind of
8 put that all to the side to let the Court -- to let the
9 chips start to fall and let the Court resolve motions
10 to remand.

11 At this point and since September there have
12 been withdrawals of a couple of the motions to remand.
13 It leaves by my count eight cases left against my
14 clients that are still subject to remand.

15 So, I think at this point balancing
16 efficiency with the fact that the cases are moving
17 forward, we would like to move forward with the motions
18 to dismiss. I just wanted to kind of raise that with
19 Your Honor.

20 THE COURT: As opposed to the remaining
21 motions to remand?

22 MR. BARNICKOL: In parallel, or at least at
23 the same time. I mean, I think all that I really want
24 to do is just not continue to defer, and defer, and
25 defer.

1 So, what I would like to do is just work out
2 with the plaintiffs a briefing schedule, get the
3 motions on file now, and Your Honor can certainly
4 proceed how you see fit as between the remaining
5 motions to remand and our motions to dismiss.

6 THE COURT: All right. I can't do motions to
7 dismiss until I decide remand motions, because that
8 determines whether or not I clearly have jurisdiction.

9 MR. BARNICKOL: Fair enough, Your Honor. I
10 think, though, at this point there may be a value to
11 getting the briefing done. I'm not sure that there is
12 a real strong reason why the briefing shouldn't go
13 forward.

14 At one point I would have said that is kind
15 of a waste of the Court's time and it's a waste of the
16 parties time to brief this if it may be moot, but there
17 is still going to end up being -- I don't know if I
18 have the numbers exactly right, but I think it's
19 somewhere in the neighborhood of 65 cases where there
20 is no motion to remand still pending against my client.

21 So, those cases balanced against the eight
22 where there is, kind of seem to me to make sense to
23 start moving forward with the briefing.

24 THE COURT: Yes, I don't know if I have that
25 number of motions to dismiss, but if it is I am not

1 sure they are of record with me. But, I agree that if
2 counsel see no other changes in their status, at the
3 very minimum we will address the motions to remand.
4 That's fully briefed, isn't it?

5 MR. BARNICKOL: Yes, Your Honor.

6 THE COURT: Yes. The motions to dismiss, you
7 would like a briefing schedule?

8 MR. BARNICKOL: Yes, but I mean I intend to
9 work the plaintiffs. I am not here to ask Your Honor
10 for that today.

11 THE COURT: Okay.

12 MR. BARNICKOL: I just kind of -- I don't
13 want to let this issue just slip totally to the side
14 and I wanted to kind of get your guidance on whether
15 I'm in the right ball park with trying to --

16 THE COURT: I think you are.

17 MR. BARNICKOL: Okay.

18 THE COURT: I think that it has to be
19 clarified but, you know, there is a time in the life of
20 an MDL of this nature, of pharmaceutical mass torts,
21 where you have to let dust settle, and I wanted to see
22 where the cases are and how they are.

23 We have seen a lot of changes in the last six
24 months, and if there are definitely no changes in the
25 cases that you are referring to, and that is, you know,

1 a position shared by your opponents, I see that the
2 message is Judge, we can't do anything else with this,
3 please do this.

4 I will do the motions to remand first, and
5 then we will clarify with counsel whether or not there
6 is a reason to address the briefing on the motions to
7 dismiss on those cases if they remain here, of course.

8 As to the others, we will do all of the
9 briefing at the same time. Perhaps, I would like on
10 those to not have 65 briefs, but a combination since
11 they do have a common issue.

12 MR. BARNICKOL: Yes. No, I think that's
13 exactly what -- in the first conversations that I had
14 had with the plaintiffs' group and the lawyers that
15 have cases against my clients, that was always the --
16 the notion was, that we would file consolidated briefs.

17 I think the arguments are fairly common
18 across claims, and I don't want to dump a bunch of
19 stuff on the Court and particularly waste the Court's
20 time with lots of the same arguments in different
21 briefs.

22 THE COURT: You may find it reasonable to
23 pick a lead case and file the briefs in that case and
24 in the MDL, dual filing, because both numbers have to
25 show. Sometimes, notices do not get sent out, ECF

1 notices, unless they are in both. That can be missed.
2 We found that out in Avandia.

3 So, pick a representative number, try to
4 agree with the plaintiffs on that, and then we will
5 address it in that manner and ask why that ruling,
6 whatever the ruling is, shouldn't apply to the rest of
7 the cases.

8 MR. BARNICKOL: Okay.

9 THE COURT: All right?

10 MR. BARNICKOL: Thank you, Your Honor.

11 THE COURT: All right. I appreciate it. Who
12 is your counterpart in the plaintiffs' steering
13 committee?

14 MR. ROBINSON: Your Honor, Mr. Robinson here.
15 I will be happy to, after court today, to start
16 discussions here. We have talked to some of the
17 people, and some of the people are in the courtroom
18 that have these cases, and then others are out. I have
19 talked to at least a couple of them. I think we can
20 start discussions.

21 THE COURT: All right. I appreciate that. I
22 did see someone stand in the back. I guess you are
23 involved in this.

24 MS. PINTO: Yes, Your Honor. I am Ms. Pinto,
25 Rosemary Pinto.

1 THE COURT: Yes.

2 MS. PINTO: I think I am co-counsel in all or
3 most of those cases, and we are in general agreement
4 with everything that was said.

5 THE COURT: Thank you.

6 MS. PINTO: Thank you.

7 THE COURT: So, you will all be talking, all
8 right?

9 MR. BARNICKOL: Yes. Thank you, Your Honor.

10 THE COURT: Thank you very much. Any other
11 motions to address?

12 MR. CHEFFO: I do not have a dog in that
13 fight necessarily. The only thing that I guess I would
14 say is I have heard some discussion that some of the
15 remand cases, and I will speak with Ms. Pinto
16 afterwards, and whether they are going to actually come
17 to the Court or not, because there seems to be two
18 issues.

19 One is, there is a relatively small number
20 now of cases that have remand, and those folks may
21 decide to proceed with them and, you know, and we will
22 need an order from Your Honor on that.

23 But, like for example, I know Mr. Freese's
24 case where he withdrew it, I think in all of his cases
25 he named Wolters Kluwer as a defendant.

1 THE COURT: He did.

2 MR. CHEFFO: Right, so that's going to be,
3 you know, the issue that I think that he was talking
4 about.

5 THE COURT: The discovery has to proceed no
6 matter where those cases are.

7 MR. CHEFFO: Right. So, the question I think
8 we all frankly need to resolve pretty quickly,
9 plaintiffs and defendants is, you know, are they going
10 to, you know, have this Court rule on, you know, motion
11 to dismiss and proceed here or not. But, I think
12 that's probably a discussion that in the next week or
13 so we need to have.

14 THE COURT: Right, right. We hope that dust
15 settles very quickly, because it would just make it
16 easier.

17 MS. NAST: You know, frankly, Your Honor, the
18 landscape has changed since those cases were filed and
19 removed. We now don't have a -- well, we never did,
20 but there is no coordinated proceeding in state court.
21 I think there is only one Zolof case pending in state
22 court, and it's not in a mass tort context.

23 So, we have been talking and will continue to
24 talk to Ms. Pinto and others to ultimately determine
25 where these things are going to play out.

1 THE COURT: All right. Thank you.

2 MS. NAST: The last thing on the agenda is
3 the report on the special master recommendation. We
4 were notified that Your Honor would like us to submit a
5 slate. We have talked to Mr. Cheffo about that.

6 They really haven't had a chance to have a
7 consultation with their client about that, so would it
8 be all right if we submitted our slate, and I think it
9 will be a joint one, next week?

10 THE COURT: Yes, that will be fine.

11 MS. NAST: Okay.

12 THE COURT: Yes, we see that that could be
13 helpful. Of course, I have always left that to counsel
14 to let me know when it was necessary, but I think when
15 it comes to choosing cases and resolving discovery
16 disputes, it's probably time.

17 MS. NAST: And at least somebody will be in
18 place in the event that they are needed.

19 THE COURT: Right.

20 MS. NAST: Let me see if my co-counsel has
21 anything to add and then I think, unless Your Honor has
22 something, I think we're finished.

23 THE COURT: I don't have anything else at the
24 moment. Good morning, Mr. Heim.

25 MR. HEIM: Good morning, Your Honor. Your

1 Honor, just an observation. The Court observed very
2 early on this morning that it is important for all of
3 us to develop a way to get to the science as early as
4 possible. I think that I have heard Your Honor say
5 that at the last hearing and maybe even at the hearing
6 before.

7 I just want to again put on the -- or at
8 least have Your Honor think about the idea of a court
9 appointed science expert. It may be early for it yet,
10 you may want to wait a little bit further down the road
11 before you take up whether or not you think that's
12 something that the Court might want to do.

13 But, from our point of view, and there are
14 only a few of us so it is easier for us to come to a
15 conclusion as opposed to the plaintiffs' side, but from
16 our point of view that may be a salutary thing to do in
17 this case. So, I just wanted to make that observation
18 today.

19 THE COURT: I don't have too many doubts
20 about needing a court appointed scientific expert to
21 assist the Court in an objective manner as to how to
22 evaluate the evidence that is -- well, not in the
23 middle of a hearing, I'm talking about tutorials. I
24 trusted that counsel would be eventually talking about
25 that.

1 If you could only agree on which cases were
2 moving forward first, or if there is any generalized
3 base of cases that could project a particular type of
4 science to teach this Court. I don't know until I see
5 some cases --

6 MR. HEIM: To see what we bring forward, I
7 understand that.

8 THE COURT: I mean, I read complaints when
9 they come in, not every one, but I read the complaints.
10 I certainly identify them, check them for conflicts,
11 and as they are transferred in, as they are filed here
12 I review it, but I can't tell from the complaints what
13 the science is supposed to be because there is so many
14 allegations and a variety of allegations, I think it is
15 going to be a while before we learn it all.

16 THE COURT: But, whenever you have crystallized it a
17 little bit more, I think that's the time. It is never
18 too soon, however, to have someone lined up, someone
19 without conflicts, because with all of these cases that
20 are now amassing, there are bound to be a lot of
21 experts on retainer or reviewing records. So, you have
22 to start finding someone. I do not have anybody in
23 mind. So, you can probably talk about it.

24 MR. HEIM: We can talk about it among
25 ourselves. Very well. Thank you, Your Honor.

1 MS. NAST: Your Honor, we have not had an
2 opportunity -- I never disagree with Mr. Heim.

3 THE COURT: I wouldn't.

4 MS. NAST: And I won't disagree with him now,
5 but we haven't had an opportunity to discuss this with
6 defendants, and we would certainly like to do that
7 before we make any substantive response.

8 THE COURT: Right. I know this, at this
9 point in time it is too early for me to benefit from
10 any such expert, even on a tutorial basis, because
11 there is so much more that could be covered say in six
12 months to a year when the cases are closer to the Court
13 hearing them.

14 MS. NAST: We are a personal witness to the
15 way you handled the science in Avandia so, I mean, I
16 don't think we're real confident that that's necessary,
17 but we are very willing and able to speak to the
18 defendants about that.

19 THE COURT: Yes. This is probably something
20 that could help, because there will come a time in this
21 case when I will have to make pure science
22 determinations and as long as it is coming, this
23 tutorial type of instruction is coming from a court
24 appointed truly objective expert, I think I could
25 benefit. I think it would benefit the MDL.

1 MS. NAST: It's interesting. Ms. Birnbaum
2 will remember that in breast implants Judge Pointer had
3 a science panel, and I'm not sure that at the end of
4 the day that added or didn't. I don't know, only he
5 could tell us.

6 In any event, the next hearing is currently
7 set for February 25th. Is that still a convenient date
8 for the Court?

9 THE COURT: I know I looked at the schedules,
10 and when it falls in the middle of the week it's never
11 convenient, but that's a Monday, isn't it?

12 MS. NAST: I think it is.

13 THE COURT: I think that's a good day.

14 MS. NAST: Okay.

15 THE COURT: Yes, we are are keeping that
16 open.

17 MS. NAST: Thank you.

18 THE COURT: All right.

19 MS. NAST: Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. CHEFFO: I think March was one that we
22 talked about, and I think it's during the spring break.
23 I don't know if you want to deal with that, Your Honor,
24 now, to propose the new dates.

25 MS. NAST: It's during your spring break.

1 MR. CHEFFO: Yes, the March 25th date.

2 THE COURT: We should probably push that into
3 April.

4 MR. CHEFFO: If we could.

5 MS. NAST: Just push it a week.

6 THE COURT: All right. We will try and push
7 it a week.

8 MR. CHEFFO: Okay. Great. Thank you, Your
9 Honor.

10 THE COURT: I'll do it before I start a long
11 trial, a criminal trial on April 15th, I think.

12 MR. CHEFFO: Perfect, thank you.

13 THE COURT: So, we will get it in before
14 then.

15 MR. CHEFFO: Thank you, Your Honor.

16 THE COURT: April 2nd may very well be
17 available, so we will check on that. Okay. We will
18 move that for you.

19 MR. CHEFFO: Thank you, Your Honor.

20 THE COURT: Anything else from anyone? It
21 was a pleasure to see all of you. Smiling, wow, very
22 happy people today.

23 (Proceedings adjourned at 10:40 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.

1-22-13
Date



Jeff Nathanson