

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT DISTRICT OF PENNSYLVANIA

3)
4 IN RE: ZOLOFT)
(SERTRALINE HYDROCHLORIDE))
5 PRODUCTS LIABILITY LITIGATION) 2:12-MD-02342-CMR
6)
7) Philadelphia, PA
8) October 17, 2012

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10 TRANSCRIPT OF STATUS CONFERENCE
11 BEFORE THE HONORABLE CYNTHIA M. RUFÉ
12 UNITED STATES DISTRICT JUDGE

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14 APPEARANCES (see next page)
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1 THE COURT: -- attorneys to call in as opposed to
2 being here. It's complicated to get them on the phone. We
3 don't understand why they weren't just there. We have to call
4 them. They have to be on the line and then we take them in.
5 And one of them actually still isn't in. So, we're going to
6 proceed with four of the five that requested to appear and
7 participate by telephone. If this continues to be a source of
8 delay, we may have to regroup and see how else we can address
9 it.

10 But in any event, we're here. We have received the
11 joint proposed agenda for this conference and a number of
12 proposed pre-trial orders. We are anxious to hear more about
13 everything and good morning.

14 IN UNISON: Good morning.

15 THE COURT: We can start by following the proposed
16 agenda which I will just add one item at the end and that's
17 the outstanding motions to discuss that. As to the status
18 interview, the current and anticipated volume, I would like to
19 have an update from you, Mr. Cheffo or --

20 MR. CHEFFO: I think Mr. Corr was going to address
21 that, is that right, Steve?

22 MR. CORR: Yes.

23 MR. CHEFFO: If that's okay, Your Honor.

24 THE COURT: That's fine. Good morning, Mr. Corr.

25 MR. CORR: Good morning, Your Honor. So as of the

1 filing -- actually I think Mr. Aylstock had put it into his
2 report but as of that filing, there were 245 cases pending in
3 the MDL. I spoke with Nicole before the conference, I think
4 there might be a transfer order that hit maybe in October that
5 we might be missing from that.

6 So anyway, we're somewhere in the 245 to 250 and Mr.
7 Aylstock is going to in his state report, give you some update
8 of some conversations he's had with some lawyers and cases
9 that are kind of sitting on the sidelines waiting to see where
10 we go here with discovery and things before they decide which
11 venue they're going to go.

12 So, I think when you see down through the agenda here
13 today, as you mentioned we do have some joint proposed orders
14 that are before you that are going to get -- we'll talk about
15 in more detail. I think Ms. Nast is going to run the agenda
16 for the plaintiffs and Mr. Cheffo for the defendants.

17 But with respect to the report from the state, Bryan
18 will give you that and talk about where we are with some of
19 this and then you'll get a preview also of the discovery
20 issues that we've been facing. We have been meeting with the
21 defendants. The PSEs met a few times and then we'll go from
22 there.

23 THE COURT: And what is this about a PowerPoint?

24 MR. CORR: I think Mr. Robinson has a short
25 PowerPoint during some of the scope of discovery, vis-a-vis

1 Daubert scheduling. I think that he'll -- it's I think ten
2 slides or something like that.

3 THE COURT: Good.

4 MR. CORR: Okay?

5 THE COURT: I was thinking that Mr. Aylstock's
6 reports are typically taken a little earlier in the agenda
7 here because of this issue.

8 MR. CORR: It probably fits better right now, I would
9 think.

10 THE COURT: It does. And I wanted to thank you
11 because they're very complete and just what I needed, along
12 with copies of the letters that you sent to certain state
13 judges. I appreciate that because it is very important that
14 they connect with us right away.

15 MR. AYLSTOCK: Good morning, Your Honor.

16 THE COURT: Good morning. Thank you, Mr. Corr.

17 MR. AYLSTOCK: I think you have my letter of October
18 12th. We're generally reporting on the status of the various
19 state court litigations. Since the prior hearing, I think
20 counting Mr. Robinson's fifty cases he filed right prior to
21 the prior hearing, we've only had about seven more cases come
22 into this MDL. And I think there may be some transfer orders
23 and so forth.

24 But I think as Mr. Corr alluded to, my impression in
25 kind of informally sampling plaintiffs lawyers out there,

1 there are probably a thousand cases kind of waiting to see
2 where things go here and would anticipate that eventually
3 hopefully most of these will be in before Your Honor. But I
4 think a lot of people are just sitting on the sidelines right
5 now in connection with these issues to see how the discovery
6 plays out, like that.

7 THE COURT: I would understand that in this
8 particular litigation. There isn't a statute issue. There is
9 no reason to rush. Sometimes you can't even identify all of
10 the alleged damages or injuries. So, I am sure that that's
11 going to continue.

12 MR. AYLSTOCK: And I --

13 THE COURT: I don't think we're going to be able to
14 amass the corpus of most of the cases for some time and that
15 might mean that we have to proceed with what we have and let
16 the chips fall where they may.

17 MR. AYLSTOCK: I think once Your Honor provides some
18 more clarity with regard to the discovery and how things will
19 meet here, I do anticipate a large number of filings. I think
20 there's just kind of the fog of war right now where nobody's
21 really sure, kind of the tactical way to get the cases filed.
22 So I do think that hopefully there will be some more cases
23 filed once that happens.

24 THE COURT: I appreciate knowing that. You also
25 requested that I talk to by telephone conference one of the

1 New York State judges and I am happy to do that with Judge
2 Clark. She has one case right now.

3 MR. AYLSTOCK: Yes, Your Honor, only one case.

4 THE COURT: And we'll try to arrange it for next
5 week, even though I will be at the MDL conference for the
6 judges. I am only out of commission on Tuesday when I'm
7 giving a presentation on multidistrict coordination. So --

8 MR. CORR: Well if you would like me to join you down
9 in --

10 THE COURT: I will.

11 MR. CORR: -- for the break --

12 THE COURT: I will. Especially for the break-out
13 sessions. They're likely to be lively.

14 But we can arrange that because I am certainly still
15 on duty.

16 MR. AYLSTOCK: Great and she certainly indicate a
17 willingness to do that. So I appreciate that.

18 With respect to the other state court litigations,
19 there have been some hearings that have occurred and discovery
20 is proceeding in the state courts. There's fourteen plaintiff
21 groups currently pending in Illinois before Judge Gleeson.
22 Judge Olopono (ph.), I think is the pronunciation. There's
23 thirty-eight cases, as well still up at the Seventh Circuit
24 pending a decision on remand and the propriety of the remand
25 order from the District Court in East St. Louis.

1 There's forty-three cases in Missouri, consisting of
2 two plaintiff groups; Judge Ohmer and Judge Hartenbach. We've
3 made contact with both of those judges as you're aware. Judge
4 Huff has six cases in New York and Judge Clark, as we
5 mentioned has one case in New York. We have made contact with
6 Judge Huff's law clerk, just to make sure that the judge was
7 aware of the coordination of services that this court can
8 provide.

9 And there has been a development in the nineteen West
10 Virginia cases that were removed from Judge Young and Judge
11 Robert Chambers on September 25th issued a remand order,
12 remaining those back to West Virginia. That's currently up on
13 appeal at the Fourth Circuit and there's briefing scheduled,
14 as the letter lays out. So those cases, except for the one
15 case in West Virginia, are probably on a holding pattern for a
16 matter of months until a decision from the Fourth Circuit.

17 We had made contact prior to the last conference with
18 Judge Young and he's certainly willing to coordinate with Your
19 Honor, as well.

20 THE COURT: Okay. Thank you. Thank you very much.
21 Mr. Corr?

22 MR. CORR: And, Your Honor, if I may point out, in
23 one of the proposed joint orders that you received, there is a
24 direct filing provision in there which I think will also go a
25 long way to helping -- you know, once we have the discovery

1 plan set, people understand what the path is here, they can
2 also come right into this court, file directly and then we're
3 on our way.

4 THE COURT: I think that will be helpful in helping
5 attorneys decide which jurisdiction is best for their clients
6 and where they should file. We take no position on what the
7 decisions are but we do know that most state courts, if they
8 have a group of cases, are not likely to forge ahead if they
9 know the MDL is doing the same thing. And coordination seems
10 to be a little bit more interesting to state court judges
11 these days than say if they have just have one case. But one
12 case in one state jurisdiction can move very quickly, as you
13 all know.

14 MR. CORR: Yes, I think the --

15 THE COURT: And that's more likely to happen.

16 MR. CORR: I think there was actually a discussion in
17 one of the state court -- I think it was St. Clair County,
18 about getting some depositions set and I think it as a
19 discussion about doing depositions in November and since then
20 we've gotten dates for ESI and two 30(b)(6) dates in November.

21 So I think in that sense, there should be some
22 coordination among the state and the MDL and hopefully that
23 will continue as we go along.

24 THE COURT: Well you may not necessarily need a court
25 order from the state judge to allow that --

1 MR. CORR: Right.

2 THE COURT: -- as long as counsel can agree to
3 coordinate that. However, the ground rules need to be laid
4 out successfully, so that you're not repeating depositions.

5 MR. CORR: And it's certainly our goal to take the
6 lead here in the MDL and make sure that we are setting the
7 dates and getting things done and sometimes that may require
8 us to get them done a little bit earlier if there is something
9 that's happening in the state court but we'll have to work
10 together to get that done.

11 THE COURT: Such is true. Thank you. All right.

12 That report will be filed of record, Mr. Aylstock. I
13 appreciate that -- not the letters to the judges, but the
14 report and if there are any other judges that I can speak to
15 personally, if they are interested enough to do that, I'm
16 happy also to do that.

17 What I found in my most recent experience in MDL
18 coordination was that many judges were just content to sit
19 back and wait to see what was left for them to do and that is
20 a wise move when you have a very busy docket of other matters.
21 On the other hand, other judges are very interested in keeping
22 pace or keeping a pace and that's fine, too. So I just want
23 to coordinate with all of them because that's the best way not
24 to have repetitive and conflicting decisions.

25 All right, let's get back to the proposed agenda

1 again and I'll ask you, Ms. Nast, to address the next matter.

2 MS. NAST: Thank you and good morning, Your Honor.

3 THE COURT: Good morning.

4 MS. NAST: If I may, I'm just going to take a minute
5 to preview the rest of the agenda. I'll speak to the summary
6 of the efforts. Mr. Aylstock has already spoken to the
7 coordination efforts and despite his very celebratory
8 participation in the debate last night, remarkable, I will
9 speak to the joint proposed orders on the areas of ongoing
10 discussion which are basically ESI and the scope of discovery.
11 Mr. Zonies, Mr. Cheffo and Mr. Robinson will address those
12 issues.

13 Steve, did you already say what you wanted to say
14 about the federal cases?

15 MR. CORR: Yes. Yeah.

16 MS. NAST: Okay. So, item number 4 has already been
17 addressed; other federal cases.

18 To the extent that there's anything remaining to be
19 addressed on item number 5, and there may not be, if there is,
20 Mr. Blizzard will address it.

21 THE COURT: All right.

22 MS. NAST: So, okay, as to item number 1(b) "summary
23 of efforts". We have had two fairly long meetings with Mr.
24 Cheffo or/and Mr. Cheffo's team since the last status
25 conference, basically addressing discovery issues. We have

1 had a PSC in-person meeting and multiple PSC conference calls.
2 We have an upcoming meeting next week. It's in Denver, so
3 we're calling it the ski-in and ski-out meeting.

4 THE COURT: So soon?

5 MS. NAST: There's not enough snow but, you know,
6 we'll suffer. There are some events -- other events that
7 we're planning and we do have a conference call with our
8 group, the whole group, weekly or bi-weekly as needed and then
9 with our own group, probably daily -- I mean with a smaller
10 group. So that's that.

11 On the proposed orders that we submitted to the Court
12 and we apologize for submitting them to you late and on such a
13 busy day -- I mean it was a -- the day of Senator Specter's
14 funeral and the day of the debate and there couldn't be many
15 days much busier than that. But that's when we finally got
16 the job done.

17 THE COURT: All right.

18 MS. NAST: The first one is a case management order
19 to which -- the provisions of which, subject of course, to
20 Your Honor's approval, we've agreed. And most of them are
21 fairly straightforward, such as, you know, the applicability
22 of the order and the application to all parties. The transfer
23 case management order suspended. I think actually you might
24 have already done that in one of your earlier orders. So it
25 just confirms that.

1 The coordination with state court proceedings, which
2 is Your Honor's custom and way of proceeding. The direct
3 filing is helpful and Steve already addressed that and we
4 think that will be very helpful to everybody and the provision
5 for the motions to transfer.

6 Number 6, the status conferences; you've already
7 scheduled status conferences for the next four or five months.
8 So that's actually already in place.

9 And the motion hearings, which is kind of our way to
10 try and bring a little self-discipline, if you will, to our
11 way of proceeding. So that was that order.

12 The waiver of service is very straightforward. It's
13 a Rule 4 order, except that it includes the appropriate places
14 to serve the various parties.

15 The master answer, we haven't completed that order.
16 We've agreed on it. Basically, Pfizer would like to have a
17 master answer in place. We have no opposition to that. It
18 will not preclude them from filing a 12(b)(6) motion in
19 appropriate cases but it will certainly, I think, for
20 everybody, make it a very more orderly proceeding.

21 The preliminary discovery plan, again it's -- it's a
22 lot of things that we might fight about but we're not. And
23 you've been there before; you've participated in these
24 arguments. We've agreed on a records collection person, you
25 know, provision and fact sheets, et cetera. Those things are

1 all underway. We've agreed on a court reporter. All subject,
2 of course, to the Court's approval.

3 And then the last one is the plaintiff's fact sheet
4 and I think there's something wonderfully remarkable about the
5 plaintiff's fact sheet. It's only six pages long. And it may
6 be, and we've agreed with defendants on this, it may be that
7 at the end of the day, they will find that they require
8 something more but you saw the fact sheets in earlier cases
9 and they were much more -- they were much longer, much more
10 burdensome.

11 This fact sheet, we hope will provide defendants with
12 everything that they need and if it doesn't, we've certainly
13 agreed that we will talk to them about providing more. But we
14 thought that a six-page -- well, actually it's seven -- a
15 seven-page fact sheet was a big improvement on a twenty-eight
16 or forty-one or in some cases, I've seen fifty-two page fact
17 sheets, so we've agreed on that.

18 And those are the orders before Your Honor and I
19 apologized to Ms. Herman yesterday because we submitted them
20 as pdf documents. We have them, of course, ready in Word and
21 are happy to submit them in that format should you want to
22 make changes to them or if you don't want to accept them,
23 that's -- we understand that, too.

24 THE COURT: Well they look very thorough and
25 certainly are absolutely necessary right now to move this MDL

1 forward.

2 MS. NAST: They do help, yes. Yes, indeed they do.

3 THE COURT: And I appreciate the work that went into
4 them. I do have one comment and/or question concerning the
5 case management order which is going to end up as pre-trial
6 order number 11. Only one section of it and that's the direct
7 filing section -- and as it's been submitted -- let's see --
8 there is no court -- there is court approval -- there is no
9 court approval necessary, correct?

10 MS. NAST: Well, the court approval, we would
11 contemplate would be if Your Honor enters this order. You
12 wouldn't have to approve the filing of the individual
13 complaint as a direct filing because it would relate back to
14 this order.

15 THE COURT: All right. Then as far as I can tell,
16 there is no mater here that necessitates an agreement or is
17 there?

18 MS. NAST: Well this is the agreement --

19 THE COURT: Okay. Then --

20 MS. NAST: -- that we've agreed.

21 THE COURT: -- anyone --

22 MS. NAST: Did you want to talk to --

23 MR. CHEFFO: I just want to -- you know, I thinking
24 on this, Your Honor, was as most of these are -- you know, as
25 Dianne I think said appropriately, we probably could have

1 spent a lot of time arguing about different things but we're
2 trying to figure out, you know, a little bit of what the
3 plaintiffs want and what we want.

4 So in the normal course, you know, it's cumbersome to
5 have to file in a particular jurisdiction, you know,
6 conditional transfer orders, potential fighting about that and
7 then they get transferred here. And you need local counsel in
8 those jurisdictions, so we've avoided that.

9 This allows -- and then our concern is we've reserved
10 our right because we do think conceptually the process of
11 direct filing makes sense. It's most efficient. But, you
12 know, we didn't want to waive our right with respect to the
13 1404 venue issues for later on. But the ultimate goal here is
14 to basically have Your Honor position these cases and as many
15 cases as possible, to prepare them for trial. So later on,
16 you know, we reserved our rights to do it, but allows the
17 plaintiffs to just file here, single plaintiff cases, we have
18 no objection to doing that. And then to the extent that we
19 need to address issues of venue once Your Honor has completed
20 the discovery process, we can do that.

21 MS. NAST: I would be remiss if I did not suggest one
22 slight amendment to Mr. Cheffo's comments which is that we
23 would like to prepare these cases for trial or resolution.

24 MR. CHEFFO: Agreed.

25 THE COURT: Sounds like the appropriate phrase.

1 MS. NAST: Yes, yes. And I neglected to mention
2 something about the preliminary discovery plan that should
3 probably be mentioned. We anticipate that everything will be
4 cross-noticed in the state courts. So for example, Mr. Cheffo
5 has given us, and I think Steve mentioned this, he's given us
6 two dates so far and he's going to give us more, for 30(b)(6)
7 depositions and it's my understanding that they're going to be
8 cross-noticed in the state courts.

9 MR. CHEFFO: Yes, absolutely and that's --

10 MS. NAST: Yes.

11 MR. CHEFFO: You know, we're working both with the
12 state court lawyers, so that they feel they have enough time
13 to prepare and with the MDL and as I said from the beginning
14 of this, it's our intention to make sure that the MDL lawyers
15 have the first opportunity to take these depositions and
16 participate, consistent with the needs of the state courts.

17 THE COURT: Yes, cross-notices are absolutely
18 imperative if we're going to --

19 MS. NAST: And that's the --

20 THE COURT: -- avoid later battles --

21 MS. NAST: Yeah, that is the plan.

22 THE COURT: -- and the very problems that the various
23 jurisdictions run into. So that would have to be part and
24 parcel of an efficient case management order.

25 MS. NAST: Absolutely. And it helps both plaintiffs

1 and defendants, frankly. So that is planned.

2 So then we move into roman III on the agenda, and Mr.
3 Zonies is going to initially address that, followed by Mr.
4 Cheffo and then (b), Mr. Cheffo will begin that followed by
5 Mr. Robinson. And as I said, other federal case have already
6 been addressed and we'll see where we stand on state court
7 cases at that point.

8 THE COURT: Very good.

9 MS. NAST: Okay.

10 THE COURT: Thank you.

11 MS. NAST: Thank you.

12 MR. CORR: Your Honor, before we move to that, I
13 forgot to mention to Your Honor that Shawn Tracey is picking a
14 jury, I believe today, so he was unable to come --

15 THE COURT: I have his note.

16 MR. CORR: He was going to try to call in, so that's
17 good.

18 THE COURT: I consider him excused because he was
19 unavailable today.

20 MR. CORR: An excused absence, I'll let him know.

21 THE COURT: Yes, you get two. But I also see a lot
22 of people here that didn't sign in. I don't know if there's a
23 reason for that, Mr. Corr. No?

24 MR. CORR: He just woke up.

25 MS. NAST: He was at the --

1 THE COURT: Ms. Nast?

2 MS. NAST: He was at the celebratory party, as well.

3 THE COURT: I won't ask which side was celebrating
4 because it looked a mighty close call to make.

5 MS. NAST: That's probably wise, Your Honor.

6 THE COURT: Mr. Zonies?

7 MR. ZONIES: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MR. ZONIES: And as you know, it would not be my
10 custom to be celebrating with those gentlemen, so I --

11 THE COURT: I can't imagine.

12 MR. ZONIES: -- was to bed early and early to rise.

13 The electronic discovery, good news is we've met and
14 conferred a number of times on it with Mr. Cheffo's team, Ms.
15 Wu (ph.), in particular as well, and you know, I think we're
16 going to be able to work out what I'll call the middle ground
17 because we all understand these issues very well and working
18 out the middle ground is something that so far, as you can see
19 from these orders, we've been able to do well. It may take us
20 some time to get it done but we can often meeting in the
21 middle.

22 The real question that I think will be before the
23 Court is where do we start to get to the middle ground? And
24 Mr. Cheffo and his team and his client's position is, is that
25 we start what I would call the old-fashioned way, where we

1 start with taking a document, turning it into a picture,
2 extracting the text out of the document, extracting the
3 metadata out of the document and then processing all of that
4 and then producing the picture with the words and the data
5 underneath the words as the production. That's how we used to
6 do it. That's how we started in Avandia. But we've
7 progressed since that time.

8 So they would like to start there and meet in the
9 middle. And our position is what we think is the correct and
10 now proper way to approach this, the Sedona method, which is
11 we start with the document and we start with native documents.
12 We don't have to extract them. We don't have to process them.
13 We don't have to pull data out of it. We don't have to fight
14 about what the data should be. We start with the document.
15 And the document gets produced to us in native format and at
16 that point, if there's an issue, it moves to the middle and we
17 try to figure out why it shouldn't be produced in native.

18 So really it's the starting point that we need
19 guidance on from the Court. We believe we should start with
20 native. If there are reasons that native is inappropriate,
21 and we understand there may be in many, many instances, we're
22 in the middle. We'll sit down and figure it out. And move
23 toward whatever is the most efficient way to get the
24 information passed to us versus starting with all of the
25 images and the fights about the metadata, et cetera, and only

1 in certain instances, produce the native document. So the
2 starting point, we need help with. The middle, I think we'll
3 do fine.

4 THE COURT: All right.

5 MR. ZONIES: And we would propose that a simple
6 order, native, unless there's a reason, and if there's a
7 reason, go figure it out. That's how we would approach it.

8 THE COURT: Thank you. I think I need to hear from
9 you, Mr. Cheffo.

10 MR. CHEFFO: Yes, Your Honor. Your Honor, like much
11 of what you've heard today, we've had surprising agreement on
12 many things including the presentation. So what I am going to
13 do with Your Honor's permission is I will address the ESI
14 issue but rather than just get up and sit down and have Mr.
15 Robinson -- I'm going to talk about really both of those
16 categories. I'm going to talk about the discovery plan and
17 some of our thoughts and themes and where we think the Court
18 should go. And Mr. Heim and Ms. Birnbaum, I think have a few
19 comments as well on that, in kind of a more cohesive context,
20 I think.

21 Let me also, if I could, Your Honor, I've made three
22 copies -- these are, you know -- we've agreed that we're just
23 going to use a few demonstratives. I have two for your
24 clerks. And I'll get to those in a few minutes.

25 But let me first start by saying you know --

1 reiterating, I think, what Dianne and Steve said, we've
2 accomplished a lot and I think that when you look at the
3 orders that we've presented, we've made some considerable
4 strides and I credit that to the joint efforts and
5 professionalism of the plaintiffs and the steering committee,
6 as well.

7 You know, we've also, I think, made strides to avoid
8 as much as we can, surprises both in meetings and before the
9 Court. So I'll tell you that, you know, we have agreed to
10 both preview, if you will, our views on this, I think and --
11 you know, the plaintiffs will tell me if they disagree. I
12 don't think the point of today, of what we're going to do, is
13 to ask Your Honor to rule from the bench on any of these
14 issues and I think you know that.

15 THE COURT: I know.

16 MR. CHEFFO: But it's to really to put some context
17 about some of the things that we haven't had a chance to
18 really address up until now and then obviously Your Honor will
19 decide whether you want papers, you want to make some rulings
20 and things of that nature.

21 I do believe that there's probably some additional
22 common ground in meetings we'll work and if not, we'll
23 hopefully tee up some issues for the Court in a more
24 streamlined manner.

25 So where to start? I think, you know, the plaintiffs

1 have made the point a number of times that these cases are
2 about children and families and, I think, you know, we haven't
3 stood up and said that every time. You know, I think Your
4 Honor hasn't taken that silence as meaning that we don't
5 agree. And I think that where we also agree and start with
6 this litigation is that both sides need to be incredibly
7 sensitive and professional and responsible in how we both
8 prosecute and defend these cases.

9 And I think if you start back to the applications
10 from the various PSC members, both those who Your Honor
11 selected and those that didn't, the focus of what I think they
12 all recognized and we agreed was, these are very complicated,
13 scientific and medical issues. And at the hearings for the
14 PSC, Your Honor asked some questions and the folks who were
15 selected and were not, again talked about their experience
16 with the science, prosecuting these types of cases and the
17 importance of really understanding which case were viable and
18 which cases were not viable.

19 And I think if Your Honor may recall, you had asked
20 some questions about early Rule 26(f) -- and again, I don't
21 mean to be presumptuous but I took that at least as two
22 things: one is, you wanted the parties to be creative in how
23 we can address this in an efficient and fair and equitable
24 manner but ultimately get to the point, so we don't have cases
25 that are not viable. And these cases can pose a hardship, win

1 or lose, on the parties and I think we all need to be
2 sensitive to that.

3 And I think -- so that's one of the starting points
4 and again, a comment I agree with, Mr. Aylstock said then, he
5 said I agree -- in response to your question about whether we
6 should have an early Rule 26(f), he said, "I agree that there
7 needs to be careful screening of the cases because to put a
8 family through that and not have a successful result at the
9 end is a tough thing. I would submit that the folks in this
10 room have carefully screened their cases. There may be some
11 that have not." And then he went on and basically said he
12 thinks that there could be some type of self-regulation that
13 could be used in order to keep the non-viable cases from being
14 filed.

15 And I think last hearing, Mr. Robinson, you know, to
16 his credit said, you know, we'll try and self-regulate and try
17 to keep these cases -- and again, without being presumptuous,
18 my take away from Your Honor's comments was I appreciate that
19 but it's hard for the plaintiffs' steering committee or
20 particular plaintiff's firms to tell another plaintiff firm
21 that they can't bring claims and you know, there's a self-
22 regulation.

23 We believe the only self-regulation that occurs is
24 from Your Honor. That's how we're going to self-regulate
25 these cases or how the cases will be regulated. So with that

1 as a starting point, I would ask Your Honor if it's okay to
2 just -- if you look at tab 1 with me, please.

3 So what is tab 1? Tab 1 is a listing in the 200 or
4 so cases, this is a listing of all of the alleged injuries in
5 this case. Now again in fairness, is there some duplication?
6 Could you group these in terms of some cardiac? You know,
7 yes, you can but you literally -- you don't see A to Z but you
8 see A to V. And you know, everything from autism to heart to
9 ear lobe issues, it literally is almost every body system.

10 So we start with the premise that if the plaintiffs
11 are right that this is probably -- collectively, that this is
12 probably not just the most teratogenetic pharmaceutical
13 product, but it's perhaps the most teratogenetic substance
14 known to man to be able to cause all of these birth defects.

15 Now I am not here to argue Daubert and tell you that,
16 you know, we disagree. Of course Your Honor assumes we do
17 disagree with these. But this is what we're talking about.
18 So, self-regulation notwithstanding perhaps the best efforts
19 but clearly, it doesn't work in terms of limiting the types of
20 disease end points or body systems that are here.

21 Again, a little bit of background and then
22 ultimately, just to preview for Your Honor, what I am going to
23 do is take, you know, my five or so minutes and walk through
24 some background and then I am going to tell you what I think
25 we've been urging as our proposal to get the Court to appoint

1 what was most reasonable and fair for everyone and is
2 efficient in a spot where Your Honor can lead this litigation
3 in a way that will help both the plaintiffs in this litigation
4 and perhaps the state courts as well.

5 So we look on the next slide that birth defects;
6 there's 120,000 babies born every year with birth defects.
7 It's -- I was surprised to read this. It's surprisingly
8 common that one in --

9 THE COURT: You didn't want this on the PowerPoint or
10 you didn't plan to hook it up?

11 MR. CHEFFO: I didn't plan to hook it up and again, I
12 really more just to be less formal, the plaintiffs have copies
13 of it. We can provide that, Your Honor.

14 THE COURT: That's fine.

15 MR. CHEFFO: So one in thirty-three kids are born
16 with birth defects. The next slide, I think is also just
17 instructive because it contextualizes what this litigation is
18 about. It's really not an option for a doctor to treat -- to
19 not treat, depression. You'll see the FDA, you'll study after
20 study, talking about very, very significant outcomes for
21 untreated depression. So we're not faced with a situation of,
22 you know, do we withhold treatment or not. That's not a
23 decisions that typically make and again, these authors in
24 these studies time after time, talk about inadequate treatment
25 of maternal depression may lead to worsening of the condition

1 and therefore, also indirectly affect fetal well-being.

2 Now I haven't seen anything where the plaintiffs
3 actually disagree with that. So that may be a point where we
4 agree but I think when we talk about the population here of
5 women who have psychiatric impairments, it's important to
6 understand that this is a very complicated population of
7 folks.

8 If you look at the next page, the Coran (ph.) study,
9 "Uncontrolled depression in pregnancy has been associated with
10 increased risk of miscarriages, prematurity, low birth weight,
11 critically the strongest predictor of life-threatening post-
12 partum depression is depression in late pregnancy. Women who
13 continue (sic) their anti-depressants cold turkey because of
14 fears of teratogenic effects exhibit higher rates of morbidity
15 and hospitalization which includes suicide ideations and
16 attempts, impaired adherence to medical therapy and pregnancy
17 management."

18 THE COURT: Just for those who will hear this and I
19 know that you meant to read "Women who discontinue their anti-
20 depressants cold turkey."

21 MR. CHEFFO: Thank you, Your Honor.

22 THE COURT: Because not everybody can see what you're
23 reading.

24 MR. CHEFFO: You're absolutely right. Thank you.

25 And I'm sorry about that.

1 THE COURT: That's all right.

2 MR. CHEFFO: And then just finally, the next slide,
3 this is -- so it's not just these peer review studies that
4 have addressed these issues. The FDA as recently as December
5 of 2011 in a drug safety communication said, "Untreated
6 depression during pregnancy may lead to poor birth outcomes
7 including low birth weight, pre-term delivery, low Apgar
8 scores, poor pre-natal care, failure to recognize and report
9 signs of labor, and an increased risk of fetal abuse,
10 neonaticide or maternal suicide."

11 Now here's really the crux of when I said earlier,
12 and I sincerely mean it and I believe the plaintiffs do as
13 well, that I think we need to look at this litigation triangle
14 as all of us having a very significant duty and obligation and
15 responsibility. The top of the triangle is Your Honor. Over
16 here, defense counsel and over here are the plaintiffs'
17 lawyers. And before we basically as an institution, advance
18 the theme that women should not take these type of medicines
19 because they can cause harm. In our view, you need to be
20 pretty sure that there's, in fact, science that it can cause
21 the A to Z or A to V injuries.

22 And the other responsibility that we have is, you
23 know, imagine telling -- the consequence of telling a mother,
24 a father, a family that a medicine that the mother took while
25 she was pregnant caused the injury to her child or the death

1 of her child.

2 So my point is that these are very important, not
3 just litigation issues, but they're public health issues. And
4 I think we all just need to be very mindful of that, not just
5 in our sensitivity of how we deal with these, but in our focus
6 on how we get Your Honor to resolve these because again, if
7 the plaintiffs are right and they cause A to V, then people
8 should know that. But if they're not right, and these claims
9 shouldn't be made, there are potential very serious
10 consequences and people should know that, as well.

11 Now if you look at the next slide, Your Honor, again
12 as I said from earlier, there's two sides to every story. I'm
13 not arguing Daubert now. But the point of this slide is
14 really just to highlight that unlike a lot of cases, a label
15 in this case -- now there will be a lot of disagreement about
16 this case, right? And most failure to warn cases or in many
17 failure to warn cases, the plaintiffs will argue well, it
18 causes X, Y, Z issue or a few discrete issues and you didn't
19 properly warn about that or it's not in your label.

20 Here that's not really the case. The ultimate issue
21 here is about whether it should be a C versus D warning but
22 you can look at the label and find information about
23 pregnancy.

24 And why we feel so strongly -- and this is a little
25 bit of advocacy but frankly, we don't believe that there's a

1 lot of controversy amongst legitimate scientists and doctors
2 and researchers about the teratogenicity of these medicines.
3 We think the controversy are in -- amongst litigation experts.

4 And the reason why we think that is because there's
5 study after study of these review studies of -- in peer review
6 journals, you know, the first one says "Anti-depressants as a
7 group and individual anti-depressants apart from Peroxetine,
8 which is Paxil, are unlikely to be teratogenic."

9 The next one, "The hypothesized teratogenicity of
10 SSRIs remains undemonstrated."

11 The next one studying thirty-four reviews, "In our
12 opinion the current data do not support teratogenicity of
13 SSRIs."

14 Now I don't expect the plaintiffs to get up and say
15 we agree, we dismiss our cases. I expect them to say there's
16 reasons why those are wrong and we have our science to support
17 it. So my point here today again is not to get a ruling from
18 the bench that we're right but it's a point that these are the
19 very -- these are the core issues in this litigation. And
20 they are the crux of the issues that we need to be focusing
21 on.

22 And as recently as, in the next page, 12/14 again of
23 2011, the FDA said, "In general, most epidemiology studies
24 show that adverse events in pregnant patients are similar to
25 those in non-pregnant patients and many studies find no fetal

1 abnormalities in excess of the one to three percent found in
2 the general population."

3 You know, we highlight it. It doesn't say all
4 studies find no major, it says many and that will be a point
5 that at some appropriate point both sides will argue. But the
6 FDA is basically telling folks do not change your course of
7 treatment. And again, why is this is a public health issue?
8 Well if this was just an issue limited to this court in some
9 of the claims and argument back and forth, it may be one
10 thing. And again, the point here is not to single out any
11 particular advertisement or any particular issue. The
12 plaintiffs, I suppose, the firms are within their rights to
13 advertise. But if you just watch TV, if you read magazines,
14 if you ride the subway, if you ride the bus, if you listen to
15 the radio, what you will see is folks are being inundated with
16 e-mails, one of our colleague's eighty-three year old mother a
17 week ago got an e-mail about birth defects and whether she
18 used Zoloft while she's pregnant.

19 This isn't a population -- I get back to my first
20 point -- this isn't a population that many of which may or are
21 psychologically compromised. So the impact on potential
22 advertisements and hyperbole is not without consequence.

23 The next page just really highlights for, you know,
24 this head to toe allegations about -- in the advertising about
25 what this causes and you could see virtually every body system

1 is impacted.

2 Then I'm skipping, Your Honor to the Julia Lyon (ph.)
3 piece in the -- that's in this -- it's entitled "Utah Pregnant
4 Moms Fear Mental Health Drugs." I think this really makes the
5 point, at least it made the point for me and hopefully it will
6 resonate with Your Honor and perhaps with the plaintiffs, as
7 well, this is just one example. But this is a hotline that
8 received about 10,000 calls a year. It's the most heavily
9 used of any call line in the nation. That's what the
10 officials at Utah said. "The staff and consultants including
11 medical doctors, a nurse, a pharmacist, continuously review
12 the latest literature on drugs in order to provide accurate
13 advise. When anti-depressant ads began running last year,
14 state officials tried to contact attorneys with their concern
15 that women were now afraid of the medications." They said no
16 one called them back.

17 The next page says specifically about anti-
18 depressants, same article, "The risk line receives more than
19 100 calls per month on mental health issues, primarily anti-
20 depressants. The number's climbing. That's likely due in
21 part to an intense ad campaign by law firms seeking clients
22 whose children may have been born with birth defects after the
23 mothers took certain medication such as Zoloft. Some of the
24 callers reported that they've ditched their medications after
25 seeing the ads without talking to a doctor. What this says to

1 us is that litigation is driving healthcare, said the Risk
2 Program Manager, that's a big concern because it's not always
3 based on fact."

4 And that's the crux and what underlines frankly
5 everything that we're going to propose and have proposed going
6 forward. You'll see the last slide basically just says,
7 "Notwithstanding all the lawsuits and the claims here, the FDA
8 December 2011 says, FDA advises healthcare professionals not
9 to alter their current clinical practice of treating
10 depression during pregnancy."

11 So again, our view is and will be there's not a lot
12 of controversy amongst, you know, credible physicians and
13 scientists and researchers. There may be litigation
14 controversy. But whatever that controversy is, the point is
15 we need -- we all need I believe, Your Honor, to help us
16 address these scientific and medical and Daubert issues sooner
17 rather than later because not doing so is again in our view,
18 not without some consequence.

19 THE COURT: Mr. Cheffo, even if I agree that you can
20 move up the timetable and address certain issues first, you
21 can't get to those decisions on science unless you have the
22 basic, at a minimum, underlying discovery.

23 MR. CHEFFO: Absolutely.

24 THE COURT: And the sci issues are all about how do
25 you approach discovery. It's mechanical.

1 MR. CHEFFO: Sure.

2 THE COURT: And it seems to me the quickest way to do
3 things, to get to your premise and the test of the parties'
4 positions is to find the clearest, most efficient way of
5 getting that information because as I understand litigation,
6 if you can't support your claim, it disappears.

7 MR. CHEFFO: Understood. And that's a great jumping
8 off point. So, you know, Mr. Zonies is an advocate and a good
9 one at that. You know, I wouldn't necessarily characterize
10 ours as old school, you know, kind of in the prehistoric ages
11 but just to be clear what we've done is, you know --

12 THE COURT: No, I'm old school. I'm sure you're not.

13 MR. CHEFFO: Well, I'm not the one -- he was kind to
14 say my team has been negotiating the ESI. I haven't because
15 you're going to hear the extent of my knowledge on it in the
16 next thirty seconds.

17 But what I have been schooled enough to tell Your
18 Honor is this, is that the -- this is a product that was
19 approved back in 1991, I believe. So a lot of the materials
20 were paper form. We didn't just copy these in a way that no
21 one could read. What we did was we digitized the 1.3 million
22 pages of documents, okay? And we didn't just put them in like
23 a pdf like you can't search, we put them in tif searchable
24 formats.

25 So what they're basically -- you know, what we've

1 kind of been asking is why do you need it another way? It's
2 how our lawyers review these documents. So it's not like we
3 have some secret method of dealing with this. What we've
4 given them is basically just that, is here are the entire -- I
5 came out to California and Mr. Robinson and I met and I said
6 here's four hard drives. And I will tell you, that was
7 probably about two months ago. Do you know how many questions
8 or complaints that I've had about our production or issues?
9 Now I know they're still looking at it. It's a lot of papers.
10 But the quick answer is none, you know? And if they did have
11 an issue or something they couldn't find or an attachment that
12 wasn't, the first thing I would do is say let me address that
13 and they know that because, you know, we've talked about that.

14 So the issue is not, you know, are we trying to do it
15 some old school hide the ball way. It's just the opposite.
16 What we've basically been saying is this is the state of the
17 art. We can present, you know, to the Court or maybe this is
18 one where we can just -- we just needed an ESI master just to
19 work this out.

20 But to be clear, they have the entire IND and NDA.
21 They have all the reproductive tox studies. They have all the
22 labeling issues. They have the FDA advisory committee
23 meetings. They have safety and efficacy studies. We've
24 agreed to produce every adverse event that's reasonably
25 related to these and we're going to be very judicial -- not

1 judicious, very open about providing those adverse events to
2 them. They have -- we've given them commitments to give them
3 medical information letters.

4 We've produced -- they'll receive when they get back
5 to their offices today, custodial file searches without even
6 much hullabaloo. We've given that on discs, all again
7 searchable. There are two or three others that are coming
8 within the next month or so.

9 So, you know, I don't -- Mr. Zonies didn't
10 misrepresent this in any way but it's not fair to say that
11 we're sending them to kind of a warehouse, somehow that it's,
12 you know, finding a needle in a haystack. In fact, you know,
13 we could probably pull out some orders that were filed in I
14 think the Celexa litigation and some others that are very --
15 that some of the same lawyers have agreed to and there are
16 some nuance issues. But our proposal is consistent with
17 frankly what the state of the art is.

18 THE COURT: So but you're telling me that that's how
19 you store the information in the first place.

20 MR. CHEFFO: No, not -- I mean, not all the time. On
21 some of the paper documents, it had to either be say, here's a
22 million pages of paper or whatever the number is, go look at
23 it. Other times, there are in databases, for example, those
24 exist in a different way.

25 I mean what we've basically said is if there's a

1 situation where, you know, you could tell us why you needed
2 all of the specific metadata and information, we'd be willing
3 to do that. But I mean there's practical issues too, Your
4 Honor. One is, in terms of Bates stamping discovery, being
5 able to know what's out there. The idea of basically, you
6 know, turning over databases is just not something that's
7 typically done. I mean there's -- because otherwise, you
8 don't know what's -- you can't prepare witnesses. You don't
9 know what document, whether it's authentic or not.

10 So really what we've -- and I think we'll continue to
11 work on this, in our view at least is we have not heard a
12 reason as to why a tif fully searchable with specific metadata
13 is not acceptable and if there is for specific kind of
14 documents or things, we'll be happy to -- to my knowledge, we
15 have not -- they have not said why they need native or why
16 there's a detriment to getting to yes on those issues.

17 And I think that you're absolutely right. This is
18 not a situation where we're saying let's hide the ball. Let's
19 try and get to the science issue and keep all our documents.
20 What we've said is, you know, if there's a legitimate need --
21 as I said, any study, adverse event reports, scientific
22 issues; things that you're likely to hear and need for a
23 Daubert hearing, we don't want to be before Your Honor on
24 those issues, right? If I'm asking you for a Daubert hearing,
25 I don't want you to be saying, well, Mr. Cheffo, how can they

1 possibly do this if they don't have the studies that you need?
2 So we're being proactive with that.

3 And I will also tell you this, Your Honor, we've
4 served some discovery too and today is not the time to get
5 into issues or disputes because we do have some but the only
6 concern I will -- the only issue I will say is, you know, as
7 of today, we have not received, you know, a single piece of
8 paper from any plaintiff or authorization yet at all and we've
9 produced, you know, upwards of almost two million pages.
10 There's a process in place for that, but you know I think we
11 need to get a little credit for kind of being proactive here
12 and doing this in a usable way.

13 And the other thing I would say is in their discovery
14 responses, they've basically said three things; one is we
15 object, you're not going to get it. That's fair, we'll talk
16 about that or it may not be fair. The other is yes, we'll
17 agree to produce X, Y and Z and we'll produce it early on and
18 then the third category is yes, we'll agree to produce it but
19 we'll agree to produce that in connection with trial pool
20 cases. Right? So what does that tell you? To me, it tells
21 me that this concept of staging the litigation so we can get,
22 you know -- do I need to know all the collateral source
23 information of every plaintiff? Do I need to know a host of
24 other things, that I might in order -- before we got to trial
25 know but if we do it the old-fashioned way and we do full

1 blown discovery on every issue of plaintiffs and defendants,
2 we are out three or so years, I think, with this level of
3 litigation.

4 What we're proposing is basically can a hard-driving
5 approach with respect to discovery for the scientific issues,
6 we're not talking out of both sides of our mouth. The reason
7 why we agreed to this initial six page plaintiff fact sheet is
8 again, do what we're saying, which is recognize that I don't
9 need every piece of information about every plaintiff to
10 present some of these Daubert scientific issues because what I
11 know is if the cases survive, we'll do it quickly. If the
12 cases don't survive, there's no reason to put these, not just
13 mothers but families, through these issues, costs, time and
14 issues. And I think what that level of guidance, we could get
15 to a point where you won't be hearing people say, you know, we
16 don't have enough information to put this on because I think,
17 you know, in talking to the plaintiff's lawyers, they feel
18 pretty -- they feel one way about the science in their case
19 and we feel another. But there's not -- there may be nuance
20 but it's not going to be about whether we didn't get X, Y, Z
21 document on the science.

22 So I've done probably more talking, Your Honor, than
23 I had wanted to. I would like to maybe let Mr. Heim, unless
24 Your Honor has some specific questions --

25 THE COURT: No, we'll keep asking them as we go

1 along. I think we are clear enough on the disparity however,
2 between the requests for the two forms. So that's what you'll
3 both have to -- both sides will have to give me as to what are
4 the advantages and disadvantages of producing each.

5 The native format may work in some parts of the
6 discovery. It may not work in others in this litigation. It
7 doesn't all have to be one form.

8 MR. CHEFFO: Right.

9 THE COURT: And I think that -- I do keep up with
10 Sedona; I try to or at least I pretend I know what they're
11 talking about but it -- so these terms aren't foreign to me
12 but I'd like to hear how it impacts your work and the
13 litigation here.

14 I am most concerned with early on identifying genuine
15 injuries that are alleged here. If they run the spectrum,
16 then it seems to me that the plaintiffs are going on a very
17 broad discovery quest to identify cases in each of the
18 categories and that is a daunting task, just as it's a
19 daunting task to defend against each and every one of those.

20 You may learn enough early on in discovery to figure
21 out where the concentration should be and then there will be a
22 clearer path to the first set or first round of Daubert issues
23 and categorize them, if any exists.

24 The plaintiff fact sheet is really important for both
25 sides to identify what they should be discovering. So I'm

1 still very much centered on what should be discovered; the how
2 will, we will deal with it. It's not as big a problem as
3 what. But I will need some briefing and if it gets too
4 complicated for me, I'll get an expert.

5 MR. CHEFFO: That's always another option is, you
6 know, an ESI and discovery master and we can perhaps work out
7 some of these issues as well.

8 THE COURT: Discovery --

9 MR. CHEFFO: But I think Your Honor -- sorry.

10 THE COURT: -- discovery masters in ESI issues
11 usually are the ones I turn to for search terms when you can't
12 agree.

13 MR. CHEFFO: Uh-hum.

14 THE COURT: But you're all too good at this to need
15 that.

16 MR. CHEFFO: No, and the last thing I --

17 THE COURT: Search terms are really not going to be
18 the problem here. It's really the format.

19 MR. CHEFFO: I think Your Honor's framed the issues
20 right. I mean there's really two issues; one is the ESI and I
21 think as Joe said, I mean ultimately at the end of the day, I
22 think we'll be able to work that out or an ESI master.

23 Probably the bigger issue really is a conceptual
24 disagreement and, you know, I was careful, I think this is a
25 principled position on theirs and it's a principled position

1 on ours. We just have a disagreement about the most efficient
2 way to get it and it's a matter of do we spend our time,
3 effort and resources on identifying whether there are eighty
4 or so diseases or do we need to do kind of a scorched earth-
5 type of turn the company upside down with 250 cases to get to
6 that point. We don't think you do, Your Honor.

7 THE COURT: Thank you.

8 MR. ZONIES: May I --

9 MR. CORR: Joe, let Bob go.

10 MR. ZONIES: Just on the ESI?

11 THE COURT: Just on the ESI.

12 MR. ZONIES: Just on the ESI. I don't want to
13 crossover --

14 THE COURT: And then we'll hear from Mr. Heim.

15 MR. ZONIES: All right. And just to be clear on the
16 ESI, I think as Mr. Cheffo said, again we can meet in the
17 middle on these things. It's just what's the starting point?
18 And we'll be happy to put it before the Court in writing about
19 why we think native is the most efficient the way it's done
20 now and why we think that that should be the starting point
21 and then we fully understand that there will be issues along
22 the way where native may not be the most efficient way. We
23 just want the information in a way that gets it to us quickly,
24 cost-effectively and that is most usable and we'll put that
25 before the Court in writing about why we think that's native.

1 It should be the baseline and then work from there.

2 THE COURT: All right. About thirty days you can do
3 that for me or sooner?

4 MR. ZONIES: No question.

5 THE COURT: All right. And then you may respond.

6 MR. CHEFFO: Yes, Your Honor.

7 THE COURT: Thank you. All right. Mr. Heim? Thank
8 you, Mr. Zonies.

9 MR. ZONIES: Thank you.

10 MR. HEIM: Good morning, Your Honor.

11 THE COURT: Good morning.

12 MR. HEIM: I'm happy to be here with you today.

13 THE COURT: I thought you were going to be in Eastern
14 Europe?

15 MR. HEIM: Well, I was just going to say that I'm
16 very happy to be before Your Honor instead of being in
17 Kazakhstan, although it now appears that my wife and I will be
18 having Thanksgiving dinner at the American Embassy there
19 because there was a little bit of a government shakeup, a
20 peaceful government shakeup and they moved it back a month.
21 So, we'll be going in November.

22 THE COURT: Would an invitation to my house for
23 Thanksgiving save your neck?

24 MR. HEIM: I think it would trump the American
25 Embassy, clearly.

1 THE COURT: Oh, my goodness.

2 MR. HEIM: So, Your Honor, the Court has been very
3 consistent in these hearings. You just said a moment ago that
4 you believe the Court has been centered on what discovery
5 should take place and when. And I think it was at the last
6 hearing when Your Honor observed that given the number of
7 plaintiffs and the involvement of families and the wide range,
8 the really wide range -- excuse me -- of injuries that are
9 claimed here, that it is in everyone's best interest and
10 especially the plaintiffs, but in everyone's best interest for
11 everyone to know earlier rather than later whether there are
12 viable claims for many of these injuries; not all of these
13 injuries.

14 And I don't think anybody will disagree with Your
15 Honor's observation in that regard and hearing this morning
16 that there's a thousand state court cases that are looking for
17 Your Honor's leadership in the MDL, I am guessing that those
18 state court judges would stand up and say absolutely, yes, we
19 agree as well.

20 And I urge Your Honor that the way to do that, the
21 way to get to that earlier resolution as to whether these
22 injuries that are claimed, these wide, wide, range of injuries
23 that have now appeared as claims before the Court, is to
24 concentrate early on, to concentrate -- I said early on and I
25 really mean now -- on the science and on whether or not there

1 is any reliable science that would suggest that many, many of
2 these claims have any viability whatsoever and to weed them
3 out. And just -- there's just no science there.

4 I mean this is a case that, as Your Honor knows, is
5 not about drug that has been withdrawn, a medicine that's been
6 withdrawn. It's not about off-label marketing. Many of the
7 cases, pharmaceutical cases, deal with those situations. The
8 case is about children, babies. It's about families. And
9 it's about a medicine, a medicine that is very, very effective
10 for treating a very serious medical condition, a medicine that
11 is on the market that's being prescribed every day to
12 depressed, clinically depressed pregnant women. And so, we
13 need to get to that resolution of the science, and I think the
14 science should go ahead of everything else and let's get to a
15 resolution of the science with these claims.

16 And in that regard -- I mentioned to Diane a moment
17 ago -- and I want to provide a thought to Your Honor is
18 that -- and I think you just mentioned it a minute ago -- that
19 the Court is very much aware that Federal Rule of Evidence 706
20 permits the Court to appoint an independent scientific expert.
21 And under Rule 706, that expert would be a testifying expert,
22 an expert who would be subject to the discovery that is
23 permitted under Rule 706 by the parties, but would be the
24 Court's expert on the science.

25 So that is something that perhaps --

1 THE COURT: I was referring to the production and the
2 manner and mode of ESI production. I know that we can also do
3 that in the context of Daubert issues, but I don't have any
4 reason to say that's justified yet.

5 MR. HEIM: Well, it may be early. I wanted to put
6 that thought in Your Honor's head. In addition to Federal
7 Rule of Evidence 706, the Court, I'm sure, is aware that Your
8 Honor has inherent authority and as you know I can provide you
9 with the citations, but I think you know that the Court has
10 inherent authority other than through Federal Rule of Evidence
11 706 to appoint a scientific expert simply to advise the Court.
12 Not a testifying expert, but a scientific expert. And given
13 the complexity of the science here, and it's a very complex
14 science, and given the wide range, I think Mr. Cheffo said
15 eighty different claimed injuries as a result of their
16 prescribing of the drug Zoloft, Your Honor may want to give
17 thought and the parties -- one or all of the parties could
18 propose that the Court use the Court's inherent authority to
19 get a nationally recognized expert to advise Your Honor with
20 regard to these complex scientific issues.

21 THE COURT: Am I supposed to be considering this in
22 your opinion now in the litigation or after some discovery
23 gleans some information or no information on certain of the
24 alleged injuries -- and that's something that only the parties
25 would know as they move forward in litigating -- or is this a

1 new type of need in the highly publicized and advertised area
2 of litigation?

3 MR. HEIM: Well, Your Honor, I'll give --

4 THE COURT: Because I'm not so sure I can jump the
5 gun.

6 MR. HEIM: Yeah.

7 THE COURT: I have a circuit that will tell me
8 otherwise, and I'm not sure it's the right thing to do right
9 now.

10 MR. HEIM: Well --

11 THE COURT: But I know that there is a way to react
12 to the type of advertising that I've just seen and that may
13 not be the first way to react, but I understand what you're
14 saying.

15 MR. HEIM: I think -- and this is something that, you
16 know, the parties may want to consult about, plaintiffs'
17 counsel and defense counsel, but my own sense of it, and this
18 is purely my sense of it, is that having the benefit of a
19 truly independent nationally recognized expert on this drug
20 and on the scientific issues about how this medication affects
21 pregnant women, and the benefits of it, and the risks of it,
22 and the inherent science of it having the benefit of that
23 earlier rather than later would be helpful to the Court, and I
24 very much expect that the court of appeals would -- I can't
25 say that they would applaud it, but I don't think they'd have

1 any difficulty with it.

2 But, you know, whatever the stage might be, having
3 someone who really, really understands on a deep level this
4 issue I think would be useful to the Court. And as Your Honor
5 knows -- I'm sure Your Honor knows that Chief Judge Pointer in
6 the MDL with the breast implant -- the silicone gel breast
7 implant litigation did exactly that. I mean he used
8 independent experts to great effect in that litigation. And
9 so it's not a novel idea by any means.

10 So what I would suggest to Your Honor, and I think
11 this is where Mr. Cheffo was going is that we adopt a
12 discovery plan for the benefit of everybody that puts the
13 science and regulatory issues up front. We deal with them
14 immediately. Whether or not Your Honor thinks that -- or at
15 what point or whether Your Honor thinks an independent expert
16 would be useful, I think the fact that we're here -- standing
17 here saying that we think Your Honor might consider an
18 independent scientific expert gives you some sense for the
19 confidence that we have in the science here.

20 But I think emphasis on that now will be to
21 everybody's advantage, the plaintiff families, the plaintiffs,
22 and to the defense.

23 THE COURT: Thank you, Mr. Heim. Let me say two
24 things.

25 I don't want my comments or my questions to be

1 misunderstood by anyone and there will be people reading a
2 transcript here, or listening to it, upload it on PACER that
3 may not understand, so let me be very clear.

4 I don't have a position about advertising that is
5 negative or positive. Advertising can be a public service and
6 a great public service to inform the public. On the other
7 hand, it can also be commercialized. So I don't know what it
8 is in this case. I have not been looking for the advertising.
9 I too get spam e-mail and I quickly delete it. So --

10 MR. HEIM: Yeah, me too.

11 THE COURT: I have to delete it, because I don't want
12 anything to interfere with my ability to rule impartially.
13 But I don't wish to make any statements about advertising, but
14 the advertising does seem to promote a wide range of alleged
15 injuries that are potentially irreparable by damages and, if
16 that's the case, everybody wants to know early on whether or
17 not there is.

18 MR. HEIM: Yes.

19 THE COURT: But I actually don't know what
20 plaintiffs' counsel can do when they're responsible to clients
21 other than to ask for as much information as possible so that
22 they can properly advise them. And we leave the proper advice
23 to them and their malpractice carriers and their clients. So
24 I won't get involved there.

25 But the other issue is if I invite you and your wife

1 to Thanksgiving everybody's invited. I stay impartial. And
2 we'll do it at the beach so there's another house we can have
3 dessert at.

4 MR. HEIM: Well, that's very good of you, Your Honor,
5 but my comments -- my suggestion that the Court move up, and
6 stage discovery, and get us to the science really early here,
7 and to consider an independent expert to advise Your Honor,
8 and I think an independent expert under the Court's inherent
9 authority might even be better than a Rule 406 expert, really
10 was unrelated to the advertising issue.

11 THE COURT: Thank you.

12 MR. HEIM: Thank you.

13 THE COURT: I think it's a good suggestion. Thank
14 you very much. Ms. Birnbaum?

15 MS. BIRNBAUM: Good morning, Your Honor.

16 THE COURT: Good morning.

17 MS. BIRNBAUM: It's a real pleasure to be here. I've
18 never had the privilege of being in your courtroom. I think
19 we're all going to spend a lot of time together.

20 THE COURT: I think that's true.

21 MS. BIRNBAUM: And I think we're also very grateful
22 because -- and I think you are in this litigation, both on the
23 plaintiffs' side and defense side, have people with a lot of
24 experience who have dealt with each other before. Dianne Nast
25 and I were very much younger when we first met in the breast

1 implant litigation that Mr. Heim just made reference to and a
2 number of the plaintiffs' lawyers we've worked with in other
3 MDL's. So we can assure you that from a defense point of
4 view, and I know from the plaintiffs' point of view, you will
5 get total cooperation in this lawsuit.

6 We just want to be able to get this done in a way
7 that is going to be the quickest, most efficient, most
8 productive way to get to an end result. And all these cases
9 are different. Every MDL that we get into in the
10 pharmaceutical area that we're all experienced in is
11 different. I mean breast implant litigation was very
12 different. What Judge Pointer did there involves a lot of
13 what could happen, but he didn't have three independent
14 experts. He had the experts actually acting as sort of
15 decision makers in the arena of what the science was and what
16 it wasn't.

17 Now, in that litigation I begged him many, many years
18 before he finally got to the Daubert issues to get to the
19 Daubert issues early. And if they had been, that litigation
20 would have been a totally different litigation.

21 But we have examples that I think Your Honor can look
22 at and make up her mind as to how best to proceed to get to
23 the bottom line and that is can we get to the essence of the
24 cases and either they will be tried, or settled, or resolved,
25 but until we get all of that other types of allegations out of

1 the way it's almost impossible to do that.

2 And what I would ask Your Honor to take a look at,
3 perhaps, is what Judge Rothstein did in the PPA cases. PPA
4 was another mass tort. It was the ingredient in over-the-
5 counter diet drug products and over-the-counter cold
6 medications, which is something I could really use this
7 morning since I woke up with a very bad cold. And in that
8 litigation we had something similar to what's happened here.
9 We had a situation where there was a study.

10 In that litigation it showed that there could have
11 been a relationship between the drug and some injury. But the
12 court was confronted with lots of injury; psychoses. This
13 was about the question of whether certain types of strokes
14 could be caused by this medication. But the allegations of
15 injury were all over the place. There were injuries that
16 occurred weeks and months after the plaintiffs took the
17 medication. There were injuries that were alleged that were
18 psychotic injuries, there were a lot of heart condition
19 injuries and what Judge Rothstein did with the help of Francis
20 McGovern, who was the special master in doing this, she had
21 the issues of the science done very early in the litigation.
22 It took a year and there was discovery going on. There's no
23 question that discovery would go on here, because all of the
24 scientific information we have is going to go to the
25 plaintiffs to examine.

1 And within a year what she did was have the Daubert
2 hearings on all of these issues. Plaintiffs brought in
3 experts to try to support some of these allegations. She came
4 down with an order, and a bunch of cases were dismissed on
5 summary judgment, and the rest of the cases there were some
6 trials and there was resolution.

7 And this -- what she did is written up in the Drake
8 Law Review of 2006, page 621. She and McGovern wrote up what
9 they did and how they got to the result they did. And in the
10 end what she concluded -- and I'd just like to quote that --
11 that her decision to make an aggressive -- to take an
12 aggressive role in determining admissibility of scientific
13 evidence and the important practical result of setting clear
14 parameters for motions for summary judgment and ultimately
15 reducing meritless claims in a large litigation.

16 So I think we have a model that could work very well
17 here to get us all effectively and efficiently to the results
18 I think the parties are looking for. And I think most of the
19 plaintiffs' lawyers really don't want this case to just go on
20 and on and on with all kinds of allegations that there would
21 be no scientific support for.

22 So we look forward to spending a lot of quality time
23 with Your Honor, and I think that the parties will get a lot
24 done among themselves that can come to the Court with consent
25 and agreement, but there certainly will be times when you're

1 going to be the person that's going to have to make the hard
2 decisions.

3 THE COURT: Well, thank you, Ms. Birnbaum.

4 MS. BIRNBAUM: Thank you very much for the
5 opportunity.

6 THE COURT: Thank you. I will be sitting with Judge
7 Rothstein in less than a week, and I will -- and I'm familiar
8 with the Law Review article. And also Francis McGovern will
9 be speaking right before I make my presentation, so I have
10 plenty of opportunity --

11 MS. BIRNBAUM: To talk to them.

12 THE COURT: -- to mingle and pick their brains.

13 MS. BIRNBAUM: Great, thank you.

14 THE COURT: Thank you very much.

15 MS. NAST: Your Honor, I -- Mr. Robinson will respond
16 on behalf of us. I have to correct I'm sure what was an
17 inadvertent statement that my dear friend Sheila made.
18 Although we're coming up on the twentieth anniversary of the
19 beginning of breast implants, she and I are both still the
20 same age.

21 THE COURT: Of course you are.

22 MS. BIRNBAUM: I would definitely agree with that.
23 We all have our own hair.

24 THE COURT: Of course, and I'll take the same
25 medicine if you can just tell me what that is. Mr. Robinson.

1 MR. ROBINSON: This has definitely been a morning of
2 the history of MDLs and mass torts. In fact, as they all know
3 I was involved in breast implants. And frankly what happened
4 is for about four years we fought and litigated it, and then
5 most of us were settled out, and then unfortunately some of
6 us, Mr. O'Quinn, myself, others, Mr. Blizzard, I think, we
7 weren't involved in this hearing down there, but that was at
8 the end. The 706 hearing was at the very end of that.

9 THE COURT: To wrap up the rest of --

10 MR. ROBINSON: As a wrap-up.

11 THE COURT: -- the claims.

12 MR. ROBINSON: Right. The other thing is I was also
13 with Judge Rothstein, and it sort of shows my age, I guess
14 too, but basically there was no 706 in that -- there were
15 lawyers here involved in that as well and what happened is
16 Francis came in and helped us get the thing resolved, is what
17 happened there.

18 But I really don't think with 245 cases right now
19 that's the issue before you. In fact really what we came to
20 do today was -- we've told you about all the areas that we all
21 agree on, but there is one area that we're disagreeing on, and
22 it's -- I look at it as a divergence from what's gone on in
23 every other mass tort that they've talked about, I mean from
24 breast implants to PPA, Fen-Phen, Resilin. Judge Kaplan was
25 asked to do a 706 panel. He didn't do that in Resilin.

1 But we did have Daubert hearings with Judge Kaplan.
2 I argued before him. But in all of those cases what we did is
3 that we completed the defense discovery first so that we could
4 have experts informed after we completed the defense
5 discovery. And Pfizer was involved before Judge Kaplan. We
6 took the Pfizer -- we got all the documents, all the
7 discovery, we took the Pfizer depositions, and then we went to Judge
8 Kaplan on a Daubert hearing.

9 So that's really what my PowerPoint -- I came here --
10 it's a very short thing, just ten slides, Your Honor, and I'll
11 give a copy to the defense here. Maybe I'll just pass one up
12 to the Court if I could.

13 THE COURT: Thank you.

14 MR. ROBINSON: To just give you sort of the history
15 in this case -- what happened here? Okay.

16 On July 23rd, we sent out a forty-five request for
17 production under the federal rules. Here we are, what, three
18 months later, they're still sitting out there; forty-five
19 requests for production.

20 On July 24th, we sent out to the MDL -- before all
21 these state courts have done it we sent those RFPs out, forty-
22 five of them. We sent out PMKs, 30(b)(6) notices on July
23 24th. I worked all night, I mean on both those projects. And
24 Ms. Nast and I sent those out to the defense. So they're
25 still sitting out there.

1 On August 5th, and it might have a Sunday because we
2 had calls all through that time, and I give Mr. Cheffo credit,
3 he was talking to us on Saturdays, Sundays. He and I talked,
4 I think, on that weekend. I sent him an ESI proposed order on
5 August 5th. It's been over two months. And really what I did
6 was this. Was I took the -- what happened in this Toyota case
7 I'm involved with Judge Sellner. Judge Sellner just said
8 look, you're going to give native with metadata. It's just a
9 black letter ruling. Now you guys to work it out.

10 So we spent two months, and we sat down and worked
11 out and there's a lot of exceptions to what we worked out and
12 the format of discovery, and then what I sent him -- Mr.
13 Cheffo on August 5th was the Toyota compromise order that we
14 stipulated to with Toyota's lawyers and basically I just, with
15 all the compromises, put that in a proposed order to Mr.
16 Cheffo on August 5th.

17 So we have the basis here to do discovery in this
18 case. And what I'm hearing is this, and I'm hearing it again
19 this morning, you know, Mr. Cheffo was kind enough to come out
20 to California and meet with Mr. Tracey and I because we've
21 done the discovery with Mr. Blizzard and others in the Paxil
22 cases, and we tried to explain to him how important -- you
23 know, what the core discovery is in these SSRI cases.

24 And we talk science, but science is not really it.
25 Seventy percent of the core -- and we have it up on the slide

1 there -- it's the first slide -- seventy percent of the core
2 discovery, Your Honor, really deals with the causes of action
3 in the case. I mean depending -- there's a few jurisdictions
4 that still have the risk benefit 402(A) type approach, but in
5 most jurisdictions today it's a failure to warn case.

6 So really it's what Pfizer told the doctors, what the
7 patients were told, that type of thing. And then that brings
8 in -- and I just listed In Collingo (ph.), because that was
9 the case in Paxil here in Pennsylvania, but we have similar
10 cases like that in California. I bet you, you could probably
11 find forty states that have this over promotion theory that
12 what happens is this, you do a warning label, but then what
13 happens is they go behind -- get the sales reps talking to the
14 doctors, they send information to the doctors, they
15 communicate to the doctors, and you've just watered down the
16 label.

17 So you're -- I mean that's typically what happens,
18 and we think that's what happened in Paxil, and we have
19 evidence that that's what happened here. And I'm not going to
20 get into that. We have some documents that we think is pretty
21 solid, that theory.

22 Concealment. Another cause of action is concealment
23 from doctors, negligent and intentional misrepresentation.
24 And then if there's a punitive claim conscious disregard to
25 safety.

1 So that's really the essence of our case, and it's
2 what they knew, when they knew it, what they told the doctors,
3 what they concealed from the doctors, what they told the
4 women, what they concealed from the women. That's basically
5 it.

6 And so on the right side of the chart I have the
7 types of things that we need from them in discovery: warning
8 omissions; sales rep statements; they're talking to all these
9 doctors; publications; key opinion leader where they actually
10 hired one doctor out of Emery and paid him over 580 thousand
11 dollars, Pfizer did, to write about SSRI's and women having
12 children, and that type of thing. I mean I'm not going to get
13 into details, but that's the same type of thing that happened
14 in Paxil. Written communications to doctors, and then how
15 they misled the women directly. Those are the -- that's
16 seventy percent of the core liability case.

17 Now what's going on here, Your Honor, is you heard
18 the word science probably twenty times from counsel this
19 morning. So what they want to do is this. They don't want to
20 give us that seventy percent of the -- they'll give us a few
21 documents, but they don't want to give us the seventy percent
22 of the pie. They don't want to give us core liability
23 documents.

24 We just want to go by the federal rules. We want to
25 do -- we sent them forty-five RFPs. I think eleven of them

1 had to do with sales, marketing, and commercial documents. We
2 want to get those. They don't want to give them to us. They
3 just sent us -- they sent us responses saying we'll give you
4 the science documents, so to speak, but we're not going to
5 give you what you consider your core liability documents.
6 They just said no, we're not going to give them to you.

7 So -- likewise we've discussed trying to get 30(b)(6)
8 witnesses. They'll give us science, pharmacovigilance,
9 regulatory, maybe an structural person, an ESI person. They
10 don't want to give us the core liability witnesses, the
11 commercial document people. We want to take a PMK on
12 marketing sales and how they communicated. That's the issue
13 here really today.

14 And then on this slide I think that what wasn't said
15 today, but in the meetings with Mr. Cheffo and then with some
16 of the people from Pfizer, and we'll take their ESI person
17 too -- take that depo in November -- we appreciate that. But
18 I think that really what Mr. Zonies said is right. I think we
19 need an order from this Court saying look, I'm either going to
20 require at least some native format with metadata or not. If
21 we're not going to do it then we need to know. I think that's
22 really what -- but that's sort of a side issue right now, Your
23 Honor, because the core issue is what -- are we going to get
24 the discovery done.

25 And in my opinion I think we can get -- if we could

1 get the marketing sales documents along with the science
2 documents over the next year, let's say even ten months, just
3 give us those, we can probably take a small group of sales
4 marketing experts' depositions, and we can be ready for trial
5 in fourteen months, in my opinion. I really think we can do
6 that. We want to get the documents. I think we can be ready
7 for trials.

8 We don't have to get just science documents. I mean
9 that's nice, but we want to get the liability documents
10 because at some point when we do do motions, including Daubert
11 motions, we'd like to see what the documents show -- the
12 Pfizer documents show. I mean -- so that we could hire
13 experts to inform us on the liability issues. And one of the
14 issues is causation, but there's multiple issues, Your Honor.

15 So I think that's what this whole science pitch is
16 about this morning is they want to scare you that there's
17 hundreds of all these claims, and I just went through the list
18 of injuries, Your Honor, and I could tell you -- you see if we
19 look at -- we have a chart and they have them too -- but
20 basically where you -- there's a group of studies on all the
21 different SSRIs and, for example, under Zoloft there's a
22 section called cardiac defects, and then there's another
23 one -- and under cardiac there's conotruncal, there's right
24 ventricular outflow, there's left ventricular outflow, there's
25 septal defects, there's unspecified heart defects. These are

1 all in the studies. And I went through the list here and
2 twenty-nine of the ones here fit within the cardiac group.
3 Another seven or eight fit within the neural -- brain defects
4 group.

5 Now I agree there's probably some outliers here, but
6 that -- I don't think that's the big problem. We didn't have
7 that problem in Paxil. We had -- they had the same claims.
8 We got them down into their groupings. The cardiac ones were
9 in the cardiac groups; the brain ones were in the brain group;
10 the limb abnormalities were in a certain group. They weren't
11 that difficult. And frankly the literature sort of informs on
12 that, Your Honor. It lays them out by categories of defects.
13 And then you'll have RVOT and there's like -- excuse me --
14 there's six different -- seven or eight different
15 subcategories of injuries under the RVOT category and some of
16 them are on this list here. So those could be heart injuries
17 that are in these cases that fit within this RVOT category.
18 And the key is what is the relative risk for the RVOT
19 category? For example, in Paxil it was about 2.4 or something
20 like that. It was over two.

21 The bottom line is all those injuries fit within that
22 category. So I think really when you get to the epee it's not
23 going to be that difficult. But I think the most important
24 thing, Your Honor, is that we look at what Pfizer's doing
25 here. What Pfizer wants to do, they want to give us

1 particularly science, regulatory, pharmacovigilance, and maybe
2 some greenstone documents. Could we go to the next slide?

3 And then they want discovery from us -- the last one
4 we feel is burdensome, and it's something that Mr. Cheffo just
5 touched on, and we agree it is burdensome. Go to the next one
6 if we could?

7 And then what -- he told us what his plan would be.
8 So we do the science discovery, and then I just picked months,
9 but he thought there would be like six different Daubert
10 hearings. I mean if we're going to have any type of a death
11 march or pelt (ph.) on this MDL is that before we do discovery
12 against Pfizer we're going to do a series of Daubert motions
13 to knock out all these cases? I don't -- I've never seen it
14 done that way.

15 We've always gotten the discovery first, then we get
16 the expert reports next, and then we do the Daubert before
17 particular trials. You pick trials. Maybe each side picks a
18 couple trials, and then we can have a Daubert hearing. But I
19 really believe that the key is getting discovery.

20 And one other issue I see is this, Your Honor. If
21 that's really year two Daubert hearings, the problem is by
22 that time we still haven't gotten the core discovery documents
23 discovery. So that's going to -- if we could get to the next
24 slide?

25 So what we're saying, in year one let's get all the

1 depos, including the commercial documents, take the sales
2 marketing stuff, defense fact sheet responses -- go to the
3 next one -- and then we give all our -- we produce medical
4 records and fact sheets in year one. And then go to year two
5 if we could, Steve. And then basically, we want to complete
6 the Pfizer depositions and trial selection process. And go right
7 ahead to the next one.

8 So we think our plan would save one year off the
9 schedule. We could probably have trials in eighteen months if
10 we got -- if we just went to work and do this. Get the
11 discovery from Pfizer, they get the information from our
12 plaintiffs' medical records, the economic information about
13 the plaintiffs, et cetera, and then we don't have to wait a
14 year after that or after Daubert hearings to get the marketing
15 documents and the sales documents. We could be ready for
16 trial probably by the end of 2014. That's the way I see it.
17 You can go to the next one.

18 We did that in Yaz, Your Honor, with Judge Herndon.
19 We got all the marketing, everything -- all the documents
20 done, all the depositions done in a couple years and what happened
21 is it gave us, as plaintiff lawyers -- by having the marketing
22 sales document we could evaluate the cases at the end of two
23 years. So we were ready to try and resolve it, and we are.
24 We've resolved probably -- we're in a path right now of
25 resolving all the cases with them.

1 THE COURT: Without bellwether trials even.

2 MR. ROBINSON: Without even bellwethers. He ruled on
3 various issues, he ruled on motions in limine, and we're
4 going, and he's got a very good special master there that's
5 helping us.

6 I would really hope, Your Honor, that, for example,
7 on ESI, if the Court would inform as to what your thought is
8 about native metadata generally, and then force us to sit
9 down. I don't think we need a special master for that. I
10 think we can work it out. We didn't really -- we had special
11 masters in Toyota, but we just sat down with the lawyers and
12 worked that out.

13 The other thing is in -- you know, regarding the
14 sales marketing documents, if the Court just says we're going
15 to get all that done in the next year, we'll get it done in
16 the next year. And if there's privileged documents they can
17 give us a privileged log. We understand. There's going to be
18 objections and what not, but I think that we just got to get
19 it all done now, get the documents done this year, and then
20 maybe -- you know, maybe setup for a format for some trials,
21 pick cases. Each side maybe gets to pick cases, and then what
22 we do is we then take some injuries, and then setup the
23 Daubert hearings. And, you know, I don't what the format
24 would be, but, you know, plaintiffs would say why don't you do
25 Daubert on cardiac? Maybe they'd want to start out on the

1 fringe, but cardiac is probably the best Daubert for
2 plaintiffs.

3 But either way we can meet on that and work that
4 out. I think that -- and there's another problem, Your Honor
5 -- if you would go the next slide? I think this, if we don't
6 do it here -- if we don't get that core commercial discovery,
7 you know, here, then you're leaving it to the -- we're not
8 leading the state judges, that's a better way to say that. I
9 think what I'm hearing is this from this Court. This Court
10 respects the state courts, that you want to work with the
11 state courts, but that we're the MDL, we should lead. And
12 that's what I think is really what we should do.

13 If we don't do that -- if we don't get core discovery
14 here, you know, what they knew, when they knew it, what they
15 said, what they concealed what -- I mean, then other -- we're
16 just seceding this to other judges and other state lawyers.
17 And frankly I just assume do it -- take the leadership here.
18 I really would. You know, I'm involved in one set of cases
19 right now. I have five of mine in the city of St. Louis.
20 I've asked the lawyers in charge there from St. Louis, who is
21 a very -- he an ex-U.S. attorney, he was appointed by Judge
22 Herndon as the lead counsel in Yaz, he's a very good lawyer.
23 I asked him to wait, to not file his motion, because we're
24 going to try and work it out here.

25 What I think we agreed to with Mr. Cheffo was we're

1 both making our presentation to you today, and then, you know,
2 we can both bring motions. But I think we want to bring a
3 motion asking for what I'm asking for and that is that we get
4 the -- we get to pick the discovery. Under the federal rules
5 we sent out forty-five RFPs. It's not Pfizer's choice. It's
6 sort of like Taster's Choice. Pfizer wants to like -- well we
7 don't want to answer the marketing ones, we don't want to
8 answer the sales ones, we don't -- well, I don't think under
9 the federal rules we need to do it that way, and I've never
10 done it that way, so -- but maybe I'll learn. I'll learn.
11 But we have some very good lawyers here.

12 But in any event, Your Honor, I think that if we
13 could just get the discovery done against Pfizer. You know,
14 the whole purpose of an MDL is to try and get all of the
15 discovery done in one place, but all is the key word, not half
16 the discovery. And really for us to evaluate the cases we
17 need to understand the answers to the failure to warn issues,
18 the concealment issues, the negligent misrepresentation issue.
19 We need to see all that to evaluate the cases. And I'm hoping
20 that if we get to see all that -- both sides see it, we can
21 have Daubert hearings. If certain injuries are not
22 appropriate they can go. I don't think the Court's going to
23 need, you know 706 experts to help with that. I think you're
24 going to be able to look at both -- both briefs, and you're
25 going to be able to decide.

1 But I think that we're going to be able to work this
2 out if we do it in the normal way. All those MDLs that they
3 talked about with Judge Pointer, with Judge Rothstein, with
4 Judge Kaplan, you know, with Judge Bechtle here, with Judge
5 Bartle, and Arnold will tell you that.

6 UNIDENTIFIED SPEAKER: Yes, sir.

7 MR. ROBINSON: We did it the same way. You were with
8 Rothstein with me.

9 UNIDENTIFIED SPEAKER: Yes, sir.

10 MR. ROBINSON: We -- well, he's being nice, but --
11 Your Honor, he's normally --

12 THE COURT: I don't think he yes sir's you very much.
13 It's just --

14 MR. ROBINSON: I don't think he does.

15 THE COURT: I can see right through that.

16 MR. ROBINSON: I think you're picking up something,
17 Your Honor. I look at Mr. Heim -- well, anyway.

18 So the bottom line is, Your Honor, I really think
19 we're like two ships passing in the dark here. They don't
20 want to give us the core discovery, and we want to get it.
21 And we don't want to secede it to the state judges. We want
22 to lead the state judges. Like you said, if they hear that
23 we're doing it here, they're going to say fine, especially the
24 ones that have one case or ten cases. They're going to say
25 fine. And even the lawyers -- some of the lawyers. Now maybe

1 some state lawyers they're going to say, and I've heard that
2 from Mr. Cheffo. Some say I don't care what Mr. Robinson
3 says, we're going the other way. But the bottom line is, I do
4 think that like, for example, the lawyer in the city of St.
5 Louis he'll let us take the lead. I just think we got to take
6 the lead.

7 And so that's sort of -- that's the difference that
8 we have, Your Honor. Anyway I appreciate you enduring my long
9 PowerPoint, and I thank you very much.

10 THE COURT: Well, it's not a long PowerPoint, but all
11 of this discussion is extremely important.

12 MR. ROBINSON: Thank you.

13 THE COURT: And what I think crystalizes the
14 arguments for this Court is that it understands its role, and
15 that is to lead the MDL and coordinate with the state courts,
16 but it really needs to resolve cases in a just and fair way.
17 And you can't do that without getting through -- information
18 through discovery. You can't do that without making rulings
19 on timely motions and in a timely way. You can't do that
20 without at least setting up a schedule.

21 Now we have the preliminary discovery plan and
22 procedures that are ready to go. What we need next is a plan
23 -- a proposed plan time wise. You know, grouping, discovery,
24 what kind of discovery, how long that discovery is, and this
25 comes from each side because that's what a state court wants

1 to see. They want to see that it's not morphs arguments
2 anymore. There's dates and deadlines. And that's what we
3 require next.

4 So if that's where you want take the arguments as to
5 how much and what, you need to put that into a plan, and I
6 know that's your next step anyway. But I need the same kind
7 of plan from the defendants if you guys aren't going to work
8 this out. And right now I think you've hit a snag of sorts.
9 It could be a major snag if it is perceived as turning the
10 cart before the horse.

11 But when you both put your plans together, then you
12 have to justify to me how the native versus metadata plan or
13 TIFF and metadata, and native and metadata impact it, because
14 that's the cause and effect that I'm looking for to make
15 decisions. And I can stick in anywhere an expert if I need
16 one. I can do that when I see the immediate need. I happen
17 to understand the argument that science comes first, but
18 believe it or not science is related directly to the
19 marketing. So I can't do one without the other, because
20 that's what allegedly is told by a manufacturer to a doctor,
21 and then what doctors tell their patients is something else
22 entirely or we're looking at the labeling -- and/or not one or
23 the other.

24 So there's much ground to cover here and if we have a
25 plan in place then you'll be able to coordinate better with

1 the state courts. That's what we need, the plan. Sometimes
2 the outline and the calendar becomes a pretty good read map,
3 and we can then deal with the individual issues, what comes
4 first, what comes second, and I'll be happy to work with you
5 on that. You might need a discovery master here or there, but
6 I don't think overall any of you is so -- any of you is
7 inexperienced and none of you are inexperienced to the point
8 where you need to be guided.

9 The problem is we build onto the experience of every
10 former MDL, every former complex case and what they have
11 accomplished, and that's a good thing and sometimes it's an
12 interference, but it's a good thing in this case because there
13 are similar cases that have already gone down the pike, and
14 there are also many good models to adopt. What I like to do
15 is pick and choose, because like a Chinese menu it is the
16 right thing to do when you have a brand new animal, which is
17 the MDL of Zoloft. But it's still up to me to push this
18 machinery, because it's not running on its own yet, and I'll
19 be pushing it with sheer will, because I don't have a piece of
20 machine to help me. I've got to push it.

21 So you're right. I do want the MDL to be the leader,
22 and I know that the defendants want that too. I don't think
23 there's a question there. They're here because -- and they
24 agreed to the MDL, because they didn't want to be litigating
25 all over the country. And so we've got a common angle there

1 to adjust your sights. I think you can both get there.

2 MR. ROBINSON: And, Your Honor, that's a good point
3 because actually -- you know, if this was the only case -- or
4 I'm sorry. If all the cases were here, then I could see
5 saying well I'm not going to be afraid of scaring people away,
6 or plaintiff lawyers away or, you know, plaintiffs away, or
7 into state courts or wherever because it's all here.

8 But I think for -- if we only 245 cases and there's a
9 thousand sitting on the sideline watching here I think that's
10 important. And frankly you might want to give on this
11 marketing sales discovery because if they think we're doing
12 our job here in getting the discovery that we normally get in
13 any other mass tort --

14 THE COURT: You mean they might to give?

15 MR. ROBINSON: Well, I think the defense might want
16 to reconsider this, because if they gave us all the discovery
17 now, and they're not afraid of it, right, if they think they
18 have some defense, which I -- that was another thing. I'm not
19 debating -- I came here to get into the discovery plan. I'm
20 not agreeing with them that what they said that there's no
21 cases here and that -- you know, the prefatory stuff. That
22 was the arguments they made in Paxil. At least we won one
23 trial in Paxil, and I think that we have the same arguments
24 here.

25 But I think that really they should think that if

1 they want the 1,200 cases here let's show that we're doing the
2 lead here. We're actually going to do all the discovery here.
3 That's why I'm here. I'm here. And I just put fifty cases in
4 at the last hearing to show good faith to try and send a
5 message to people, but apparently the words out there that
6 they're not sure whether we're going to get the normal
7 discovery here. And I -- it's my job, I feel as Ms. Nast, to
8 try and lead us to getting the normal discovery we're getting
9 with very MDL.

10 Once that happens I -- once it likes it's going to
11 happen I believe you're going to see people coming in here. I
12 think that they'll come. They'll -- and I think they should
13 come because -- and that's what Pfizer wants. Pfizer wants
14 them all to come here, so I think that they should not -- just
15 allow the discovery to take place. There's nothing to hide,
16 right. That type of thing. If that's the attitude, well then
17 I think -- and then the Court can make rulings on every --
18 after seeing everything.

19 So that's how --

20 THE COURT: How quickly, Mr. Robinson, and, Ms. Nast,
21 can you meet and propose a discovery schedule and share it
22 with the Pfizer team, and they can counter-propose? Because
23 until I see your differences on paper as to what practically
24 makes a difference I'm not going to be able to determine
25 whether you need me only or a discovery master.

1 MR. ROBINSON: We just talked to Mr. Cheffo. He
2 thinks he might need two weeks.

3 THE COURT: Okay.

4 MR. ROBINSON: Does that make sense?

5 MR. CHEFFO: Yeah, just about.

6 MR. ROBINSON: Okay.

7 THE COURT: That sounds good.

8 MR. CHEFFO: If that's okay.

9 MR. ROBINSON: We'll try and meet and talk about it
10 in two weeks. Maybe there's some thoughts here. I mean look
11 at it, I would be -- I don't want the Rosetta Stone for the
12 MDL to be, you know, eighty percent of the people went down on
13 Daubert. I mean that's not a good thing. But I do think that
14 they're entitled to bring Daubert hearings on the science. I
15 agree with Mr. Heim. It's just timing. And I think that it's
16 appropriate to do the discovery first, so once we have the
17 Daubert hearings we could have some trials then, because -- if
18 they're not going to settle we can have some trials.

19 But if we have to have another year of discovery on
20 marketing and sales that's going to add another year past
21 Daubert.

22 THE COURT: Well, there are ways to approach
23 discovery on several different issues and parts of the
24 litigation at the same time if -- that's what they call a full
25 court press. I don't know if that's warranted here. I don't

1 know if it's justified here. We don't have statute issues
2 that we have to inform the public about, and yet at the same
3 time if it's not here then where will it be and will it be
4 piecemeal in various state jurisdictions.

5 I think that's not good for anybody, but on the other
6 hand Pfizer is the one that's getting their bones picked
7 initially in discovery, and it would seem to me that that
8 would be more painful than doing everything here in a very
9 tightly orchestrated, coordinated way.

10 MR. CHEFFO: Okay, can I -- do you want to -- is that
11 okay --

12 THE COURT: That's fine.

13 MR. CHEFFO: -- can I take a few minutes to respond?

14 THE COURT: I think you should.

15 MR. CHEFFO: Thank you.

16 THE COURT: Thank you, Mr. Robinson.

17 MR. ROBINSON: Thank you, Your Honor.

18 THE COURT: And I saw you. Mr. Zonies trying to talk
19 about something, so I'll call you again.

20 MR. ZONIES: Thank you, Your Honor.

21 MR. CHEFFO: I'm going to, you know, try and briefly
22 respond to a few these things and not go over the ground we've
23 covered, because I think the issues are frankly framed even
24 more starkly than they had been before, but a few things.

25 I welcome Your Honor's invitation. I think it makes

1 sense to see our discovery plan, and I don't attribute bad
2 motives, but the characterization of what we proposed is not
3 consistent with, I think, what was shown there. There may
4 have been some initial discussions, but I think we have a plan
5 that will absolutely get us to a point consistent with a
6 much -- with everything we need to do and resolution or
7 trials, and we'll present that to the Court.

8 THE COURT: But you do have to deal with the
9 discovery that's already been propounded.

10 MR. CHEFFO: We do and let's start with the state
11 courts just to be very clear here. The vast majority of the
12 state courts, and I was sitting on my hands a little bit, but
13 the vast majority of the state court lawyers we've been in
14 contact with. Brian's done a masterful job of dealing both
15 with the court and others in the group. And Mr. Blizzard has
16 been very cooperative in kind of working with the cases, but,
17 you know, we've heard a lot about this case in -- that this
18 former U.S. attorney that wants to seek discovery.

19 I think what Your Honor needs to know is that was a
20 multi-party complaint, right?

21 THE COURT: I know. I know that.

22 MR. CHEFFO: And you know who else was counsel of
23 record on the case, Mr. Robinson.

24 THE COURT: Yeah.

25 MR. CHEFFO: And Mr. Tracey. So this idea that these

1 people are chomping at the bit and they can't be controlled
2 when he's on the complaint I think is somewhat disingenuous.
3 So this scare tactic that everything's going to happen in the
4 state court I think, Your Honor, in my view needs to be
5 disabused of that. I think what the state court -- and I've
6 been dealing with Mr. Freis and others, what they have said is
7 as long as we're not getting -- you know, we see movement here
8 and we're getting documents, we're going to coordinate.

9 Are there going to be a few people here and there
10 that might try and step? There may well be. But I don't
11 think, you know, this impression that -- first of all, most of
12 the state court cases right now are either on appeal before
13 circuit courts for remand issues. There's motion to sever,
14 there's motion for form, or they're on appeal. Okay, so
15 that's the status. And --

16 THE COURT: But to be fair those were filed, it's my
17 understanding, before Mr. Robinson became a PSE leader, and I
18 think that is a source of contention for him to convince his
19 own cases or a part of his own cases not to proceed separately
20 from the MDL. So I --

21 MR. CHEFFO: That may well be, you know, but I mean
22 just -- you know, these are not people who no one can talk to.
23 I mean the point is we've all actually been cooperative. In
24 fact, I think we just alluded that there was an initial
25 30(b)(6) they dovetailed with other 30(b)(6) notices here.

1 We've talked to the state court lawyers, we've talked first to
2 the MDL lawyers about this. So there is a level of
3 coordination and there is no orders on producing it. And, you
4 know, in my view the state court judges are just as rational
5 and reasonable as Your Honor would be, which is they see, you
6 know, 240 cases and they're going say, well wait a minute.
7 This idea -- I mean have you ever seen a mass tort of this --
8 with millions of pages get to trial in fourteen months? I
9 mean I've never seen that. It would be impossible
10 particularly when you're going to want -- you know, I think
11 his slides were most instructive. I don't think the word
12 science, or mothers, or illness, or specific causation was
13 there. That's the difference.

14 This is all about, you know, we need to find out
15 whether there's liability. Well from our perspective, don't
16 you want to actually know if there's science to support it,
17 then to find out if someone -- you know, a marketing person
18 told X, Y, and Z. And to be clear, we have not drawn lines
19 here that are distinct. All right, in other words it's not
20 like said no commercial and no marketing.

21 In connection with the 1.3 million pages of fully
22 searchable documents, you know what's in there, Your Honor,
23 there's every single add that's ever been run by Pfizer,
24 because that was part of the NDA in the first use, and we're
25 going to continue to have a dialogue here about certain things

1 and issues that they need to do. But the real kind of crux of
2 the dispute here is they are basically saying we want to do
3 everything on Pfizer. We want to get every document and
4 there's forty-five requests there to produce -- the first one,
5 I think, is produce all documents that say Zoloft on them.
6 So, you know, there are forty-five, but they're pretty broad
7 requests. And the issue here is not when, and we do think its
8 staging. That's the key. That's how I would characterize our
9 position.

10 So this is their discovery request. And I said, you
11 know, I'm not -- we're going to talk about these things, but,
12 you know, we asked for a driver's license, and they objected
13 and said it's too burdensome. So we'll talk about that. But
14 this idea that, you know, we need to get every document and
15 that's the way it's done. That's not the way it's done in
16 every case. You get information to get to discovery. And
17 throughout their responses what they say to issues that I
18 would agree are secondary, they say that they should be
19 produced in the trial pool cases.

20 So what we're suggesting, and we will lay our plan,
21 is there's a lot of work. There's going to be dozens of
22 depositions on both sides and there's going to be millions of
23 pages of documents, and it's unrealistic. I've never seen a
24 case where you could basically say we're going to do a hundred
25 depositions and twenty million pages, I mean Your Honor's been

1 through this, and say we're going to get to trial in fourteen
2 months. It can't happen. What can happen is a hugely
3 concerted effort on focused discovery and that's what we've
4 been proposing.

5 Now, you know, Mr. Robinson said, well they're -- you
6 know, he said some of these cases can be grouped. I said that
7 initially. I agree that some of them can be grouped and maybe
8 some of them are not viable. Well, you know, I didn't hear
9 him say, and I welcome him to say, well you know what let's
10 cross of those seven. That would be a start. Let's hear that
11 from the PSE if none of these are viable. Right now those are
12 in the complaints, those are 200 cases.

13 And I guess -- so the last thing I would really say
14 is that, you know, we -- and maybe he misspoke on this -- but
15 he did say, you know, there's this forty-five document request
16 out there, and they haven't been responded to in a 39(b)(6),
17 and I actually really do strongly take issue with that because
18 of what we've been doing in the 1.3 million pages of
19 documents, plus these custodial searches, plus the 30(b)(6)s
20 are in fact responding to those forty-five requests. All
21 them, no, but by the same token we're doing what they did,
22 which is basically say, you know what, we're going to give you
23 these now. It make sense. We're going to give you some of
24 this, but you don't need all of this information right now
25 because if you do that, again, people are going to continue to

1 be seeing these ads for the next three years.

2 Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Cheffo. Mr. Zonies?

4 MR. ZONIES: Very briefly, Your Honor. I don't think
5 this board needs to go to Illinois to figure out how to run an
6 MDL. I think there was one done in this courtroom very well,
7 very efficiently, very quickly. It has a great pattern that
8 we can follow in this case. There doesn't seem to be any
9 reason to deviate from that pattern. We're not scared of
10 Daubert. We're ready to do Daubert in normal course toward a
11 trial date. The discovery plan should be based upon a trial
12 date. That's how we're going to put it out there for the
13 Court.

14 As you'll see, this Court doesn't need an uber expert
15 to help the Court understand complex sciences. This Court
16 learned about apoB, apoA, Lp-PLA2, and lots of very complex
17 cardiovascular issues in a case where the relative risk was
18 1.43. And yes there are many injuries in this case. They are
19 statistically significant 6.1 relative risk, 2.0, 2.8, 5.7 in
20 many body areas. That's because in this case, as you'll see
21 when we do get to Daubert, the baby -- the developing fetus is
22 bathing in Zoloft. Bathing in Zoloft. So it's going to
23 affect different body systems with very high relative risks.

24 That to me is putting the cart far before the horse.
25 We've plenty of work to do until we come back in here and

1 argue Daubert although we don't -- we aren't concerned about
2 it. We think that that ought to drive off of a trial date,
3 and we can be working. No reason to stop everybody else over
4 there while the science committee goes ahead and gets ready
5 for Daubert. There are a bunch of very good lawyers who are
6 chomping at the bit to get going on this case and work up the
7 liability, and the science, and the damages. That's what
8 we're here for. Trial -- get ready for trial.

9 THE COURT: Okay, so you could perceive of a dual
10 track in discovery of the liability and the science?

11 MR. ZONIES: No question, Your Honor. We did it in
12 here for you for three years, and we got to a trial date in
13 three years. We didn't get to just Daubert in that time. We
14 got to a trial date ready to go.

15 THE COURT: Right.

16 MR. ZONIES: Plenty of people, plenty of bodies to
17 work very hard and get it done for you.

18 THE COURT: But we had addressed in that three year
19 time general Daubert issues. And --

20 MR. ZONIES: No question. And we even did a specific
21 causation Daubert hearing in that same period of time. We're
22 confident. We're not concerned about the Court's ability to
23 handle it. Yes, there are many different injuries. We dealt
24 with that in Avandia as the Court knows. We said these are
25 the bulk of the injuries. Let's focus on something that will

1 help resolve the bulk of the injuries in this case. That's
2 something we can clearly work out with the other side, and
3 you'll see that in our proposed plan.

4 THE COURT: Thank you.

5 MR. ZONIES: And, Your Honor, our group's here, and I
6 haven't talked to Mark, so I don't mean to pop this on him.
7 We'll sit down in your jury room, as we done many of time,
8 right now and bust out -- we both have draft discovery
9 plans -- bust out a discovery plan, and sit down, and get it
10 done, and give it to you today or both sides, you know,
11 tomorrow. This case needs to move. We need your help pushing
12 it.

13 THE COURT: I would be very happy if whoever is still
14 available would do that. My courtroom, my jury room is yours,
15 because I know until other cases that are out there, maybe not
16 filed yet, maybe pending in a state jurisdiction, other cases,
17 other judges, they need to know that we have a schedule.

18 I think the other orders that you proposed, which I
19 am adopting with some minor changes, but if I thought it was a
20 substantive change I would contact you, that will be helpful,
21 and it is definitely time not only for the preliminary
22 discovery plan but the actual discovery plan.

23 So if you can work that up into a concrete proposal,
24 fine. Outline for me the areas the areas that you differ, and
25 I'll rule on it, because you're right I do have a model.

1 MR. ZONIES: You have a model, Your Honor. And I
2 understand we sent you those proposed orders in a TIFF format,
3 and we'll send you then native so you can work --

4 THE COURT: So I can see the difference.

5 MS. NAST: That's pretty good. Your Honor, the next
6 item -- did you have anything further on this?

7 THE COURT: No, thank you.

8 MS. NAST: Okay, the next item I think we've already
9 covered, Mark, the state court issues.

10 MR. CHEFFO: Yeah.

11 MS. NAST: We've covered them satisfactorily?

12 MR. CHEFFO: Yes.

13 MS. NAST: Okay. So I only have two other things.
14 Joe referred to getting together on the discovery plan, and
15 you mentioned just tell us where we disagree.

16 History is a good teacher, and we've had a good
17 history with Mr. Cheffo and his colleagues. I suspect we will
18 agree on a lot of the discovery plan and present you with what
19 we've agreed on and simply, maybe in different colors, the
20 areas that we don't agree on. I would assume Your Honor would
21 not want briefing on that, but just two proposed -- the
22 proposed form of order.

23 THE COURT: Unless they involve a legal issue, which
24 I can't --

25 MS. NAST: Right.

1 THE COURT: -- perceive of right now, but you might
2 want to include some time for the Court to decide motions, and
3 some time for the Court to utilize an expert -- a scientific
4 expert if it needed to, because I don't want to keep rewriting
5 or revising --

6 MS. NAST: Right. Right, okay.

7 THE COURT: -- the dates.

8 MS. NAST: Okay.

9 THE COURT: So it has to have some plan in there and
10 why.

11 MS. NAST: Okay.

12 THE COURT: As to why there would be a gap or room
13 for movement.

14 MS. NAST: Okay.

15 THE COURT: But at leads to a bellwether trial date.

16 MS. NAST: Right, and I am assuming -- there's been
17 multiple references here today to masters. I am assuming at
18 this point we're not addressing that.

19 THE COURT: I don't think so.

20 MS. NAST: We don't really see a need to address it.

21 THE COURT: Unless you do, I don't.

22 MS. NAST: No. No, I don't think either one of us
23 do. I mean obviously we have --

24 THE COURT: Do you agree, Mr. Cheffo?

25 MS. NAST: -- some suggestions and --

1 MR. CHEFFO: I agree, Judge.

2 MS. NAST: -- you know, I'm sure that that may -- if
3 it comes to that -- if it comes to that, and it may well never
4 come to that, we may well agree on a suggestion for the Court
5 on that issue.

6 THE COURT: All right, do you agree?

7 MR. CHEFFO: Yeah, I think as part of our discussions
8 for today I'm comfortable with that and, you know, we may when
9 we submit proposals, if we think it's part of something that's
10 helpful we'll do it, but for today I'm in agreement with -- so
11 I don't have to stand up again, I think -- well, let me let
12 you finish. I'm sorry.

13 MS. NAST: Go ahead.

14 MR. CHEFFO: No, no, go ahead.

15 MS. NAST: You can go.

16 MR. CHEFFO: No, no. I thought you were done, I'm
17 sorry.

18 MS. NAST: Just go ahead.

19 MR. CHEFFO: I was just going to say that I'm
20 probably -- I may have been on the wrong side, you know,
21 because, you know, we're training-in and training-out here
22 today, so -- as opposed to skiing-in and skiing-out.

23 MS. NAST: But fortunately there's a lot of trains
24 out.

25 MR. CHEFFO: Yeah.

1 MS. NAST: And then, Your Honor, the last thing which
2 is just totally administrative, our next hearing is set for
3 November 19th. I don't have the order with me setting the
4 hearings, but shall we set that hearing for 10 o'clock?

5 THE COURT: Yes.

6 MS. NAST: And that way a lot of people can train-in
7 and train-out on the same.

8 THE COURT: Yes, that would be fine.

9 MS. NAST: Okay, excellent.

10 THE COURT: If you don't need to come ahead of
11 time -- I think it's a Monday, isn't it?

12 MS. NAST: We'll we will -- yeah, it's a Monday.

13 THE COURT: yeah.

14 MS. NAST: The steering committee will be here on
15 Sunday.

16 THE COURT: Because I know you always like to meet --

17 MS. NAST: Right.

18 THE COURT: -- around then.

19 MS. NAST: But there's a lot of people who come in
20 and out.

21 MR. ROBINSON: Your Honor, can I say one thing and
22 maybe --

23 THE COURT: Yes.

24 MR. ROBINSON: I have a Daubert hearing on the 19th
25 with Judge Sellner all day. I'm sure it's going to go all

1 day. There's tons of -- you know what a Daubert hearing is,
2 and so --

3 THE COURT: I think so.

4 MR. ROBINSON: Yeah.

5 THE COURT: I think I know what you mean.

6 MR. ROBINSON: So I think I'm going to be tied up on
7 the 19th, if there's another date. I'd like to be here
8 especially if we're going to respond to some of these other
9 things. If there's any other date the Court had available in
10 November or December I certainly would --

11 THE COURT: Well, I was -- you know, that's a tough
12 week. That's Thanksgiving week --

13 MR. ROBINSON: Okay, well we'll just do it without
14 me. That's good.

15 THE COURT: -- and it is not a good travel time for
16 anybody. So if you want me to move that week I will. Why
17 don't you all give me your discovery proposals, and I'll see
18 if we really need to address it in an open forum.

19 MS. NAST: We have a lot of pies to bake, Your Honor.
20 We can't go much later than the next day.

21 THE COURT: Can't go later --

22 MS. NAST: Right.

23 THE COURT: -- maybe earlier, but that would be
24 problematic with other things that are already scheduled. So
25 I really do have to work on that.

1 MS. NAST: Yeah, okay.

2 THE COURT: But, you know, I want you here too, Mr.
3 Robinson, so I'll see what I can do.

4 MR. ROBINSON: Thank you, Your Honor.

5 THE COURT: All right. Mr. Heim?

6 MS. NAST: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. HEIM: Your Honor, I just wanted to respond very,
9 very briefly to Mr. Zonies. I think everyone in the courtroom
10 knows that Your Honor conducted a very, very successful MDL
11 with Avandia, but I also think Your knows that every mass tort
12 is different. Zoloft is not Avandia, and I have never seen
13 counsel move so quickly away from the dispositive issue as
14 what I've seen here this morning, the dispositive issue being
15 causation. It may be that seventy percent of the secondary
16 liability issues are involved in all these other things, but
17 the one thing that has to happen, there's nothing that gets
18 anywhere near close to the dispositive and central issue of
19 causation. That's what involved here with that very important
20 medicine for pregnant women and that's why we think this
21 should go first in a phase lay, and let's get it done, and
22 let's get rid of all of these things where there's just no
23 science.

24 THE COURT: Well, I will consider that. I'll utilize
25 all of your fine arguments when I get your proposed dates and

1 schedules. I appreciate the work that has been accomplished
2 so far, and I do think that entering these orders today will
3 certainly help direct some of the rest of the litigation, but
4 we're not getting to the meat of things, and I understand that
5 there will be differences. I don't think one can go before
6 the other. I think you're going to have to do it together.
7 But we'll see how that goes.

8 Anything else from anyone? And I appreciate you all
9 being here and there's so many of you. You can't leave until
10 you sign your name, okay. I already signed yours for you, Ms.
11 Nast. And, Mr. Cartmell, I signed yours too. Thank you very
12 much. We're adjourned.

13 (Court is adjourned)

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C E R T I F I C A T I O N

I, Linda Ferrara, court-approved transcriber, do hereby certify the foregoing is a true and correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Linda Ferrara

LINDA FERRARA

DATE

AAERT Certified Electronic Transcriber

(CET**D-656)

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