

1 APPEARANCES:

(Continued)

2 MARK S. CHEFFO, ESQUIRE
3 Skadden, Arps, Slate,
4 Meagher & Flom, LLP
5 4 Times Square
6 New York, NY 10036

7 SEAN P. TRACEY, ESQUIRE
8 Tracey Law Firm
9 440 Louisiana Street
10 Suite 1901
11 Houston, TX 77002

12 MARK P. ROBINSON, JR., ESQUIRE
13 Robinson Calcagnie Robinson
14 Shapiro Davis, Inc.
15 19 Corporate Plaza
16 Newport Beach, CA 92660

17 CHRISTOPHER COFHEN, ESQUIRE
18 (No Appearance Provided)

19 EDWARD BLIZZARD, ESQUIRE
20 Blizzard & Nabers
21 440 Louisiana Street
22 Houston, TX 77002

23 STEPHEN A. CORR, ESQUIRE
24 Mellon & Webster, PC
25 87 North Broad Street
Doylestown, PA 18901

26 - - -
27 Audio Operator: Erica Pratt

28 Transcribed By: Brad Anders

29 - - -

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1 (The following was heard in open court at
2 10:54 a.m.)

3 THE COURT: Good morning.

4 ALL: Good morning, Your Honor.

5 THE COURT: Please be seated. I thank
6 counsel, the leaders of both the plaintiffs and defense
7 in this matter for meeting with me in conference in
8 chambers. We have a number of things to address on the
9 record today.

10 One of them, if I may, look at the proposed
11 agenda, I would like everyone to know that the pretrial
12 orders amending the prior pretrial orders for the
13 selection of the initial discovery group and the joint
14 discovery and scheduling plan that were submitted
15 jointly has been reworked for different numbers.

16 We are filing them as we receive them by
17 agreement of counsel. We thought it would be best to
18 just enter new pretrial orders, and that's what we've
19 done, and those will be filed today, but they have been
20 reviewed and signed and look very reasonable looking
21 forward to the trial dates, the trial pools for
22 Bellwether trials in September of 2014?

23 MR. ROBINSON: October, Your Honor.

24 MS. NAST: October.

25 MR. ROBINSON: October.

1 THE COURT: October is a very reasonable
2 target as far as the Court is concerned, and we will
3 keep tabs on it as counsel advise.

4 Now, I am going to ask counsel to address the
5 first agenda item, and that is a status overview on the
6 summary of leadership efforts and coordination.

7 MS. NAST: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MS. NAST: If I may, I am going to combine
10 the status overview with, excuse me, B, the summary of
11 the leadership efforts. We have been busy, we've had a
12 number of meetings. The science committee and the case
13 selection committee met in California for two days a
14 few weeks ago.

15 The PEC met in Atlanta. We have had weekly
16 conference calls with the PSC. We've had very frequent
17 calls with Mr. Cheffo. Mr. Blizzard's case and Ms.
18 Menzes' (ph) case specific committee, no I didn't get
19 that right. Mr. Blizzard, who is your co-chair?

20 MR. BLIZZARD: Mr. Siger.

21 MS. NAST: There we go, Mr. Siger, have met
22 very frequently and are hard at work narrowing the
23 cases so that we can meet the new deadline, which we,
24 by the way, appreciate the Court entering that order.

25 We had a number of people from Kalamazoo, not

1 the destination of choice, but nonetheless, that's
2 where the documents, there were 200 boxes of documents
3 that were tendered and we had a number of people out
4 there reviewing those documents.

5 So, we have been busy,. Everyone is engaged
6 and hard at work. I think that goes next then, unless
7 Your Honor has any questions, to currently anticipated
8 volume, and that would be our, I called them, the Marks
9 squared, Mark Cheffo and Mark Robinson will speak to
10 that.

11 THE COURT: All right.

12 MR. ROBINSON: The defense will go first,
13 Your Honor. We like that, actually.

14 THE COURT: You don't get it often.

15 MR. CHEFFO: Yes, this is usually the role
16 that's been played by the plaintiffs, but I will try
17 and quickly go through. So, I will echo, as I have
18 done, Diane's comments.

19 We, I think, you know, where we can are
20 working together. We are providing information and
21 charts to the plaintiffs with respect to where cases
22 are being filed, as well as where we are with fact
23 sheets and the like so that we can work cooperatively.

24 I would acknowledge Mr. Blizzard and his
25 folks in kind of following up on the fact sheets and

1 documents. I think they have done their best to try
2 and do that.

3 So, here is just a few quick details. There
4 are 244 cases in the MDL which has 319 plaintiff
5 families. Of that, I think the real number is probably
6 300, about 300, because there is 12 cases that are in
7 the process of being dismissed.

8 There are about seven others where the
9 plaintiffs have indicated that they will dismiss. So,
10 of the 300 cases, there is about 30 of them where we
11 have either given an extension or they are recently
12 filed, so that's about 270 cases.

13 Of the 270 cases we don't have fact sheets
14 yet in 31 cases, and in 117 of those cases we've been
15 using a litmus test of are there 50 pages or less, 117
16 cases we don't have 50 pages either of the plaintiff,
17 the mom or both. Then about 40 cases we have between
18 50 and 100 cases. So, that's about 150 of the 270
19 cases right now where we have less than 100 pages for
20 the mom, child or both.

21 Then, just turning briefly to product ID,
22 which again I know both sides are focused on, but just
23 to give the Court a quick report, of the 270 cases
24 where we actually did get the fact sheets, we received
25 pharmacy records of some sort in about 200 of them.

1 In about 120 of the cases it does appear that
2 Zoloft was used during the pregnancy of the 270, and
3 then about 50 of the cases there appears to be some
4 Zoloft use, but can't tell the timing.

5 So, that's something that I think we are all
6 working on, but there are, you know, some significant
7 challenges, I think, to getting those records and to
8 reviewing them.

9 Then, one other quick statistic that, and
10 again we've shared this information with the
11 plaintiffs, but of the 300 plus cases, about 47
12 percent, 50 percent, 149 cases are PSC cases.

13 Of the PSC cases 78 percent of the cases are
14 filed by three firms. One firm has ten, one firm has
15 five, and then all of the rest have three or less cases
16 that are filed into the MDL at this point.

17 Then, I did want to highlight one recent
18 filing. Mr. Cofhen is on the PSC, obviously, he is one
19 of the firms. I think his firm has two cases filed
20 here in the PSC, I'm sorry, in the MDL. There was a
21 situation, there was a recently filed MDL, I am sorry,
22 recently filed putative nationwide class action.

23 Just by way of some background, I got a call
24 or Pfizer got a call from a reporter from the AP not
25 too long ago and the reporter indicated that they had a

1 complaint that had been embargoed, couldn't share it
2 and couldn't tell us who the folks who filed it were
3 and a press release and they wanted us to comment.

4 I asked for the complaint and asked for the
5 name and they wouldn't share it. When it was filed,
6 apparently they had given this reporter an exclusive.
7 So, when it was filed you saw that, you know, Mr.
8 Cofhen's name was one of the two firms listed, and that
9 somewhat surprised me.

10 It is a putative nationwide class action. It
11 was not filed here, of course, it was filed in Federal
12 District Court in California. And as I, I think, try
13 to characterize it, it is essentially that Zoloft
14 doesn't work, it's a placebo.

15 The plaintiff in that case apparently used
16 Zoloft for three years, the doctor prescribed it, she
17 took it and then according to her, realized it didn't
18 work. She wants her money back, and the money back for
19 all of the folks who have used Zoloft for depression of
20 which it is approved across the country.

21 So, again, filed in federal court. I raised
22 this with Mr. Cofhen, and I indicated that I thought at
23 the very least this was something that should be
24 included in the MDL, as all typical consumer fraud
25 cases are typically done, and that we would be filing

1 an application with a tag along notice with the MDL
2 panel and would he consent to that. He has indicated
3 that he will not consent and he believes that it should
4 not be in this Court and should remain in California.

5 So, those issues will obviously need to be
6 addressed. If they really are going to oppose it we
7 think, you know, clearly there is issues of overlapping
8 discovery --

9 THE COURT: Could I just clarify something,
10 please, Mr. Cheffo? The allegation of fraud is not
11 limited to those particular women who took Zoloft when
12 they were carrying a fetus?

13 MR. CHEFFO: As I understand it, basically
14 this is saying we are not seeking personal injury
15 damages, we are just seeking economic damages, the cost
16 of the product back.

17 There is a state 17 200 consumer fraud-type
18 statute and then they are basically seeking a
19 nationwide, as I understand their complaint, punitive
20 class action.

21 This particular woman is saying that even
22 though Zoloft was and has been approved for major
23 depressive disorder, and even though her doctor
24 prescribed it and she filled the prescriptions for
25 three years, somehow it doesn't work and it apparently

1 never should have been approved by the FDA for those
2 purposes, and she wants all of her money back and
3 presumably they want all of the money back for every
4 woman who took Zoloft. I mean, we've talked with the
5 plaintiffs, many of the plaintiffs in this MDL continue
6 to take Zoloft and other SSRIs.

7 So, at the very least there are, I believe,
8 overlapping issues and I just wanted to bring that to
9 the Court's attention. But, that's my report unless
10 Your Honor has specific questions.

11 THE COURT: Well, I haven't seen that and I
12 think I am going to have to wait until it is made part
13 of the MDL. Mr. Cofhen, it does seem to cut against
14 the allegations of most of your other cases and your
15 colleagues cases.

16 MR. COFHEN: Well, first of all, I will say I
17 think you hit the nail right on the head, Your Honor.
18 There is a process by which, as this Court is aware,
19 Mr. Cheffo is aware, the MDL panel would hear it
20 through a tag along action.

21 Second of all, I do think I look to the Court
22 to explain where we see the differences in that case,
23 clear differences, in my opinion. It is a class action
24 that involves consumer fraud claims.

25 There are no personal injury claims. There

1 is certainly no claims involving Zoloft and birth
2 defects which is what the MDL panel or this
3 consolidated action to be about.

4 I don't see any distinction or conflict I
5 should say between that action and what we have here.
6 Quite frankly, I didn't even consider that it would be
7 part of this case, and I told Mr. Cheffo that.

8 I said I would be honest with the Court about
9 that. I didn't even consider that it would be part of
10 these actions because it is a consumer fraud case.
11 Again, I think we need to let the process play out.

12 But, in fairness, I am co-lead counsel in two
13 SSRI cases involving Lexapro and Celexa. Interestingly,
14 one is a consumer fraud case in front of Judge Gorton
15 in the District of Massachusetts, and the other
16 involves suicide cases, personal injury cases in the
17 Eastern District of Missouri in front of Judge Sippel.
18 There is a reason that the MDL panel chose not to
19 consolidate those. They saw those as two separate
20 actions.

21 I think that it was cause some complexities
22 in this case, for the plaintiffs in this case that
23 aren't necessary. So, that's my opinion. I do think,
24 as I said, there is a process, Mr. Cheffo has filed his
25 motion for tag along and we will let that process play

1 out. And if we are in your Court we will be happy to
2 be here and to litigate here.

3 THE COURT: Well, that's up to the MDL court
4 at this time.

5 MR. CHEFFO: And I agree, Your Honor. The
6 only thing I would say is --

7 THE COURT: Thank you, Mr. Cofhen.

8 MR. COFHEN: Thank you.

9 MR. CHEFFO: -- is, I mean, I think
10 complexities is a word that I think speaks true to what
11 it does create, and I think it does highlight that the
12 issues that the fact that Mr. Cofhen is a PSC member
13 here and clearly, even without being a personal injury
14 case there has to be overlapping discovery, and no
15 matter what the MDL panel ultimately decides to do, I
16 think the issues are going to be complicated of having
17 Mr. Cofhen both be on the PSC here and in that case if
18 the cases are not joined before Your Honor.

19 THE COURT: Well, we will have to deal with
20 those issues when they're ripe, and at this time I
21 don't know that they're ripe for me and this Court and
22 the MDL management of it.

23 But, interesting how the allegations
24 formulate into other causes of action, and we do know
25 that, unless the MDL panel sends it here and unless a

1 case is filed directly into this MDL we don't assume
2 any jurisdiction over it.

3 So, we will leave it at that, but thank you
4 for the information. It is the first I have heard of
5 it.

6 MR. ROBINSON: Thank you, Your Honor. I will
7 definitely stay out of that. Thank you.

8 MR. COFHEN: Nothing to be ashamed of, Mark.

9 MR. ROBINSON: No, I'm not. The
10 complexities, I think, include the men that take Zoloft
11 too, right?

12 MR. COFHEN: And I am glad you brought that
13 up, because that's not right.

14 MR. ROBINSON: I didn't mean to bring it up,
15 I was thinking complexities. Your Honor, I am speaking
16 just a little bit about coordination with the states.

17 THE COURT: All right.

18 MR. ROBINSON: And I am going to say some
19 things, then I am going to ask Mr. Tracey to speak,
20 because he has been involved in this process. I have
21 been trying to talk to people across the country as has
22 Mr. Tracey and Mr. Blizzard and others.

23 For example, in California I am talking to
24 Mr. Skekos (ph) who has a number of cases. He is
25 considering putting them in the MDL now, and I think

1 that's coming along.

2 THE COURT: And where are his cases?

3 MR. ROBINSON: Well, he hasn't filed them
4 yet, Your Honor.

5 THE COURT: Okay.

6 MR. ROBINSON: But, he is considering filing
7 them. I think that myself, Mr. Tracey and Mr. Blizzard
8 have talked to Clayton Clark, we've talked to. They
9 have talked to Mr. Bailey, I have not, and I think that
10 there is some possibilities that those groups of cases
11 may come in the MDL, and I will let Mr. Tracey talk
12 specifically about that.

13 But, I do think there is an effort to -- I
14 know Mr. Cheffo talked to Mr. Itkin (ph) and he has got
15 cases in West Virginia. We're trying to get him to
16 bring them into the MDL as well. Then, as I meet
17 individual lawyers with cases I am trying to encourage
18 them to file them in the MDL.

19 The only issue that I see that's a problem is
20 that if it is a New York plaintiff there is a
21 jurisdiction problem, as I understand it, putting a New
22 York case into this MDL here. It has got to be filed
23 in New York. I don't know if there is any way to get
24 around that, but if there is maybe Mr. Cheffo can come
25 up with some way to give this Court jurisdiction.

1 But, I do think there has been some good will
2 on that. I do think Mr. Tracey ought to speak to what
3 he has done, what he has tried to do with his Texas
4 friends down there as well.

5 MR. TRACEY: Okay. Friends?

6 MR. ROBINSON: They're in the same building.

7 MR. TRACEY: Good morning, Your Honor.

8 THE COURT: Good morning, Mr. Tracey.

9 MR. TRACEY: So, I have been speaking, as you
10 know, for some time with a couple of different law
11 firms that are in Houston. They actually are in my
12 building, the Bailey Perrin law firm and Clayton
13 Clark's law firm.

14 The best we can tell in terms of numbers of
15 cases, Clayton Clark probably has in the top two, three
16 or four in terms of total numbers of cases. He has
17 reported to me he has between 100 and 125 cases where
18 he has proof of use in the first trimester and proof of
19 damages.

20 I think the Bailey firm, they reported to me
21 they had about 80 confirmed cases right now. We have
22 been encouraging them to join us here in the MDL and
23 they have been sort of silently waiting for two things.
24 One, the common benefit order to get approved and
25 submitted, so they can find out how much it is going to

1 cost which is weighing heavily on their minds.

2 Then, two, to see how we're doing here and
3 whether we are getting anything accomplished. And so,
4 I know that we have circulated a common benefit order
5 that we hope to get to the Court soon, so that issue
6 gets resolved and people can know where they stand.

7 I think it would be very helpful to have
8 them. I think they are seriously considering it. They
9 are busy with other things like mesh and they have
10 thousands and thousands --

11 THE COURT: A lot of attorneys are right now.

12 MR. TRACEY: -- of cases, and so I think
13 their attitude about not joining the MDL is developing,
14 since they have so much time, effort and money in mesh.

15 So, look, I am hopeful that when we get the
16 common benefit order submitted and signed it will jump
17 start their decision, and I think we are going to get
18 them here, and I think it would be important to get
19 them here to have the numbers up here. So, that's sort
20 of the state court issue.

21 I would like to add, if you don't mind, even
22 though I didn't know that we were going to talk about
23 Mr. Cofhen's issue, and I would just like to add one
24 thing to that is I don't know that this PSC wants to
25 spend the time, money and effort to prosecute a

1 property damage claim when we are spending all of our
2 time, money and effort prosecuting birth defect claims.

3 To me they really don't go together and quite
4 frankly, I think there may be some push back from this
5 PSC to Mr. Cofhen about spending those types of
6 resources. So, in spite of Mr. Cheffo wanting it here,
7 I think there are some reasons it shouldn't be here.

8 THE COURT: I really will not take a
9 position on this. I think good counsel need to do what
10 they need to do. I appreciate knowing about it because
11 the MDL panel sometimes does contact this Court, but
12 without more information, without the need for me to
13 have more information at this time, I will simply
14 remain silent on the issue and leave it to counsel to
15 deal with each other's cases as you deem appropriate.

16 I do think there are resource issues to
17 address.

18 MR. TRACEY: Great. Thank you. Any further
19 questions, Your Honor?

20 THE COURT: No, Mr. Tracey, thank you.

21 MR. TRACEY: Thank you.

22 THE COURT: Thank you, very much. The report
23 that I have from Bryan Aylstock to be filed today, it
24 is dated February 20th, Bryan was not able to be with
25 us today and asked to be excused and sent Jason

1 Richards. I think Mr. Richards can supplement the
2 report if he would care to, please?

3 MR. CORR: Substitute better than the
4 original.

5 MR. RICHARDS: Mr. Corr, is making some not
6 so nice comments behind my back. How are you doing,
7 Judge?

8 THE COURT: I am fine, how are you?

9 MR. RICHARDS: Good. In my report of
10 February 20th we identify about 323 cases that were
11 pending in the MDL.

12 THE COURT: Which is pretty close to Mr.
13 Cheffo's 319.

14 MR. RICHARDS: It is pretty close, and there
15 has been some activity recently since I refiled the
16 report which resulted in a net increase of about four
17 cases that considers the -- what has happened last week
18 until now.

19 THE COURT: Well, I actually signed
20 dismissals, as Mr. Cheffo mentioned, for some cases
21 already, four or five.

22 MR. RICHARDS: Yes, ma'am, and we filed, the
23 Aylstock firm, filed, I think, 11 cases last week. So,
24 I am trying to take all of that into account, so that's
25 how I arrive at about 327 which is an up-tick of about

1 48 cases since last month this time.

2 So, the trend is clearly more cases are being
3 filed in the MDL, and as Mr. Robinson indicated, they
4 have been talking with some plaintiff firms around the
5 country about filing more cases in the MDL.

6 The new activities in California, that's the
7 new blip on the radar for this month. There were 12
8 plaintiff families who filed in San Francisco. It is a
9 little bit deceptive, because some of those cases came
10 from the dismissals from New York from Judge Huff's
11 office, chambers. So, some of those cases in New York
12 were refiled in California. So, the 12 cases include
13 some of the dismissals.

14 There are still the 38 cases that are in
15 Illinois that are pending a remand decision by the
16 Seventh Circuit, and there is still 18 cases in West
17 Virginia that are pending a remand decision by the
18 Fourth Circuit.

19 Beyond that I would note that in West
20 Virginia the one case is pending before Judge Young.
21 There was a recent telephone conference on February
22 13th and he drafted the parties to proceed with
23 discovery in coordination with the MDL.

24 So, it looks like our efforts in reaching out
25 to the state court judges is paying off and the judges

1 are coming around to participation in the MDL, as far
2 as discovery goes.

3 Beyond that, I think that's probably the gist
4 of our report. They somewhat stole my thunder, but
5 that's really all I have for the Court.

6 THE COURT: And you came all this way.

7 MR. RICHARDS: I did. I came all this way,
8 and Bryan got a doctor's excuse, and I came all this
9 way to say that. I came all this way to tell you what
10 I already wrote to you.

11 THE COURT: Well, I appreciate you being
12 here, and I appreciate everyone being here. It is good
13 to see everyone, but more importantly it is good to
14 know who is active and interested, and I am assured by
15 your leaders that everyone is.

16 Yet, there comes a time when I need to
17 actually sit down with all of you and make sure that
18 everyone is getting their fair share of the work,
19 because it is about the work. You have a lot of work
20 to do.

21 I appreciate Bryan Aylstock's reports. They
22 are always very informative and they are filed in our
23 court's docket as well as posted on the website so
24 others can see what is going on. Of course, there is
25 always room to update it to the minute, but we don't

1 need to do that. It's the round numbers that we are
2 looking at.

3 I am always curious about how other courts
4 are handling their own case management, and this always
5 informs me of that. So, if Judge Young has access to
6 our orders and our notices, especially the deposition
7 cross-notices that are filed, that would be very
8 helpful to him.

9 Do you think that you could follow up and ask
10 Judge Young what else he needs from the MDL to properly
11 coordinate?

12 MR. RICHARDS: Sure.

13 THE COURT: I would be happy to talk to him,
14 but of course, you know, we do something new every
15 week. If you are really going to coordinate with the
16 MDL you might want to know exactly what we are doing
17 when we do it.

18 MR. RICHARDS: Sure.

19 THE COURT: I am very encouraged, though, by
20 the response of the state judges.

21 MR. RICHARDS: Along those lines, the Court's
22 website has its PTOs up, and since we are talking about
23 websites we have talked to an IT department.

24 The website, the independent website from the
25 Court which we're going to develop could take anywhere

1 from, you know, around a month, a month and a half to
2 get some more stuff up on the website for use for state
3 court judges and for other litigants in the country to
4 see what is going on.

5 You would have cross-notices, it would have
6 the pretrial orders, and some pleadings perhaps. We
7 are in the process of getting that worked out, and I
8 will work with Mr. Cheffo on that to see what his input
9 is as far as what he wants to see on the website to
10 make it informative for everybody to use and have
11 access to.

12 THE COURT: I am interested in information
13 access to facilitate coordination and easier access to
14 information. I know that all of you have been involved
15 in other MDLs. Some of those MDLs have a stand alone
16 website.

17 This Court in the Eastern District of
18 Pennsylvania has always chosen to create the websites
19 as part of our own JNET system. Of course, it is PACER
20 accessible. But, I don't think the common person knows
21 about PACER.

22 MR. RICHARDS: No, and it's a pain for me, I
23 have to go back and find my password every time I get
24 into PACER.

25 THE COURT: That's why I don't use it,

1 because I can't remember my passwords.

2 MR. RICHARDS: I would note one other thing
3 as far as staying up to date, we try to do the best we
4 can. What we do is every month we send our draft
5 report to the defense and they take a look at it,
6 because they are often in the best position to know
7 what is the latest of what is going on, and they are
8 always very helpful.

9 Particularly, Katherine Armstrong and Mara
10 Gonzalez are very helpful in giving us the last minute
11 little tweets to report that make it more timely. So,
12 I want to thank them for their efforts every month in
13 helping us get the report out.

14 THE COURT: All right. Thank you.

15 MR. RICHARDS: Thank you.

16 THE COURT: Since we are on the website, I
17 did mention this to your leadership earlier in my
18 conference, but we have tried to enhance the
19 information available on the Court's website, and those
20 changes ought to be put into effect today or some day
21 this week. I hope you all look at it and recommend
22 further modifications if you think it is appropriate.
23 We do look for input from everyone.

24 I have one question for you, Mr. Cheffo. The
25 orders that I have been given, stipulations to dismiss

1 cases without prejudice, is that subject to a later
2 filing?

3 MR. CHEFFO: That is a great question, Your
4 Honor. So, here is the parameters. This is generally
5 public news, right, so what Pfizer's position has been
6 is that we obviously try to be accommodating with
7 dismissals.

8 We have said if you wanted to dismiss, you
9 know, we're not asking for with prejudice dismissals.
10 We will allow a without prejudice dismissal, each side
11 to bear its own cost. We have only asked for two
12 things.

13 That is that the plaintiffs, if they choose
14 to ultimately refile, that they file in federal court,
15 and if they file in federal court they don't contest
16 transfer to the MDL. Virtually every plaintiff who we
17 have dealt with had said sure, you know, that is fine.

18 Of the few that are before Your Honor, the
19 Carey, Dani & Lowe firm have, I think, four dismissals
20 where they are seeking to dismiss without those two
21 conditions, and there are also folks who have cases in
22 the MDL, but they also have other state court cases.

23 So, we have opposed their dismissals only on
24 the ground that we think, as the Court has the power to
25 do, if you allow those without prejudice dismissals you

1 should attach those conditions to them. Does that
2 answer your question, Your Honor?

3 THE COURT: Yes, it does.

4 MR. CHEFFO: Okay.

5 THE COURT: They are different.

6 MR. CHEFFO: Exactly, because, you know, we
7 have answered so, therefore, they have to seek the
8 Court's permission to dismiss without prejudice.

9 THE COURT: Thank you.

10 MR. CHEFFO: Thank you.

11 THE COURT: All right. That brings us up to
12 the selection of the initial discovery group.

13 MS. NAST: Your Honor, Mr. Robinson is going
14 to report on that, but I want to mention one thing I
15 forgot to mention. There are a number of people here
16 who did not sign the sign-in sheet. Ms. Herman told me
17 that it would be available after the conference for
18 them to sign it.

19 THE COURT: It will be.

20 MR. ROBINSON: Your Honor, I think that topic
21 has been addressed by the Court earlier, that we have
22 submitted agreed upon stipulated amendments to the
23 schedule. The old PTOs were 15 and 17. The Court is
24 going to, as I understand, give them new numbers.

25 THE COURT: 20 and 21.

1 MR. ROBINSON: Okay. So, 20 and 21.
2 Basically, there is one issue that I think should be
3 important for, and we're going to let all the plaintiff
4 counsel know this, that I think there is a May 15th
5 cutoff regarding dismissals, right, that were in that
6 order.

7 So, if people are going to try and dismiss
8 their cases without prejudice they ought to definitely
9 get them dismissed before May 15th.

10 THE COURT: It might be a good idea, since I
11 have a copy of this right in front of me ready to be
12 filed, if we actually just mentioned on this record,
13 because then it will be on the transcript for others
14 who might want to access it.

15 MR. ROBINSON: Yes, Your Honor.

16 THE COURT: What this agreement entails, this
17 agreement that the Court has approved. If you don't
18 mind I will just run through it.

19 MR. ROBINSON: Thank you, Your Honor.

20 THE COURT: Then, you can comment on it if
21 you like, Mr. Robinson.

22 MR. ROBINSON: That's fine, I'll put the
23 Court.

24 THE COURT: Okay. As this amends a prior
25 order, it sets forth the protocol for selecting the

1 cases that have been consolidated in this MDL, and they
2 are to be included in the initial discovery group
3 proceeding to threshold discovery as defined in the
4 order, which is part and parcel -- which I won't read
5 because it's too lengthy, of the joint discovery and
6 scheduling plan.

7 The 25 cases that are going to be selected
8 for bellwether trials are selected as follows. "In
9 those cases where multiple plaintiff firms are listed
10 as attorneys for plaintiff families, those plaintiffs'
11 counsel shall advise Pfizer and Greenstone, the Pfizer
12 defendants, which firm is primary counsel to each
13 plaintiff family no later than January 31st, 2013, and
14 continue to update that list as new cases are filed
15 thereafter."

16 It is my understanding, counsel have told me
17 that that has occurred. Secondly, "On or before March
18 15th of this year the PSC will select 12 cases to be
19 included in the initial discovery group and send their
20 list of cases, including plaintiff name and MDL docket,
21 to defendants and the Court. PSC selections must be
22 distributed so that no plaintiff firm is primary
23 counsel for more than two cases among the PSC
24 selections."

25 Then, a week later, "On or before March 22nd,

1 the Pfizer defendants will select 13 cases to be
2 included in the initial discovery group and send their
3 list to the PSC and the Court. Pfizer's selections
4 must be distributed so that no plaintiff firm is
5 primary counsel for more than two cases in the Pfizer
6 selections.

7 "In the event that a plaintiff family is
8 dismissed from the PSC selections prior to May 15th,
9 2013 the PSC shall then select another family, another
10 plaintiff family with the same primary counsel. In the
11 event that a plaintiff family is dismissed from the PSC
12 selections prior to May 15th, 2013 Pfizer shall select
13 another plaintiff family from any case in the MDL.

14 "In the event that a plaintiff family is
15 dismissed from the Pfizer selections after May 15th,
16 2013 Pfizer may, at its discretion, select another
17 plaintiff family to replace any such dismissed
18 plaintiff family." The only difference I see there is
19 without the restrictions of the plaintiffs' firm.

20 MR. ROBINSON: Right.

21 THE COURT: That's how I am reading the
22 differences. "Replacement cases will be selected
23 within 15 days of dismissal of the original case.
24 Expanded plaintiff fact sheets will be served for
25 replacement cases with 30 days after notice of

1 selection has been provided to the non-selecting
2 party.

3 "The deadline for plaintiffs in the initial
4 discovery group to respond to the expanded plaintiff
5 fact sheet is extended to April 15th, 2013 for the 12
6 PSC selections, and is extended to April 22nd, 2013 for
7 the 13 Pfizer selections."

8 Then there is a notice provision. This is a
9 short schedule. I expect everybody will be able to
10 make it.

11 MR. ROBINSON: I want to make a record, Your
12 Honor. I actually misspoke. The May 15th date, as the
13 Court just said, in the event that a plaintiff family
14 is dismissed from the Pfizer selections after May 15th,
15 Pfizer may at its discretion select another plaintiff
16 family to replace any such dismissed plaintiff family.
17 That is what I should have said, and I think I
18 misstated it.

19 THE COURT: That's okay, I just read
20 verbatim.

21 MR. ROBINSON: Thank you, Your Honor.

22 THE COURT: Almost verbatim. I think it has
23 been clarified so there is no confusion. All right.
24 That is a very energetic and aggressive schedule. It
25 comports with the other identified dates that the

1 parties have agreed to which impact on types of
2 discovery, pace of discovery, and motions, general
3 causation Daubert motions.

4 You will be submitting reports by the middle
5 of the upcoming summer, and the Court will be hearing
6 those motions after February 3rd, 2014, which is the
7 end of briefing.

8 So, we will schedule those in advance of the
9 October of 2014 trial dates, because in between, and we
10 have to do that very quickly in there, in between if
11 general causation is successful for PSC in any respect
12 and trials or to be commenced, there will be
13 case-specific science motions, no doubt.

14 So, we know how much attention plaintiffs and
15 defendants are paying to these obligations, because
16 they are not easily moved. These dates are pretty
17 entrenched. The over-arching problem that the Court
18 sees is not in the dates or the schedule, or even the
19 types of discovery.

20 It is not knowing what else may be out there
21 that has not yet been filed. Statutes of limitations
22 are not going to run very quickly in a great number of
23 these matters. So, that is the only reason why the
24 Court has encouraged counsel to seek out knowledge and
25 information about what else is out there.

1 It is not to gather up cases to put in the
2 MDL. It is to find out what else may be coming here,
3 because we don't want to have a trial selection of
4 cases that aren't truly representative of the issues in
5 the case, the issues that are undoubtedly causation and
6 damage related.

7 So, we are still looking for the best
8 representative cases wherever they may be, and I am
9 certain that you all want the same thing, because that
10 is the only way to truly judge for your own purposes
11 true values of cases, true values of issues. We are
12 trying to get to that. That is called content and
13 substance.

14 It's not called collecting cases. I know
15 counsel have used that term a little or tried to
16 encourage cases to be filed here in the MDL and not out
17 there in the state jurisdictions, but I never want to
18 leave that impression with anyone. It would be
19 incorrect. So, hopefully I will be represented
20 correctly today.

21 MR. CHEFFO: Just on this case selection, I
22 just have two points, I guess, while we have everyone
23 here in the room. You know, it has been our position
24 and will continue to be subject to Your Honor's last
25 question that, you know, we are fully willing to accept

1 without prejudice dismissals. We have been.

2 Again, I would just encourage everyone to the
3 extent they are going to do that to your point, you
4 know, we don't want to get to a point where we select,
5 you know, 13 cases and then basically 11 of them of our
6 selections are dismissed at some point.

7 You know, things will happen as the happen, I
8 suppose, but I would just encourage everyone, you know,
9 as they look at their cases if they are going to be
10 dismissed. the time to do that is before case selection
11 in our view, Your Honor.

12 The other thing, and I have told the PSC
13 this, this is just really more of a heads-up for Your
14 Honor and perhaps some of the plaintiffs, no one should
15 be surprised, particularly with respect to Michigan and
16 Texas plaintiffs, if we ultimately make dispositive
17 motions. Justice Huff in the New York Zolof
18 coordinated proceeding has dealt with a few of those
19 cases.

20 Again, I am not here to argue that motion
21 today whether we are right or wrong, but what I want to
22 make sure everyone is aware of is if they do pick a
23 Texas or Michigan plaintiff as they are certainly
24 entitled to do, that they should not then be surprised
25 if we make a dispositive motion as to those plaintiffs.

1 Again, I have alerted the PSC to the extent that that
2 may or may not influence their selection.

3 THE COURT: I don't see any of the provisions
4 of the PTOs that prevent you from doing that. I guess
5 I don't understand why you would do that and not on
6 other cases.

7 MR. CHEFFO: Well, we ultimately may have
8 summary judgment motions, but there are some
9 particular, we believe, kind of legal principles under
10 the law of Texas and Michigan that can be handled on a
11 judgment on the pleadings, almost akin to a motion to
12 dismiss, where that is probably not as clear for many
13 of the other jurisdictions.

14 So, we certainly reserve our rights, but this
15 is much more like a motion to dismiss that would be
16 filed. I just did not want someone to say I wish I had
17 known that before I had selected my Michigan case.

18 THE COURT: All right. Is there a difference
19 with how the two judges in New York that have state
20 cases are handling theirs, because Judge Clark doesn't
21 seem to have the same issue that Judge Huff did?

22 MR. CHEFFO: Judge Clark is in --

23 THE COURT: A different county.

24 MR. CHEFFO: Yes, Oneida.

25 THE COURT: Oneida.

1 MR. CHEFFO: I say Oneida sometimes. I
2 should know it is Oneida County, which is upstate.
3 Justice Huff has the coordination for really the New
4 York City cases, so they all go to her. I don't think
5 there is really any difference in the way they have
6 handled them.

7 The issues that Justice Huff has addressed
8 really are these dispositive issues on Michigan and
9 Texas law. She has also addressed form non-issues
10 where we have moved to dismiss.

11 You heard a report that some of those cases
12 ultimately got filed in California. Our argument was
13 they should have been filed because New York was not
14 appropriate forum, or wherever else they were filed.

15 THE COURT: All right. Thank you.

16 MR. CHEFFO: Thank you.

17 MR. TRACEY: Your Honor, I can speak just
18 briefly to the Texas thing since that is where I am.
19 There is a presumption in Texas that has been making
20 its way through the court system, the federal court
21 system.

22 Some federal courts have gone in Pfizer's
23 favor, some have gone against Pfizer. The Fifth
24 Circuit has weighed in on it, and now there is some
25 briefing that has recently been filed with the US

1 Supreme Court. I talked to Mr. Cheffo about this
2 before. I really can't speak to Michigan except to say
3 I don't take any cases from Michigan.

4 Texas, we still do look at those cases, and I
5 think that issue, that legal issue is going to be
6 resolved sooner rather than later, and maybe it's not a
7 good time to waste resources here on that until it is
8 done.

9 THE COURT: I agree. I agree, we will see
10 what happens. All right. Is there any need to address
11 the special master recommendations? I know that
12 counsel pursuant to last conference have presented
13 three names to the Court, three very qualified names.

14 MS. NAST: No, I don't think there is
15 anything further to address on that, Your Honor.

16 THE COURT: I was only concerned about when
17 it was absolutely imperative that a master in discovery
18 and primarily discovery might be necessary.

19 That is the only position I think needs be
20 addressed yet, unless the common fund benefits orders
21 is ready for me to review. That, of course, isn't a
22 master, that is an administrator. So, we have that
23 look forward to, as well.

24 MS. NAST: Well, we think that the common
25 benefit order will be ready very shortly. We have sent

1 it to Mr. Cheffo, and his team is looking at it now.
2 They are not directly affected by it, but any order we
3 would, of course, always send to Mr. Cheffo.

4 In terms of the need for a special master, it
5 is the consensus of the PSC that an earlier rather than
6 later appointment would be helpful. Is it dire, no,
7 but we think it would be helpful.

8 THE COURT: All right.

9 MS. NAST: In terms of pending motions, there
10 are motions to remand that the Court is aware of, there
11 are motions to dismiss which are not ripe for decision
12 because they have not been fully briefed. I think two
13 pharmacies filed those motions. So, that's about it.

14 THE COURT: All right. Thank you.

15 MS. NAST: I did want to mention the Court
16 has set a conference for April 2nd at 10:00. The March
17 conference was moved to April 2nd.

18 THE COURT: Right.

19 MS. NAST: That's the last conference that we
20 have calendared, so I don't know if the Court wants to
21 calendar going forward or not.

22 THE COURT: Would counsel give me proposed
23 dates, 30 days or 45 days at scheduling?

24 MS. NAST: Sure, absolutely.

25 THE COURT: It may be that we need them more

1 frequently when you are in the middle of case
2 selections, but we are looking at work sessions with
3 what I have been told as to how often the plaintiffs'
4 steering committee gets together.

5 Sometimes we can conduct as much and
6 successfully progress without a big meeting. But, we
7 like to have whatever we do placed on the record so, of
8 course, everyone knows about it. We play this
9 balancing act very carefully.

10 We wanted everyone to gather today because
11 the last two conferences it was this Court that said
12 well, all right, we're going to make this smaller. I
13 believe that was December, and then I think the wrong
14 impression had been given that you didn't need to come
15 or you didn't need to come yourself.

16 Most of you understand what the PTO
17 requirements are, but that does not suggest that it
18 should be a wrote matter on your schedule, because we
19 do know that it costs money, we do know that resources
20 should be preserved and conserved, and we would like
21 everyone to be here because we know you do all the
22 extra work when you are here.

23 Also, this Court would like to know from
24 speaking with each of you, and I don't think there is
25 any problem with this nor objection, if there is

1 anything else that you think the Court should be
2 addressing.

3 We know that you are leaders speak very well
4 for you, but sometimes you need to know that I am here,
5 and maybe that is all you need to know, is that I am
6 here so if there is an issue we can address it. We are
7 happy to work with all of you, that's why we appointed
8 you to the plaintiffs' steering committee.

9 MS. NAST: Thank you, Your Honor. Does
10 anybody have anything that they want to raise?

11 THE COURT: Other than what is on the agenda.

12 MS. NAST: We're good.

13 THE COURT: Thank you very much.

14 MS. NAST: Thank you, Your Honor.

15 THE COURT: I don't think I have anything
16 else. Nicole, did I forget to do something? Okay.
17 All right. So, we are going to look forward to --
18 would you just see Dianne Nast, please? See Dianne
19 Nast, right there.

20 COUNSEL: I'm sorry.

21 THE COURT: Okay. You can see her right now
22 before I adjourn.

23 COUNSEL: Oh, thank you.

24 THE COURT: Okay. While they are speaking I
25 will just reiterate that if you are not going to attend

1 we think it is a good idea to have Ms. Nast, and Mr.
2 Robinson, and Mr. Cheffo and his team contact the Court
3 about when they present the joint agenda.

4 We can discuss whether or not we will need
5 additional members of the PSC to attend, or whether it
6 can be optional. I think it is better that way, but if
7 you think that there is an issue as to whether or not
8 you should be here, you should be here.

9 I may remind everybody you have to get my
10 permission first, not send me a letter or fax me a
11 letter that somebody is coming in your stead. I would
12 appreciate that. It hasn't happened often, but it does
13 happen. All right. Is there anything else?

14 MS. NAST: No, Your Honor.

15 THE COURT: Thank you.

16 ALL: Thank you, Your Honor.

17 (Proceedings adjourned at 11:42 a.m.)

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CERTIFICATION

I, Brad Anders, 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.

2-28-13
Date

Brad Anders
Brad Anders