

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: LIPITOR : 2:14 MN 2502

Status Conference in the above-captioned matter held on Friday, July 18, 2014, commencing at 10:04 a.m., before the Honorable Richard M. Gergel, in Courtroom II, United States Courthouse, 83 Meeting Street, Charleston, South Carolina, 29401.

RECORDED BY VIRGINIA DRUCE, ESR
TRANSCRIBED BY DEBRA LEE POTOCKI, RMR, RDR, CRR
Official Reporter for the U.S. District Court
P.O. Box 835
Charleston, SC 29402
843/723-2208

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

APPEARED FOR PLAINTIFFS:

- Mark Tanenbaum, Esquire
- Mia L. Maness, Esquire
- Joseph F. Rice, Esquire
- Ann Estelle Rice Ervin, Esquire
- Blair H. Hahn, Esquire
- Christiaan Marcum, Esquire
- Beth Burke, Esquire
- David F. Miceli, Esquire
- Eric Johnson, Esquire
- Ramon Lopez, Esquire
- Joseph Mankoff, Esquire
- Robert Jenner, Esquire
- Jeffrey Ward, Esquire
- Steven Maher, Esquire
- Charles Dukes, Esquire
- Timothy Becker, Esquire
- Catherine Heacox, Esquire
- Lisa Gorshe, Esquire
- Jessica Perez, Esquire

APPEARED FOR DEFENDANTS:

- Mark S. Cheffo, Esquire
- Sheila Birnbaum, Esquire
- Lyn P. Pruitt, Esquire
- Michael T. Cole, Esquire
- Amanda S. Kitts, Esquire
- Rachel Passaretti-Wu, Esquire

1 THE COURT: This is our monthly status meeting in the
2 In Re: Lipitor litigation for July 2014.

3 Which counsel are going to speak, first for the plaintiff?
4 Mr. Hahn, are you going to primarily be speaking?

5 MR. HAHN: Blair Hahn, Your Honor, David Miceli and
6 Ramon Lopez primarily.

7 THE COURT: Very good.

8 MR. HAHN: And when we get in trouble,
9 Mr. Tanenbaum's going to take care of it.

10 THE COURT: Well, that's right. He's the cleanup
11 hitter.

12 And, Mr. Cheffo, you're here going to be primarily
13 speaking for the defendant?

14 MR. CHEFFO: I think that's right, Your Honor.

15 THE COURT: Very good. First, let's start and talk,
16 there's a couple of these issues, address in various ways the
17 problem we're presented by incomplete responses to the fact
18 sheets, or nonresponses, or lack of written authorization,
19 medical authorizations or the absence of records.

20 And, you know, I have a sneaking suspicion this is the
21 bane of existence of everybody, okay, that this is not just
22 the defendant's problem, that the plaintiffs are being driven
23 crazy by this problem, too. And I've been trying to figure
24 out a way in which we sort of clean the clutter out of the
25 case for people who don't seem to want to be here. And how do

1 we do it in a way that's fair to everybody.

2 And I want to tell you, I know that the defendant had
3 proposed that any dismissals that are -- if they are going to
4 be without prejudice, they be conditioned in some way. And
5 that proposal included that it require that the -- any new
6 filing be in a Federal District Court, subject to the MDL,
7 that it be a single case, and that parties that would defeat
8 diversity would not be added.

9 I have a thought of an addition. I don't think any of
10 those I really have problems with, but I have an additional
11 thought that may solve everybody's problem. Why don't we
12 require that if anyone -- we'll let them go. It's early in
13 the litigation, probably not a showing of substantial
14 prejudice to the defendant. But the only way you're able to
15 come back in, is if you, with your filing, you produce a
16 completed fact sheet, medical authorization and the required
17 medical records. You don't get back into the dance without
18 compliance. So for those who don't want to participate,
19 they're gone, they're finished. For those who, maybe due to
20 illness or whatever, didn't complete it, the way they get back
21 in the dance is they've got to comply with the rules.

22 And I think that will relieve a lot of the stress all of
23 us are having right now over this issue, because we want to
24 litigate here about the people who really want to be here, not
25 the people who you write five letters to and call 16 times and

1 they don't return your call. They're telling you something,
2 folks; they don't want to be litigants in this lawsuit. Okay?
3 That's what they're telling you.

4 And for those who happen to be in a hospital or caring for
5 a sick aunt in Omaha and they don't get the message, we'll
6 deal with them, they'll come back, they'll complete the
7 patient fact sheet, the plaintiffs' fact sheet, they'll
8 provide the medical authorizations, we'll get the records and
9 they'll be back in.

10 What's y'all's response to that? Mr. Hahn, what's your
11 response to that?

12 MR. HAHN: Generally, Judge, I think that makes a lot
13 of sense. There are two different types of cases that I think
14 we need to deal with. One is the cases where the plaintiff
15 lawyer has come to the conclusion that you're right, they
16 don't want to be here, and we have people withdraw as counsel
17 or --

18 THE COURT: I don't want withdrawal of counsel;
19 you're making y'all's problem my problem then, okay? I don't
20 want that. I want the problem to stay exactly where it is,
21 okay? And I realize on some of you, your withdrawal of
22 counsel may be you can't even get the client to respond to
23 you, so you don't feel authorized to do anything, right?

24 MR. HAHN: Yes, sir.

25 THE COURT: I'll solve your problem; I'll dismiss

1 them. Okay?

2 MR. HAHN: Thank you, Judge.

3 THE COURT: Don't feel relieved in any way and
4 limited by that. And I do -- you know, it is the death
5 penalty, you do it with prejudice, it's the death penalty. I
6 don't do that very often. There will be circumstances as we
7 progress in this case when that line will be crossed. I don't
8 want to say where it is, but it's going to happen, and I'm
9 going to start dismissing them with prejudice. But at this
10 point it's early, and if they want back in, they've got to
11 come back in with all the stuff they didn't have in the
12 beginning.

13 MR. HAHN: Yes, sir. I think that's very fair, and
14 for that group of people, I think that makes a lot of sense.

15 Then we have a second group of people where the
16 plaintiffs' lawyers are still working with them, and there are
17 these issues of deficient fact sheets.

18 THE COURT: Let's get to that next. We'll get to
19 that next.

20 MR. HAHN: Okay.

21 THE COURT: I want to hear from Mr. Cheffo on the
22 idea of those who we're just not getting my response from.

23 MR. CHEFFO: I think -- the quick answer is I think
24 that's a, you know, a reasonable approach, Your Honor, I think
25 with those conditions. I mean, you know, we have about a

1 hundred cases, right, so --

2 THE COURT: I was counting them this morning, it's a
3 lot of cases, more than there ought to be.

4 MR. CHEFFO: You know, for cases that have gone
5 through the process, and I think, just so -- you're right, I
6 think you understand this. We didn't come out of the box
7 saying, you know, someone files it immediately. We
8 basically -- a lot of the dismissals we agreed to have
9 dismissals with these conditions. And then at a certain
10 point, particularly after the fact sheets, we said, you know,
11 kind of enough is enough. And for having said that, I think
12 your condition, for now, you know, is something that we can
13 certainly live with.

14 What I would say is, you know, as a placeholder, I think
15 as you just said, at some point they should -- because if the
16 answer really is, well, you know, the client -- I'm not even
17 suggesting anything nefarious -- but if they said we took a
18 stab and we thought it was Lipitor, they collect the medical
19 records, and it turns out that they never even took the
20 product, to come and say we should have a with prejudice, it's
21 the death penalty, well, yeah, of course it should be a death
22 penalty.

23 THE COURT: Because there's no claim.

24 MR. CHEFFO: You have no claims, you aren't giving up
25 anything. So there should be, I think -- I'm not sure that we

1 need to do it for these hundred, but going forward, I think
2 what you proposed is --

3 THE COURT: I don't want to draw a line, because you
4 never quite know. Let's deal with the facts on the ground.
5 But there will be a point where this litigation advances to a
6 point where it is substantially prejudicial for defendant to
7 be adding people -- or having people allowed to stay in that
8 will not comply with the rules. We may reach that. We're not
9 there yet.

10 And what I think we do, if we can get these people out of
11 the way, they're not just your bane of existence, they're the
12 plaintiffs' lawyers', too. We're doing kind of everybody a
13 favor in getting them out of the litigation. We want to
14 litigate the claims for people who want to be here and who are
15 going to be attentive to their rights. I know when we
16 started, the plaintiff wanted to do unilateral discovery, they
17 wanted to do it just on the defendant, and later we'd get to
18 the plaintiffs. I never think unilateral discovery is fair, I
19 think it ought to be bilateral. And I know I'm putting a lot
20 on everybody. I hear Mr. Cheffo crying in pain of what I've
21 been doing to him in terms of making him produce these
22 records; that's okay. But the pain should be distributed,
23 okay? Everybody needs to feel the pain, and not just one
24 side.

25 So you mentioned these, Mr. Cheffo, in a letter, that you

1 would like to dismiss. I think for dismissal, you need to
2 file a motion to dismiss. And you all list all those that
3 haven't responded, just no response. And to the extent
4 that -- and I think if you put in your motion -- you may get
5 the consent of the lawyers by just doing it proposed -- I'm
6 going to grant it, okay? On those four terms that I listed,
7 before you suggested, and the fourth, that they have to comply
8 with the fact sheet and the production of records, that
9 they're required to do, I want -- then they can come back in,
10 we can rapidly get those folks out of the case.

11 MR. CHEFFO: Right. I think with those conditions, I
12 think we'll probably be able to agree to most of those.
13 Because I think when I was -- I'll speak to the plaintiffs,
14 but I think they probably would agree to most -- or most of
15 them will. So I think we will make the motion as to some, but
16 I think it will be a much more narrow motion with those
17 provisions.

18 THE COURT: And to the extent, I know that some of
19 these folks they're chasing, they finally get the response,
20 that's going to be a little time between your motion and their
21 response, they can make that one last effort to get people to
22 comply, and that will get them off the list. But let's get
23 them out of the case. If it's -- I don't know how many -- is
24 it -- it's 28, I know you mentioned have provided nothing, and
25 then there are a certain number, 49, who have not signed

1 medical records, or not provided medical records or signed
2 medical authorizations? Is that fair?

3 MR. CHEFFO: There's different things. So there's
4 basically, and I may get it wrong by one or two, but my
5 understanding is so there's basically the 28 are cases where
6 nothing has been produced, but the asterisk there is that
7 there are about 16 or so or 18 of the cases in which the
8 plaintiffs have indicated that they'll dismiss. So I'm
9 hopeful that once we talk about it, those cases will be
10 dismissed. So there's probably eight or so cases there.

11 THE COURT: Whatever it is, you know, to me it's not
12 a big deal how many there are. If there's a fuss about that,
13 oh, no, we don't really fall into that list, let's deal with
14 it. But let's clear it out of the way. If you can do it by
15 stipulation, fine; if I need to rule, I'm glad to do it. But
16 I just think this is a needless distraction to everybody that
17 we just need to move on.

18 MR. CHEFFO: Fair enough.

19 MR. HAHN: Your Honor, if I could ask for some
20 clarification.

21 THE COURT: Yes.

22 MR. HAHN: I heard two different things from what Mr.
23 Cheffo said and what you said. We agree with the idea of
24 dismissal without prejudice, but you can't get back in the
25 litigation unless everything is filled out. He had other

1 criteria that he wanted to put into that dismissal. Are you
2 saying --

3 THE COURT: I think those are appropriate. I don't
4 think you should be able to game the system, to come in here
5 and then say, I'm going to do something to get out of the
6 lawsuit, I'm going to fight transfer, I'm going to add a
7 nondiverse party, I'm going to bring -- all these other
8 things. I think those conditions are not reasonable. You
9 want back in, here's how you get back in. I mean --

10 MR. HAHN: Some of those people, Judge, now we -- I
11 don't have a specific case to argue with you right now, but
12 some of those people are going to be folks that were removed
13 from State Court, have not had an opportunity to have remand
14 heard. And if they're then dismissed, being forced to come
15 back into your courtroom, if you're robbing them of the right
16 to argue --

17 THE COURT: No, they can come back in and they can
18 argue remand then, if they want to. There's nothing wrong
19 with that. I'm just saying they don't get to stay in the game
20 where when they don't comply with the rules. That CMO that
21 dealt with the consequences of not complying, you consented
22 to.

23 MR. HAHN: So what we're saying then is whatever
24 rights that plaintiff has --

25 THE COURT: No, no, they can come back in, right.

1 MR. HAHN: -- are revested with them when at they
2 come back in.

3 THE COURT: Correct, they come back in. What I'm
4 just trying to do is I think we're dealing with about 100
5 people, who y'all are probably spending an inordinate amount
6 of time worrying about on both sides, that everybody would be
7 better off not having to worry about.

8 MR. HAHN: Yes, sir. Now, the second thing, I think
9 we're bleeding over into the other category. As I understand
10 it, Mr. Cheffo says they have 28 people that have not filed a
11 plaintiff fact sheet. I've got seven people on my list that
12 haven't filed a fact sheet.

13 THE COURT: Y'all need to talk about that.

14 MR. HAHN: We can talk about that. And we're talking
15 about that group of people, not the next group of people that
16 they are saying have deficient fact sheets for whatever
17 reason.

18 THE COURT: Well, first of all, are there people who
19 haven't signed medical authorization forms?

20 MR. HAHN: Sir?

21 THE COURT: Is there a required -- y'all have a
22 provision where the plaintiffs are supposed to sign medical
23 authorization forms?

24 MR. HAHN: Yes.

25 THE COURT: Now, are there people who have not

1 provided the medical authorization forms?

2 MR. HAHN: I think that that's going to be on a
3 case-by-case basis, that we'll need to argue. Because like
4 they've got one of my cases on there that says they haven't
5 filed medical authorization forms. My people are telling me,
6 oh, yeah, they're filed and we sent them on X date. So --

7 THE COURT: That's an easy problem to solve, you hand
8 him your copy.

9 MR. HAHN: You're exactly right. But there are
10 different factual scenarios with each case.

11 THE COURT: Mr. Hahn, help me. Defendant says, I
12 don't have a medical authorization form. And you say, yes,
13 you do. There's a really easy solution. You hand him -- you
14 make another copy for him and you hand it to him.

15 MR. HAHN: Yes, sir. How do you deal with a
16 situation of the plaintiff that's in the hospital?

17 THE COURT: I can't imagine the defendant is going to
18 have an issue about that. Okay? The person that's in the
19 hospital is not competent --

20 Mr. Cheffo, do you have a problem with that?

21 MR. CHEFFO: No. Part of the issue is, and we can
22 talk specifically, we said two things. One is we said this is
23 our kind of our records up to date, we think obviously it's a
24 good faith effort, we wouldn't have done it. If it was a
25 mistake, obviously they'll tell us. And, of course, we've

1 also said if there's individual circumstances -- you know,
2 these are not cases where someone said, can I have an
3 extension or I'm in the hospital, I'm incapacitated.
4 Obviously there may be one out there of the plaintiffs. If
5 they tell us, I guarantee you we won't be --

6 THE COURT: I didn't think I would.

7 MR. HAHN: I just want to make sure, Judge, that any
8 individual lawyer that's out there, if he gets a motion to
9 dismiss from --

10 (Brief interruption in proceedings.)

11 THE COURT: Go ahead, Mr. Hahn.

12 MR. HAHN: Thank you, Judge. I just want to make
13 sure that that individual lawyer, his plaintiff has the right
14 to be heard once --

15 THE COURT: Absolutely.

16 MR. HAHN: -- he receives that motion to dismiss.

17 THE COURT: You know, my colleague, Judge Anderson,
18 has this granted and denied stamp in his office for motions.
19 I never bought one of those. So I will hear from you. I
20 would hope, you know, we have a consultation rule in our
21 district, and before he files it, he's going to consult with
22 you. And if he says here's my list of 49 people that haven't
23 given me medical authorization forms, and you e-mail him back
24 the copies of it, that will solve that problem. Okay? I mean
25 that's easy enough.

1 MR. HAHN: Thank you.

2 THE COURT: But I always will hear from you, Mr.
3 Hahn. I'm not big on -- these are people's individual rights.
4 And sometimes I think you get in these MDLs and people's
5 individual rights get ignored on both sides. And I'm trying
6 to keep us focused, but I want us to have people there who
7 want to be here. Okay?

8 MR. HAHN: Thank you, Judge.

9 THE COURT: Now, we've got --

10 MR. MICELI: Your Honor?

11 THE COURT: Yes.

12 MR. MICELI: Could I have one thing? I'd like to
13 help Mr. Cheffo whittle down what we're really talking about.

14 THE COURT: Yes.

15 MR. MICELI: Our firm filed our motions to dismiss
16 without prejudice. We were joined in by several others, and
17 that probably includes a number of what we're talking about.
18 We can get with Mr. Cheffo and agree upon for those, and that
19 will leave the other aspect of the -- what Mr. Hahn was
20 talking about, to deal with individual motions.

21 The one thing I did want to say is that we've produced
22 fact sheets where we identify doctors and other providers.
23 Pfizer's counsel is very diligent in going through those, and
24 sometimes they identify doctors who have medical records,
25 radiologists, labs, whatever. And we have given them a blank

1 authorization. What I want to make sure is we're protecting
2 our rights that fairly to scour every medical record for every
3 ancillary provider, reviewer of a lab work or viewer of an
4 x-ray or such, is not considered a deficient authorization.
5 But we'll work with them.

6 THE COURT: And here's the really good news,
7 Mr. Miceli. If he files a motion relating to a particular
8 individual who is one of your clients, about not producing
9 certain records, and you've given a blank authorization,
10 that's a pretty good response. And --

11 MR. CHEFFO: And I appreciate the clarification,
12 because that's exactly right. I mean, what we've gone through
13 is -- you know, this is not a "gotcha," all right? We know
14 that if we came to Your Honor and said, oh, it could be
15 important, but there's a radiologist that gave us 57
16 authorizations, but they forgot, we want to dismiss. None of
17 this list has any of those kind -- at least to my knowledge.
18 These are people --

19 THE COURT: And if they do, they will know it,
20 because you will give them notice of it.

21 MR. CHEFFO: Absolutely.

22 THE COURT: And they'll have an opportunity to
23 address it with you by your required consultation.

24 MR. CHEFFO: Exactly.

25 THE COURT: And you can clarify those, and you'll get

1 it down. I suspect, if we'll just set up a process for this,
2 I mean, these -- nobody wants to be spending their time on
3 this stuff.

4 MR. CHEFFO: I agree.

5 THE COURT: It's driving y'all crazy, I'm sure.

6 So anyway -- and I want y'all -- and then we have
7 people -- then we have issues about the responses are not
8 accurate, okay? I want y'all to try to work those out. But
9 to the extent that you can't, just bring them to me, I'll do
10 it. I mean, we'll -- I want to do it as simple as possible, I
11 can -- but we'll go through them, and if there are a lot of
12 them, I'll send it to my Magistrate Judge and we'll get it
13 done. We'll get it done.

14 MR. HAHN: Thank you, Judge. Mr. Cheffo and I
15 actually discussed that very issue yesterday. And my proposal
16 is what's been done in a lot of mass torts, is when you get to
17 that point, with deficiencies of the fact sheet, they file a
18 motion to compel, that puts it in front of Your Honor, and
19 that puts the individual lawyer with this plaintiff, because
20 all these are fact specific, in front of the Court, and it can
21 then be disposed of.

22 THE COURT: And what I like about it is when you get
23 that specific, once he does his duty to consultation, they
24 know it's coming. Nobody wants to be dragged up here and
25 these things, why did you leave blank all these responses. I

1 mean, it will solve the problem. And maybe it will be the
2 plaintiff will say, I don't want to be in the case anymore,
3 it's too much trouble. That's okay. No use using your time
4 worrying about somebody that doesn't want to be here.

5 Okay. So I think we're setting up a system. But the
6 letter system is great for like standard discovery disputes.
7 But when we get to something like a motion to dismiss or
8 motion to compel, the meet and confer hasn't worked out, we
9 need motions. Because I think that formal process will bring
10 it to a head, and we'll often -- just the consultation will
11 solve the problem. But if I have to address them, I'm glad to
12 address them. I don't have a problem with that. And when we
13 have any monthly meetings, I'm glad to address it.

14 And let me say this. If y'all have issues that come up in
15 discovery that are holding you up, and are so urgent that you
16 want me to address it before the next status conference, you
17 just alert me on that. We'll probably do it on the papers.
18 If I need to get y'all on the phone, I'll do that. You know,
19 if it's that urgent, I'm glad to do it.

20 So the key is, my job is to keep the highway open, okay?
21 Y'all keep moving, keep the flow going. And if you have
22 something that's holding you up, I'm glad to address it. It's
23 more convenient to do it on these Friday status conferences,
24 but I'll do it other times, if I need to.

25 And I touched on these motions to withdraw. We're not

1 going to let the lawyers out that easy. Mr. Cheffo, just go
2 move to dismiss those cases, those people that want to
3 withdraw, just do it that way. Because I don't want to hear
4 pro se, it's just a mess.

5 Okay. I had -- in the letter, there was a discussion
6 about delay in producing underlying data from the clinical
7 trials, I read. And I read the response, which was, we're in
8 the middle of the meet and confer process. And, folks, there
9 really is a lot of wisdom in giving this process a chance to
10 work. And I'm going to suggest in the future that when you're
11 in the middle of doing that, writing me about it, which
12 essentially puts it on my radar before the process has had a
13 chance to be completed, is really undermining that process.
14 And if the process -- if you're not satisfied with producing
15 something, file a motion. You can do that. And I'll take it
16 up. But, you know, y'all being in the middle of conferring
17 about something, and then one side writes me about the other
18 side's not doing enough, it just undermines that whole
19 process.

20 Mr. Hahn, you're up. Do you have anything to say about
21 that?

22 MR. HAHN: Yes, sir, Your Honor. Mr. Miceli has more
23 to say about it than I do. But generally, Judge, the reason
24 that we're here, and the reason that we brought this before
25 Your Honor is because the waters are backing up, or the

1 traffic jam is happening. And the Court needs to be aware of
2 that, and is going to affect us all the way through this
3 litigation.

4 Mr. Miceli has specifics he wants to talk about.

5 THE COURT: I'll be glad to hear from you.

6 MR. MICELI: Mr. Hahn sent the letter last Friday,
7 but a group of us helped put it together, and I sort of led
8 that part. And I think it's first important to understand
9 what the letter is, not -- we're not asking -- we're not
10 presenting it as a motion to compel. In fact, what Mr. Cheffo
11 says in his response, that we continue to work together, is
12 true. But the -- and I, short of having this reversed,
13 because there's both the custodial production and there is the
14 clinical trial data. And we continue to work with Mr.
15 Cheffo's team.

16 THE COURT: Let's talk one at a time.

17 MR. MICELI: Then we'll stick --

18 THE COURT: Talk about the data, and then we can talk
19 about the --

20 MR. MICELI: Let's go to the data then. The problem
21 is not so much that no production has taken place, because it
22 has taken place. It's actually been taking place since last
23 year.

24 THE COURT: Y'all don't understand the data because
25 you can't extract -- your experts cannot extract the

1 information.

2 MR. MICELI: Cannot extract all of the information.
3 They can get part of the picture. And the clinical data is
4 the foundational material for this litigation for some, not
5 all, but some of our experts' review. And we get data, we get
6 some data. There are four primary trials that we were
7 provided information on, Sparkle, TNT, Ideal, and -- I'm going
8 one -- Ascot. There we go, thank you.

9 But, Your Honor, there's certain aspects. There's the
10 data, there are the code books, there are all of the code
11 books, and there are certain inconsistencies within the data
12 itself. So we're not saying, issue an order compelling them
13 to do something. We need to let Your Honor know what's going
14 on, while we're traveling down this road. And as Mr. Hahn
15 said, as that traffic begins to back up, because if we follow
16 what Mr. Cheffo has suggested, this is simply premature, and
17 we're not allowing the process to work through it.

18 Our next, and again, there's not a technical time limit on
19 the clinical trial data, as there is with the custodial files.
20 However, if we wait until the next hearing on August 15, or
21 the next one in the middle of September, we get so far down
22 the road to bring this to Your Honor's attention, and we're
23 backing up against some very critical dates.

24 THE COURT: Let me understand. The way I understood
25 it was that your expert needed, for instance, some -- you

1 could extract the glucose levels at the beginning and the end,
2 but not the quarterly or whatever?

3 MR. MICELI: It's not that they couldn't extract it,
4 it's simply not there. We have the Ideal data, which Ideal is
5 one of the clinical trials, and he has found, through a
6 conversation that was held on, I believe, October 2nd or
7 October 6, the beginning glucose data and the ending glucose
8 data. However, the published article on the Ideal study, one
9 of the published articles, that was authored by three Pfizer
10 employees, coauthored by three Pfizer employees, talks about
11 interim glucose levels at every six-month interval. Well, we
12 look in our data that has been provided to us, and we don't
13 have that.

14 THE COURT: Let me ask a question. You're having
15 trouble with that. Why don't you send them an interrogatory,
16 give us the interim data --

17 MR. MICELI: Your Honor, we're working through. The
18 interrogatory was sent back in May of last year. Remember,
19 we adopted --

20 THE COURT: If that specific thing is holding you up,
21 and somehow -- I mean, if Pfizer says, oh, it's there, you're
22 just not finding it, or whatever the thing is, if it's so easy
23 to get, Mr. Cheffo, why can't you just provide it to him?

24 MR. CHEFFO: So I think I agree with a lot of -- Let
25 me correct record -- a lot of what Mr. Miceli just said. We

1 have heard this, right, they said, we can't figure this out,
2 it's complicated. And it is.

3 THE COURT: I don't doubt it's very complicated, way
4 above all of y'all's pay grade, figuring it out.

5 MR. CHEFFO: That's why they literally got their
6 expert biostatistician, you know, on the phone July 2nd, so no
7 one's using the July 4th holiday -- with our people, said
8 here's what we need, we need -- I think they're called code
9 books or source books. And we have been providing those and
10 giving them. They've now basically just raised this issue of
11 certain interim data.

12 THE COURT: I mean, I can see how that can be an
13 important fact for their expert to know, right?

14 MR. CHEFFO: I don't think there's any dispute about
15 kind of the relevance. I mean, we're taking a lot -- here's
16 some of the other issues. We know at some point we have
17 relevance objections, we can make motions in limine, and
18 obviously it gets to a point where it's kind of beyond --

19 THE COURT: We're not talking about trial
20 admissibility here.

21 MR. CHEFFO: Exactly. So we're taking it far beyond
22 kind what we think is kind of what would be, from an
23 evidentiary perspective, admissible, but we're trying to paint
24 with a broad brush so we don't get into discovery squabbles.
25 So we've given them a lot of these source books, they've asked

1 us about one in particular, we've looked at it. We haven't
2 been able to identify that specifically yet. I think in the
3 next, you know, week or so, we'll be able to give them a
4 definitive answer whether it exists, whether, you know,
5 that -- what they think that their expert read is, in fact,
6 the case or not. And we'll, I think as we have, you've heard
7 Mr. Miceli, pretty straight up, that either we give you
8 everything we have, or we --

9 THE COURT: You'll be able to do that within a week,
10 you think?

11 MR. CHEFFO: I --

12 THE COURT: Here's what I want to do. Mr. Miceli, in
13 a week, if you don't have the satisfactory response, and this
14 is something that's holding up a lot of other work y'all have
15 got to do, file a motion to compel, and I'm going to shorten
16 the time for the response, and if this is an important, you
17 know, if -- we'll deal with it. Okay?

18 And I will just say to you, Mr. Cheffo, to the extent your
19 experts are telling you, this is like any moron can extract
20 this, but their guy can't seem to get it, just give him the
21 information. Don't make him go -- I mean, just give it to
22 them.

23 MR. CHEFFO: That's been our approach.

24 THE COURT: Yeah. I mean, don't say it's in there,
25 you're just not looking hard enough. This is obviously, you

1 know, millions of bits of data, I mean, it's -- it may be easy
2 for people who work on it every day. But what I don't want to
3 do is to have some little fact like this, that obviously
4 glucose levels in a study, that sounds like could be
5 important, right? That might be, in this case, might be
6 important. That everybody gets the data, extracts it. It's
7 like the thing with the plaintiffs who won't answer. Don't
8 spend your time worrying about this. Y'all want to get to the
9 merits of this case, not the stuff like the data you need to
10 analyze the merits. Okay? So let's do it within a week,
11 respond. If you don't, Mr. Miceli, you file it, we'll shorten
12 it, and if I need any oral argument, I'll get you on the
13 telephone. If not, I won't. Okay?

14 MR. MICELI: Just so we're clear on the record,
15 because I've addressed one piece of evidence, there were the
16 four major trials, the Sparkle, Ideal, TNT and Ascot.

17 THE COURT: You don't have to give me those names
18 again, I know you don't know them. I know you know at least
19 three of them.

20 MR. MICELI: That's right. Three out of four ain't
21 bad. But there are, with regard to three of those trials,
22 Ideal, as recently as this week, Pfizer has instructed us or
23 informed us that they are investigating the contradictions
24 between the data, we've already talked about.

25 With regard to issues we raised with the Ascot data, they

1 let us know that they're still investigating that.

2 And then with the TNT data, they just recently, although
3 part of this has been produced over six months ago, they just
4 now found a new code book that they said that they are going
5 to produce. I just want to make sure that those three were on
6 the record.

7 And because this information, as Your Honor has already
8 noted, is so foundational to this litigation, having to wait
9 till this late date, is troubling. And that's why we wanted
10 to bring it to the Court's attention at this point.

11 THE COURT: I'm glad to do it, and on issues like
12 that, I'm, you know, very prepared to move quickly and to get
13 an answer one way or the other, so you'll know what that is.

14 Yes, sir?

15 MR. CHEFFO: And again, I'm not looking to snatch
16 defeat here from the jaws of victory, I just want to make sure
17 that one thing I don't necessarily agree with, with
18 Mr. Miceli, is there are these one or two issues that they've
19 now raised, but again, this is the tail end of literally
20 probably 20 requests that we've already given them. So, you
21 know, it's not like this is the most crucial piece of
22 information that we've never given.

23 So yeah, there are, there's been multiple requests, they
24 want tables, and that's how the process works. So I said
25 we'll do it in a week, we will. But this is -- there have

1 been a lot --

2 THE COURT: I get it. And, Mr. Cheffo, I haven't
3 seen -- I haven't seen any indication that you're hiding the
4 ball or not complying. And there's been an amazing amount of
5 production work on both sides here.

6 MR. MICELI: And, Your Honor, we did not accuse them
7 of hiding the ball here, that's not what we've done. But the
8 fact remains, regardless --

9 THE COURT: But if you don't have a crucial piece of
10 information, it stops your experts from doing certain work and
11 certain analysis, I get it. And, you know, one of the effects
12 of this is, you know, the defendants, they've got 100 balls in
13 the air, too, on all this stuff. And we're trying to -- how
14 do we get their attention on this issue, where down the
15 line -- it's not Mr. Cheffo; if he could give it to you, he'd
16 hand it to you right now -- the question is someone down the
17 line, to get their attention to make it a priority, and that's
18 why we're having these meetings, to help us get --

19 MR. MICELI: Exactly. Mr. Cheffo used the example of
20 they can't snap their fingers and make things happen. And
21 once we get the data, once he hands it to us, likewise, we
22 can't snap our fingers and have it fully assimilated in our --
23 with our experts immediately. And so I wanted to make sure --
24 we will continue to cooperate, but the fact remains, we're
25 still waiting. I've seen Mr. Cheffo, I've read Mr. Cheffo's

1 depositions of experts, he's quite talented. I want to make
2 sure that my experts have the full picture, so that when he
3 does sit down to chat with them, or any of these other
4 talented lawyers they brought with them, that our experts have
5 had the -- are singing out of the full hymnal.

6 THE COURT: And I think that's what we want. We want
7 them to be prepared and to have all the information as soon as
8 possible. So I'm with you on that.

9 Now, there was a discussion about this Japanese label
10 change, and information about that? And --

11 MR. MICELI: That's one of my points, too.

12 THE COURT: I understood again y'all are in the
13 middle of meeting and conferring on that?

14 MR. MICELI: Well, defendants, when we served the
15 notice, they asked us to give them the opportunity to produce
16 some materials, for us to review it, and perhaps answer some
17 questions for us, and we could decide whether we wanted to go
18 forward. What we received, we believe, from our perspective,
19 is an equivocal answer, and less than full information about
20 the Japanese label change. And as a result, we have informed
21 Pfizer that we want to immediately press forward with that
22 deposition. We don't believe --

23 THE COURT: So what's the problem with that?

24 MR. MICELI: There's none. At some point in time --

25 THE COURT: What's wrong with that?

1 MR. CHEFFO: I think there's a few issues, Your
2 Honor. Let's just talk about what the deposition is. And I'm
3 not going to go into the whining, as I think you appropriately
4 characterized it. But I think it is important, right, to
5 reiterate, since the time that we had CMO-4 the end of May, I
6 think it was CMO-4, 20,000 hours have been spent, literally,
7 by people -- not even the lawyers here, but just reviewing.
8 We calculated, there are literally 120 people working 1000
9 hours every day just on this litigation. I mean, not
10 developing that since -- just produced --

11 THE COURT: I suspect your partners are thrilled with
12 you.

13 MR. MICELI: He only has 39 in his department, Your
14 Honor.

15 MR. CHEFFO: (Inaudible) I have a discussion I could
16 have with my client after, but I appreciate your efforts, Your
17 Honor. No. So in all seriousness, you know, this is a, you
18 know, a kind of exceptional amount of work, and we're going to
19 get it done, right? And remember, we had new search terms
20 which essentially doubled the burden. And we may come back to
21 you and talk to you in the next month or two, but we're not
22 there yet. We're spitting out a lot of work, we've produced
23 six million pages. So that's the backdrop.

24 THE COURT: You know you get even with them, because
25 then they have to analyze them.

1 MR. CHEFFO: Apparently. I'm hearing we need all
2 this stuff immediately, but they already have six million
3 pages. But here's the Japanese label. You might say, well --
4 as I've heard it -- and I tried, because I think it's
5 important not to kind of get into discussions that I have with
6 counsel informally. But I think it's fair to say, you know,
7 we basically tried to understand what it is. And they said,
8 look, there's this Japanese label, and they think it says
9 something about diabetes. Okay. And --

10 THE COURT: They say Europeans and the Americans
11 weren't advised.

12 MR. CHEFFO: And they want to know, was it given to
13 Americans. Two questions basically, was it given to the FDA,
14 do you have records of that, or do you have other discussions
15 about not giving it to them. Right?

16 So the idea that that issue would be, you know, a
17 deposition, at this point in the litigation, when we're trying
18 to get everything done, they've noticed these things for the
19 middle of August, we're going to divert all kinds of
20 resources. What we've told them is this. They have, one, the
21 label. Two, they have all of the information in the
22 correspondence back and forth with the FDA. They have the
23 annual reports that are provided to the FDA. And we've told
24 them informally, based on where we are and what we've seen
25 right now, we have not seen a transmission of that labeling

1 document to the FDA, nor have we seen any discussion about not
2 doing it. Just like, frankly --

3 THE COURT: Maybe that's the answer. But they have a
4 right --

5 MR. CHEFFO: (Inaudible.)

6 THE COURT: Mr. Cheffo, I can imagine that their
7 nonbenign view of these facts could be probative, okay? Their
8 spin on this, that there was a problem with a regulator, that
9 highlighted this potential issue, and you hid it from other
10 regulators, that's their spin. I have no idea if there's any
11 merit it to or not. That could be important. And I could see
12 them, in the middle of their case, wanting to chase that. I
13 can't see taking one person's deposition being that big a
14 deal. We're going to take probably dozens of depositions
15 every month going forward.

16 MR. CHEFFO: And here's, I think, really --

17 MR. MICELI: God willing.

18 MR. CHEFFO: -- what we're talking about, Your Honor.
19 It's not a matter for us of -- we didn't basically say, right,
20 it's foreign, it's irrelevant. We said, we'll look for you.
21 It's really a matter of really -- remember, the scheduling
22 here is that we have produced 11 facilities, we have to
23 produce essentially another, you know, 28 or 29 more at some
24 point, all by September 8th. Part of that are going to be
25 pharmacovigilance.

1 So in other words, the same people, you know, this
2 could -- and that's why I proposed, it's like we aren't
3 talking about are you ever or never going to ask people,
4 they'll ask us probably five, ten witnesses, whether --
5 they're saying no, no, we want a deposition on August 27th on
6 this specific issue, as opposed to saying, why don't you get
7 all the records, let us go through, we will look for this
8 information, if you have it. And when you start depositions
9 in September or October, this will be a piece. Because it's
10 not like snapping your fingers.

11 THE COURT: Mr. Miceli, tell me why a couple weeks
12 really matters.

13 MR. MICELI: Easily, Your Honor. First of all, we
14 have, in addition to what Mr. Cheffo has explained, we have 84
15 fact specific witnesses that are getting ready to get kicked
16 off. We have 29 additional productions that are going to be
17 made -- under the CMO-4, were supposed to have been made on a
18 rolling production. Now, I understand we're going to talk
19 about the --

20 THE COURT: We're going to talk about it.

21 MR. MICELI: -- custodial files later. But there is
22 a lot that is getting ready to roll right over the top of us.
23 We have talked about tens of millions of documents.

24 THE COURT: If six million hasn't done it, I wouldn't
25 be worried.

1 MR. MICELI: It's 5.8, first of all, not that we want
2 to quibble. But the difference is, Your Honor, that --

3 THE COURT: That was before you got here this
4 morning, right? By time you get back, there are another
5 200,000.

6 MR. MICELI: But the difference is, Your Honor, is
7 4.8 of those or 4.6 of those were produced to us before the
8 March 27th conference, and the other million plus --

9 THE COURT: Mr. Miceli, let me get you back to this
10 issue.

11 MR. MICELI: Sure.

12 THE COURT: Why does it matter --

13 MR. MICELI: Certainly.

14 THE COURT: -- that it's August 27th versus
15 September 27th?

16 MR. MICELI: Because of everything else that is going
17 to come flooding down upon us between August 15th and
18 September 8th.

19 And, Your Honor, while I appreciate Mr. Cheffo's advice
20 and cooperation in telling us how we should be doing our
21 discovery, we have to put our evidence together the way we see
22 fit. And Rule 30(b)(6) allows us to take that corporate
23 representative that will bind the corporation with its answers
24 on that topic. And that's why we want to do it now, Your
25 Honor.

1 THE COURT: Mr. Cheffo?

2 MR. CHEFFO: A few things, Your Honor. This is --
3 people are entitled to 30(b)(6)s, but 30(b)(6)s are not
4 interrogatories or requests for admission. Okay? And that's
5 really what this is.

6 So what I'm basically saying is that the proper, you know,
7 way to do this, if they want to propound and offer it to craft
8 something we can deal with. The other thing, to basically try
9 and -- they're saying they want to bind the corporation.
10 We're in the middle of producing discovery on a relatively
11 obscure issue. They've had this Japanese --

12 THE COURT: You think it's an obscure issue; they
13 think it's important. I have no idea. But we can't, at this
14 point, Mr. Cheffo.

15 Now, what concerns me is this is an issue that apparently
16 has just sort of arisen recently. And have y'all had a meet
17 and confer about this subject?

18 MR. MICELI: Yes, we have. Mr. Suggs, who is on the
19 telephone, conducted that meet and confer, Your Honor. And
20 can I address a simple issue on this, where they can find
21 this. Because at the last hearing Mr. Cheffo said, we're
22 creatures of our experience, or something along those lines.
23 We are creatures of our experience as well. We know of their
24 radar's database. We know, from past depositions, that all
25 regulatory submissions are handled out of Groton, Connecticut.

1 We know that the radar's database contains what those
2 submissions are. They can go to their database and find out
3 what was submitted on this topic. And I can cite them to page
4 and verse, if they would like.

5 THE COURT: Have they not provided you any response
6 up till now?

7 MR. MICELI: They have provided an answer that they
8 have searched, and thus far they have been unable to determine
9 whether or not this has been submitted. We have not seen what
10 was or was not submitted in Japan, and we have not seen
11 anything about what was done in the United States or the EU,
12 Your Honor.

13 MR. CHEFFO: That's the point, Your Honor. And
14 Mr. Miceli's going to read this at the next hearing, and
15 that's fine. I think that what I said is that this is just
16 really a matter of a few weeks. For two reasons why. We
17 still have efficiencies. I mean, some of this has to be --
18 you know, everybody wants everything. But two things. One
19 is, it's likely that the person -- I can't guarantee, but it's
20 likely that one of the people who they're going to want to
21 depose, this would be kind of an add on 30(b)(6) that we will
22 prepare them and they will do a fulsome deposition.

23 The other issue is, and I will get into it and I'll tell
24 you about some of the rolling productions that are targeted.
25 But to basically ask -- prepare somebody for a deposition on,

1 you know, what do you know about XYZ; was this discussed? I'm
2 not going to characterize whether it's important or not. In
3 order to understand and give a fair answer, a lot of it is
4 likely to be in the documents that are going to be produced no
5 later than September 8th.

6 So really what they're trying to do is basically take
7 somebody who is going to be deposed a few weeks later, and
8 they're trying to jam us up on this specific issue, with
9 probably a witness who is going to ultimately be deposed. And
10 I just think it's not efficient.

11 THE COURT: Do you have any documents you haven't
12 given them yet?

13 MR. CHEFFO: No.

14 THE COURT: You can't find anything? I mean,
15 certainly the Japanese label change, there's some record in
16 your company about that.

17 MR. CHEFFO: Let me say this. I don't know the
18 complete story here. So I am not -- what I think I do know,
19 I'm sure I do know, is that we have -- we've given them the
20 labeling, we have given them the -- because what they were
21 talking about wasn't provided to the FDA. We've given them
22 the logs that record correspondence back and forth, and we
23 basically, through our diligent searches, they want to know,
24 is there discussions about that. We have not seen that.

25 Now, having said that, we have produced these 11 custodial

1 files, you'll hear in a few minutes, we're going to produce in
2 a few weeks another 15. And then after that we're going to --
3 so I can stand up here and --

4 THE COURT: And the last custodial file's due
5 September --

6 MR. CHEFFO: September 8th. And rather than say, on
7 September 23rd we're going to depose somebody and ask them,
8 when we won't even have produced all of the information that
9 may or may not bear upon this, just doesn't make any sense.

10 THE COURT: What day of the week is September 8th?
11 Anybody got a calendar?

12 UNIDENTIFIED SPEAKER: It's a Monday.

13 THE COURT: Why don't we -- this issue, sort of meet
14 everybody there, September 9, September 10th, take that
15 deposition. Get all the information in from the custodial
16 responses, and then if you -- if you really need it,
17 Mr. Miceli, before you start those depositions, do it after
18 they've produced it. Let's get that finished, let's not
19 distract them from that, it's a lot of work to do, but if you
20 want to do it, do it then, which would be ten or 15 days
21 later. Okay? And then --

22 MR. MICELI: Thank you, Your Honor.

23 THE COURT: If y'all can work it out.

24 Now, let me talk to y'all about something. It does not
25 take a particularly astute person to observe that the stress

1 level is rising a bit in this case, okay? It does not take a
2 brilliant person to see that. And I am reminded one time I
3 was in a case, it was lots of lawyers from in state and out of
4 state, and we started turning the temperature up a good bit in
5 the depositions and in the exchanges. And I suggested to all
6 the lawyers that we periodically host each other for dinner.
7 And that the one rule was you couldn't talk about the case.
8 Okay? And I'm going to suggest to y'all that periodically
9 after these monthly meetings, on the Thursday night before it,
10 that y'all -- the plaintiffs host the defendant one time and
11 defendant host the plaintiffs one time. And actually if
12 you're asking about each other's kids and their vacations and
13 what they're planning to do for the rest of the summer, you'll
14 probably get along better worrying about the Japanese label,
15 okay? Somehow I think it may all work a little better.
16 That's just my advice, there's no requirement that you do
17 that. But, you know, I saw that y'all were unable to write a
18 joint letter together. Now, it's like, you know, I feel like
19 a Family Court judge, okay? You can't do it together. So
20 we've got it separate. So try to dial it back a little bit.

21 You know, I'm preaching to some good lawyers here, but,
22 you know, you can be civil to each other and not be a patsy,
23 not be a wimp. You can be firm and zealous in the defense of
24 your client without being discourteous to opposing counsel.
25 And it makes everybody's blood pressure stay a little lower

1 and makes your life more pleasant. So it's in your own
2 self-interest, and you're likely to get further than by y'all
3 getting in each other's throats.

4 And sometimes these issues, you know, it seems important
5 to one side and not important to the other. You know, I like
6 the fact that federal judges are appointed out of people who
7 have tried cases, and complex cases, because I kind of get it.
8 And one side doesn't understand why it's important to the
9 other side. But sometimes I get caught up in some issue that
10 wasn't really that important, everybody was right, it wasn't
11 important, but I get emotional about it.

12 So all y'all try to be respectful of each other, listen to
13 each other, and I think y'all will be, you know, I've got a
14 feeling that these issues will become easier, if everybody
15 dials it back a notch. Okay? So the unsolicited advice from
16 the Court.

17 Now let's talk about this issue with the production. Mr.
18 Cheffo, y'all are actively working on these custodial files?

19 MR. CHEFFO: Yes, Your Honor. And I think
20 that's actually -- I was going to say great advice, and I
21 think we'll probably take you up on that.

22 (Brief interruption in proceedings.)

23 MR. CHEFFO: So with respect to our productions, you
24 know, I think I reported to the Court and to them, we had
25 these 11 folks, we initially did it, we had some new

1 revisions, fine, we've kind of gone through, we've been giving
2 productions along those. I think -- and we're talking now in
3 very small doses. I think the target is for the end of this
4 month or the next week or so, we will have done all of that.
5 But so just -- I think Your Honor understands how this works,
6 we're not saying let's do 11 and put everyone there, and kind
7 of let's start with these. Obviously there's a process, as
8 you might imagine.

9 THE COURT: And it's a -- all of them are in process?

10 MR. CHEFFO: Yeah, they're in the queue. So again, I
11 would love to come and say yes, we've done it, and stop --
12 because they want -- I don't like to get up and have to tell
13 you about here's how we're going to produce it, because it
14 would be easier just to get it done. But unfortunately that's
15 not the way the world works. But having said that, as I've
16 said many times, we have heard you, our client has heard you.

17 So here's kind of our target dates. We have these 11
18 folks, we should be done by the end of the month. We are
19 looking to -- because I've also heard them say we don't want
20 to get everything on September 8th, because -- and I get that.

21 THE COURT: And you don't want to be producing on
22 that last day either. Y'all want this thing to be rolling.
23 It was a good plan to do that.

24 MR. CHEFFO: Right.

25 THE COURT: It's in everybody's interests to do it

1 that way.

2 MR. CHEFFO: So you don't want to do one or two at
3 the same time. We also could do, you know, 30 at the same
4 time, that's tough. And kind of as a quick example, they
5 were -- and this made a lot of sense to us. We had identified
6 some folks, as you'll remember, and they were to give us some
7 names of people that they wanted. And they came to us and
8 said, look, we've given you all the names but two, but we'd
9 like to kind of defer on those, because, you know, we may want
10 them based on the records. And our response was, of course,
11 that seems reasonable, just give -- you can't give it to us on
12 X day and expect it next week, but I think we agreed you do
13 it, and then 60 days later we'll give you those two extra
14 people. So there is a fair amount of cooperation in the
15 trenches, I think, that's really going on, and this list
16 probably would have been a lot longer.

17 THE COURT: I appreciate that.

18 MR. CHEFFO: So here's where were. Our target
19 date -- now, I said target date. If it turns out August 16,
20 you know, hopefully we're not going to get a motion to compel
21 on this, but I'm trying to be straight up with Court and with
22 the plaintiffs, that we're going to produce 12 new custodians.
23 So that's going to be essentially double. And then by
24 September 8th, we'll have produced everything. And again, if
25 we have some ready before, but I don't want to promise too

1 much between the 15th -- but so --

2 THE COURT: If you've got some finished, go ahead and
3 give it to them.

4 MR. CHEFFO: Of course, that's what I'm saying.

5 THE COURT: You don't need to worry about a
6 particular day. There's a lot of data to process. So as you
7 finish it, that's the plan with a rolling production, is keep
8 it rolling.

9 MR. CHEFFO: And they'll have almost 25 of 40, 24 of
10 40, you know, by the 15th, and then they'll get the others,
11 then we'll start talking about scheduling depositions.

12 So, you know, two quick things I don't know that we
13 necessarily need to raise now, but I want to at least alert --
14 I think we may have alerted plaintiffs, but the Court. The
15 good news is there's not a zillion of these folks they're
16 asked for making objections, but there are three or four that
17 we do have objections, they're primarily Apex objections. And
18 we're -- obviously I'm not arguing this right now, I want to
19 talk to them about it, like the CEO of the company and things
20 like that. So those are things that at some point we will
21 meet and confer --

22 THE COURT: And I'm here. If y'all meet and confer
23 and you can't work it out, somebody will file a motion,
24 somebody will file a response and I'll make a decision. No
25 big deal.

1 MR. CHEFFO: But there's only, I think, three or
2 four.

3 THE COURT: I want y'all to narrow them, but whatever
4 they are, I'll deal with them. That's fine with me.

5 MR. CHEFFO: And I can give you a little -- to the
6 extent -- But I think that's the general report, kind of where
7 we are, Your Honor.

8 THE COURT: Mr. Hahn, are you satisfied with that
9 report, or Mr. Miceli?

10 MR. MICELI: Well, unfortunately, Your Honor, I get
11 to do the talking again. First of all, we haven't talked
12 about the Apex issues, but because of other litigation I'm
13 involved in with Mr. Cheffo, I was expecting that.

14 We would like, because they're going to be raising those
15 types of objections, we will have to bring those before Your
16 Honor.

17 THE COURT: That's okay, but let's everybody sort it
18 out, see if y'all can't work it out. If you can't work it
19 out, I'm glad to give you an answer.

20 MR. MICELI: We will address that with him first of
21 next week. And we would ask that those issues be raised
22 sooner rather than later, because of what's ahead of us.

23 The concern that we have, and again, one of the reasons
24 why we wanted to push to get these topics and issues on the
25 agenda, which again, is not a motion to compel, this is just

1 informational for discussion points with the Court, is that it
2 has taken from September of last year until two weeks from
3 now, to complete the production of 11 custodians that Pfizer
4 selected. These are not -- we still, with the exception of a
5 very small number of pages, 4800 or so pages of Mr. Joe
6 Feshco, (phonetic) Dr. Joe Feshco, we have not received a
7 single custodial production of somebody that we have
8 requested, that plaintiffs have requested.

9 THE COURT: Will that happen in the August
10 production?

11 MR. MICELI: I hope so, Your Honor. We have not been
12 given -- until the letter that we received from Mr. Cheffo,
13 and I'm not casting, you know, stones his way, but we haven't
14 been given any foreshadowing of what the --

15 THE COURT: You now know.

16 MR. MICELI: We now know that it's going to be
17 August 15, but we don't know who is coming on August 15.

18 THE COURT: You know, Mr. Miceli, part of the process
19 is you're trying to make your priorities the defendant's
20 priorities.

21 MR. MICELI: Absolutely.

22 THE COURT: And some of the effect of this is having
23 that effect. Okay? So part of this is just -- and for him to
24 say, and obviously it's -- these custodial files are very
25 arduous. And they're working hard on them. And sure, we all

1 would have loved to have gotten them sooner. We're not
2 turning the clock back. We're trying to figure out how do we
3 get this done. We've got a CMO with a schedule, and we're on
4 it, we're on the schedule. And I didn't want a situation to
5 come on the day before -- Pfizer come in and say we only got
6 50 percent of these done, and it doesn't sound like that's
7 going to happen.

8 MR. MICELI: That doesn't sound like it's going to
9 happen, Your Honor, but I have concerns as to how on the
10 schedule we are. And if I can address that just briefly.

11 When we entered the CMO-4, when the Court entered CMO-4,
12 it called for a rolling production. And a rolling production,
13 in the past, with litigation with Pfizer, meant to us that we
14 would be receiving periodically over the course of the
15 discovery period, productions that would allow us to review
16 documents and then receive others and continue to review.

17 We have set up a review center with computer terminals
18 and -- for this team to -- that has just sat empty since
19 January.

20 THE COURT: I've got a feeling they're going to have
21 plenty to do very soon.

22 MR. MICELI: They're going to have plenty to do.
23 But, Your Honor, my concern is that with 11 custodians taking
24 ten months to produce, we're expected to go through, the
25 plaintiffs are expected to go through what has taken them

1 months and months to go through, in literally eight weeks
2 before our experts' reports are due. At the same time, taking
3 84 depositions in our case-specific cases. And that creates
4 the problem. Because a rolling production is not four and a
5 half million in January --

6 THE COURT: Mr. Miceli, I hear you about that. And
7 at this point you've got -- you know the schedule, it's
8 consistent with the CMO, let's just leave it at that. I hear
9 you about it, but at this point there's nothing -- we're
10 sitting here in, you know, less than a month from when he
11 tells you he's going to be producing a significant number, and
12 a few weeks later, all of them. Let's just leave it be. In a
13 perfect world you've gotten one every four days, but we can't
14 do that.

15 MR. MICELI: I understand that, Your Honor, but my
16 concern, and I have to let you know where our concerns lie.
17 And our concern is that 75 percent is going to roll over us in
18 three weeks. And when that happens, remember what's happened
19 with our 11 custodians thus far, we've had to come to the
20 Court and ask for Pfizer to produce additional documents, the
21 attachments, the parent-child documents. Those issues are
22 going to be raised with the additional production, I'm sure,
23 because it just happens.

24 We're not saying that they're bad people, but when they
25 make a production and we review it, it's going to happen that

1 we will have disputes. And we're talking about an eight-week
2 period to get everything and resolve our disputes. And that
3 is a very short window, given the number people they have --

4 THE COURT: I hope you've told your steering
5 committee that you expect them to be a real working team.

6 MR. MICELI: We are, Your Honor, we've sat ready to
7 work since January.

8 THE COURT: It's fine, but it's about -- you know,
9 the avalanche is about to hit you, and I understand, in a
10 perfect world you'd have gotten it earlier, but it wasn't
11 required. I'm more concerned that by the deadline they
12 produce it, and they're going to do that. So let's leave it
13 be right now. There's no more we can do and there's no more I
14 can do right now than push them to make sure they comply with
15 the deadline.

16 MR. MICELI: While you're pushing him to comply with
17 that deadline, could you push them to please produce their
18 privilege log as well that has not been produced on the 11
19 that have already been produced to us? And we want the
20 privilege log on the 28 or 27 others that are going to be
21 coming by September 8th, because --

22 THE COURT: Mr. Cheffo, what about a privilege log?

23 MR. CHEFFO: I think there's -- Yeah. So here's a
24 problem.

25 (Brief interruption in proceedings.)

1 MR. CHEFFO: A few things. And I'll address the
2 privilege log specifically. But, Your Honor, I think we need
3 to understand a few things. This September, we keep hearing
4 about September, but you've been living this story, too. It's
5 not September, they want the search terms, they wanted
6 everything else, that was May 28th. This idea that we're
7 going to not implement the same way, I'm not sure where that's
8 coming from. Our intention is to now use the rules that you
9 told to us comply with everything else.

10 I've never really been in this situation, where this much
11 time and someone saying, look, they've met every deadline, we
12 agreed to the schedule, it's very aggressive, they're doing
13 what they should be doing, but we want to spend a whole lot of
14 time talking about it.

15 So there's a provision that says 90 days for the privilege
16 log, it's in one of the CMOs. To the extent we have it on
17 the, you know, seventy-fourth day, while it's being done, we
18 will give it to them as well. But these are kind of like us
19 saying -- raising issues that the plaintiffs haven't
20 already -- are due and are this -- we're going to get --

21 THE COURT: I understood him to say there were some
22 privilege logs from the original productions that were never
23 produced.

24 MR. CHEFFO: Well, no. We produced custodials --
25 there's a lot of things. They asked for the 11 of them.

1 Here's what I recall happened. I think you initially said in
2 the Smalls case, before the MDL, why don't you, Pfizer,
3 identify people, since you know the folks. We did that. That
4 was the ten or 15, whatever they were. We produced those.
5 Then there was MDL stuff, there was a stay, there was new
6 terms. We produced all those. And then we had -- that's what
7 we're doing now, in connection with the new protocol, if you
8 will. That's going to be done by --

9 THE COURT: And you're applying -- when you produce
10 these new ones, you're going to do the parent-child, you're
11 using the search terms, all the stuff we've already ruled on.

12 MR. CHEFFO: Absolutely. Again, is there going to be
13 some document, some issue? Sure. They'll call us up, they'll
14 tell us about it. Our intention is not to go to back to do
15 what we did prior to Your Honor's rulings. We're kind of
16 regearing up what -- what has doubled the size, frankly. So
17 we agreed or -- I'm not sure we agreed, frankly -- but when
18 you told us that this September 8th deadline was the deadline,
19 that was before the new protocol. And the new protocol has
20 literally doubled the size. We haven't come in yet and told
21 you, you know, why that's a problem. But I think we're on
22 target, and I think we're going to give documents --

23 THE COURT: I will not take a request for an
24 extension with a great deal of enthusiasm.

25 MR. CHEFFO: Understood. And --

1 THE COURT: I mean, Mr. Cheffo, you need to tell your
2 client, we're going to try the first bellwether trial in
3 July 2015. It's already calendared, don't plan a vacation,
4 we're going to trial. They need to understand that.

5 MR. CHEFFO: They do. Trust me, they do. We have an
6 issue with Daubert in between there. But putting that
7 aside --

8 THE COURT: And I'll deal with all your dispositive
9 motions and all your Daubert issues. And obviously if the
10 case goes away, the case goes away. But to the extent there's
11 a standing case, it will go to trial in July 2015.

12 MR. CHEFFO: And that's what we're trying to do.
13 We're trying to basically give them the information, and
14 again, there's a lot that happens, so we have a few disputes
15 here, a lot of working on it, we'll continue to do it, very
16 short time over this summer, huge amount of work being done,
17 there's a protocol for privilege log, it is 90 days from the
18 final productions, as I understand the agreed protocol or
19 protocol that Your Honor put in place. You know, as with
20 nothing have we waited, I don't think you're hearing they
21 waited till the ninetieth day. That's not the way we want to
22 operate, that's not the way we expect them to operate.

23 THE COURT: Mr. Cheffo, part of -- I take it that
24 part of the defendant's approach here is to promote
25 compliance, okay? To -- as an anecdote against missing

1 deadlines. And probably to that extent, they're being
2 successful. Because they're making sure the deadlines are
3 met. But I don't think you're violating the deadlines; I
4 haven't detected that. But I see it's a method to their
5 madness here, and they just want to make sure they get
6 everything, they want it sooner, not later. But by September
7 8th, this is all going to be past history. We'll mow it down
8 to a few issues. I appreciate the enthusiasm of the
9 plaintiffs wanting to get the documents, and then they're
10 going to get those boxes backed up or get all that document
11 spewed out on digital, and they'll say, wow, we're like the
12 dog who caught the tire; what do we do with all this?

13 MR. MICELI: Your Honor, if I can just add one
14 aspect.

15 THE COURT: You get only one more.

16 MR. MICELI: Okay. With regard to the production
17 that was made in September, until the plaintiffs raised the
18 issues of the parent-child documents, and the nonresponsive
19 documents that Your Honor compelled them to produce to us,
20 Pfizer thought that their production was complete from
21 September, and we still don't have that privilege log. We
22 just -- we need --

23 THE COURT: That's fine, you won the argument, I
24 ordered it, it's over, it's history.

25 Now, what about this thing with the underlying adverse

1 event reporting?

2 MR. MICELI: I get to sit down, Your Honor.

3 THE COURT: Good.

4 MR. HAHN: Mr. Lopez, Your Honor, is going to take
5 that.

6 THE COURT: Mr. Lopez, good to have you, sir.

7 MR. LOPEZ: Good morning, Your Honor.

8 Your Honor, I don't know whether this is an issue where I
9 frame the issue. I know Mr. Cheffo said he wants to brief it,
10 but I can give you some background.

11 THE COURT: Again, this is something -- Have y'all
12 met and conferred on this issue?

13 MR. LOPEZ: This is one of those -- this issue was in
14 your first scheduling order or CMO in the Smalls case. It
15 dealt with adverse events. And I took over that part of that
16 aspect of that order. And I've been meeting and conferring
17 ever since. And, Your Honor, we did file a letter brief on
18 this, I don't know if you've had a chance --

19 THE COURT: I don't think -- Pfizer hasn't filed
20 their response.

21 MR. LOPEZ: They haven't; I understand that.

22 THE COURT: Let's do this. I mean, y'all are in the
23 middle of briefing this. I understand that there's been an
24 agreement by the plaintiffs to reduce the request from 17,000
25 to 1700, is that right?

1 MR. LOPEZ: Right. Again, this is a year-old issue,
2 and we have been meeting and conferring and we've been
3 following the direction of Pfizer about, you know, they gave
4 us some documents, and now we reviewed them and we've
5 determined that, yes, indeed, there are a number of these
6 where we need --

7 I mean, Your Honor, to put this in simple terms, it would
8 be like if the plaintiffs' medical records request, we told
9 the defendants, you only need the discharge summary, it will
10 tell you everything you need.

11 THE COURT: Listen, I get why it may be relevant, and
12 I get why a lot of it might not be particularly important, but
13 the part that is, you need. I get it. And --

14 MR. LOPEZ: And we're trying to work with it. We
15 don't want 17,000, if we don't need them. But sometimes, you
16 know, you don't that whether or not --

17 THE COURT: Let me do this. You file a brief. I
18 generally don't like to read the brief until I get the
19 response and I can read them both together. But let's do
20 that. And to the extent that I need to address this before
21 the next status meeting, I'll do it. Okay?

22 Mr. Cheffo, do you have anything you particularly want to
23 add to that at this point?

24 MR. CHEFFO: I think it makes sense for us to
25 (inaudible) we'll evaluate, maybe talk to them, and narrow the

1 issues, if we can, submit our brief --

2 THE COURT: Why don't y'all talk today and see if
3 there can't be -- I mean, I get it, I mean, what I understand
4 is some of the underlying support data for the adverse event
5 reports; am I right? Is that what we're talking about here?

6 MR. CHEFFO: Yes. I mean, generally --

7 MR. LOPEZ: We call them source documents.

8 MR. CHEFFO: I think that's right. You know, now,
9 you know, as you might imagine, this is another whole -- we're
10 talking about individual people's medical records.

11 THE COURT: I get it.

12 MR. CHEFFO: Which are paper, probably sent
13 somewhere, you know. So, you know, just if you took one --
14 we'll put this in our papers, but I understand why, well,
15 arguably there could be relevant 1700, but just so we
16 understand what we're talking about, if there's an adverse
17 event report, the way the Government requires the companies,
18 they have to follow up, get medical records, produce them. So
19 literally there could be yours or mine, if someone filed an
20 adverse event report that we produced to them, and you know,
21 and to --

22 THE COURT: But, you know, there have been a lot of
23 documents that people have been chasing, that seem to me
24 maybe, maybe not they'll produce something. Adverse event
25 reports? Now that sounds to me like something that might get

1 them somewhere.

2 MR. CHEFFO: See, I think that's what I think, and
3 again, I think it is better if we have a chance to really put
4 this, you know, in a more fulsome way. But I would say this,
5 so the Court is not left with the impression, we search 450
6 terms, I think, for adverse event reports. So if the FDA was
7 to call our client and say, we want the adverse event, the Med
8 Watch, we produce that, okay? So that's --

9 THE COURT: That's already done.

10 MR. CHEFFO: That's the 17,000. That was done in
11 January, right?

12 THE COURT: Okay.

13 MR. CHEFFO: Everything. Frankly, that's what --
14 I've never done in any litigation what Mr. Lopez is asking
15 here. I mean, whether it's -- all these others. So we
16 produced the adverse event reports, which they have. We also,
17 at the same time, you'll recall -- we had two things. We
18 basically had a CMO that was agreed, and we said we're not
19 going to redo discovery. And this was back in January. And
20 it was also a provision that they could have taken a 30(b)(6)
21 for pharmacovigilance. There was two. They had to serve
22 their notice on May 9th, under the, again, agreed schedule.
23 May 9th came, went, wasn't really served on May 10th. Then
24 six weeks later, another 30(b)(6) saying okay, we now want
25 that. Tried to talk to them about it. We want to get -- you

1 know, then the letters back and forth. But our view on this
2 is that, you know, we are meeting and conferring on this
3 issue, but this isn't the -- you know, we're not starting anew
4 here. We basically produced all the adverse event reports, we
5 told them the search terms, they gave us some additional
6 search terms, we produced those adverse event reports, and
7 now -- and there was an agreement that we wouldn't redo
8 discovery that was done before. Now this, in our view, I
9 think you'll see in our letter, you'll have to see if there's
10 some middle ground, and I will talk to Ramon. But this isn't
11 a situation where we're trying to not give information that's
12 relevant, this is information of, you know, we're kind of
13 basically going to the second, third, fourth, fifth kind of
14 issue here.

15 THE COURT: Let me look at it. I can just see that
16 there are a lot of roads the plaintiffs seem to be chasing
17 that I'm kind of skeptical about what they're going to find.
18 Adverse -- drilling down on adverse event reports seem to me
19 closer to potential information one way or the other, and it
20 goes to the heart of the case than a lot of other things
21 they've chased. So I might be wrong about that, but --

22 MR. LOPEZ: I didn't think we were going to argue --
23 I mean, that's the world according to Mr. Cheffo.

24 THE COURT: I understand.

25 MR. LOPEZ: You haven't heard the world according to

1 Ramon Lopez on this issue. So if we're going to actually
2 address this in a formal way, Your Honor, I mean, this is
3 another situation where we're meeting with experts, they say
4 when are you going to get the clinical data, the backup data
5 for all these adverse events, we need to look at labs, we need
6 to look at how the company assessed causality. We don't get
7 that in a Med Watch to the FDA. That's what we asked.

8 THE COURT: I understand what you're saying.

9 MR. LOPEZ: We have the operative report, the
10 discharge summary.

11 THE COURT: Let me ask you this. Next week the
12 defendant is due to a response. Do you want me to rule on
13 this before the next monthly status report?

14 MR. LOPEZ: I think --

15 THE COURT: I'll address it.

16 MR. LOPEZ: We have five experts waiting for this.

17 THE COURT: I hear you. I'll address it. I want to
18 see what Mr. Cheffo has to say, and I'll read yours and his
19 when they arrive.

20 MR. LOPEZ: Your Honor, let me say this. This is an
21 important enough issue, at least from our perspective, that if
22 you want me to come down here between status conferences, to
23 stand here and put on an evidentiary hearing on it, I'm
24 willing to do that.

25 THE COURT: Let me read the information to see if

1 that's necessary. I hear you loud and clear, both of you.

2 MR. CHEFFO: Thank you, Your Honor.

3 THE COURT: Loud and clear.

4 Folks, I know that y'all have now selected the cases, the
5 14 which we would have, under our plan, we will eventually
6 pick the first and second bellwether cases to try, and those
7 thereafter. And every system that one picks is going to be --
8 have its strengths and weaknesses. And I picked that system
9 as I thought the best option, because it gave voice to all the
10 parties' efforts to be involved in the selection, and was
11 superior than pulling a number out of a hat. And I continue
12 to believe that.

13 But I am prepared to hear, if y'all come to me together,
14 before you -- we finally -- we've got certain deadlines in
15 August and so forth. And if y'all say we collectively think
16 these two cases are the most representative, one from the
17 plaintiff, one from the defendant, and want to control
18 collectively the first two we try, I'm willing to hear you on
19 that. Okay? If y'all want to do that.

20 The one concern I always had about that system is that it
21 tends to emphasize the outliers, the best and worst for
22 everybody. If y'all want to come to me and say, we agree with
23 these two cases are being the representative cases, maybe more
24 representative than the 14 we offered the Court, and we'll let
25 you flip a coin on which those two go first, I'm open to that.

1 I believe y'all ought to have the voice, not me, in picking
2 it, that -- if there's a way to do it. It may well be y'all
3 will never agree to that, and we'll eventually do our strikes
4 and randomly pick -- find a system to randomly pick the first
5 and second cases and that's what we'll do.

6 But I'm still open for a couple more weeks you've got, if
7 y'all want a little more control on your destiny, of actually
8 sitting down with each other and saying, you know, the cases
9 are kind of the fifty-fifty cases. You know, I can see a
10 value in litigating the outlier cases, because you might say
11 there's a liability here, but not here. There is a value in
12 that, too, I get that. And if you go over any part that goes
13 over to, probably got a hint they've got a problem, right?

14 But I want you to know that there's no perfect system.
15 And the best would be you two coming to me with two cases and
16 we flip a coin over which one goes first. I mean, to me, in
17 the perfect world, I never thought I'd get y'all to that,
18 early in this litigation, but y'all have got to know these
19 cases better now, right, I mean, the 14 plus the others, to
20 make that decision. And maybe being honest with yourselves,
21 you might be able to agree with that. I'm open to it.
22 Otherwise, I fully intend to proceed.

23 Mr. Hahn, do you have anything?

24 MR. HAHN: Thank you, Judge. No, Mr. Cheffo actually
25 had discussion from the last time you suggested that, and to

1 date, we have not been able to agree.

2 THE COURT: Surprise, right?

3 MR. HAHN: Obviously open to continuing to have those
4 discussions.

5 MR. CHEFFO: I would say we will continue to -- Two
6 grounds. We're going to produce on this one. And I would
7 say, look, the good news is as to the 14, I think there was,
8 you know, some discussion about that they were going to drop
9 some of their cases, what I've heard, and I think plaintiffs
10 will represent is that they're full steam ahead on their seven
11 and our seven. So that's a --

12 THE COURT: Pretty good sign.

13 MR. CHEFFO: That's a good sign, right? They believe
14 in those cases apparently and the others. So that's where we
15 are. And but we will, you know, we're not tone deaf, I think
16 we'll continue to talk, and to the extent that, you know,
17 people continue to learn and think about these. And there
18 obviously is benefit. We could reach two cases, you wouldn't
19 have to do all the work in the others, arguably. But it's not
20 as easy, unfortunately, as --

21 THE COURT: I can see the problem with it, and
22 there's a benefit of doing the 14. You're making a more
23 informed judgment when you do that kind of discovery. But
24 also it occurs to me that when y'all finally go through the
25 14, you might agree, you might want to control your destiny

1 then, to say among the 14, we're willing to both say these two
2 are more representative, one sort of tilting toward the
3 defendant and one toward the plaintiff, that we think they're
4 representative cases.

5 MR. CHEFFO: We get strikes, too, because then you
6 only have the eight --

7 THE COURT: Correct. That's right. So but in the
8 end, if we need to do it randomly and do it, that's what --
9 that's definitely what we will do. But I just wanted to tell
10 you that that door is open. I think once we kind of start --
11 after August, that door kind of goes down to the 14. I think
12 I'm being -- because you have to do vigorous discovery on
13 whatever cases. So y'all think about it, and I just remain
14 open to that. Okay?

15 MR. CHEFFO: I had one --

16 THE COURT: Yes.

17 MR. CHEFFO: I'm sorry, I didn't mean to interrupt
18 you. It's just really a housekeeping, and I'll -- let me say
19 this. This wasn't an agenda item, so if plaintiffs want to
20 think about it, I don't know that it's that controversial. We
21 had talked about the lexicon cases last time, so it's not
22 raising it out of the blue, and kind of you had referenced how
23 you might address some of the cases where lexicon -- there's
24 about a hundred lexicon cases. Now, some them, I think, will
25 resolve themselves, in the sense that there's probably 25 of

1 those that are now part of dismissals, we've got guidance that
2 they're going to be dismissed, so but there's still about 75,
3 by my count.

4 And at least a thought, right, for reasons we talked about
5 is, you know, I don't think it should be an ability to kind
6 of, you know, sit and wait. So if we did what we're doing
7 with the discovery rules -- so not the full-blown discovery,
8 but kind of take that model, which has, you know, some level
9 of rigor, but not certainly working everything up, and Pfizer
10 was to pick 20 cases of the 75, 15, 20 cases, and work those
11 up, I think that would be kind of a fair intermediate. And
12 then we could figure out from there, because I think it would
13 have benefit of really, frankly, two things. One is I don't
14 think people should be able to file cases and park them here.
15 And two --

16 THE COURT: I'm sorry, what? File cases --

17 MR. CHEFFO: File cases and park them here by just
18 waiving -- saying that they won't waive lexicon. And two,
19 eventually they will have to get, you know, remanded. So I
20 would just suggest that --

21 THE COURT: I don't want to try 900 cases, by the
22 way.

23 (Both parties speaking at once.)

24 THE COURT: Let me tell you, I was concerned that
25 folks were gaming the system when we were going down to the

1 14. That was my primary concern with lexicon. But I had to
2 balance that against their right to assert it, okay? I mean,
3 and I told you that if I thought that the effect of asserting
4 lexicon distorted the pool in such a way that it made it
5 unfair to any party, that I was going to revisit the system.
6 I think we're beyond that, I think y'all are satisfied with
7 the pool of 14.

8 So I kind of don't want to distract you with another --
9 let's focus on 14, let's get the discovery done. We hear
10 about all these documents. I want to keep y'all focused. And
11 so I think chasing another number of cases that aren't in that
12 14 right now, really are in nobody's interest. Okay? I don't
13 think it's in your client's interest, and it's distracting to
14 the plaintiffs who are going to have a tremendous amount to do
15 in getting all these custodial files, taking all these
16 depositions, doing all you have to do in a short period of
17 time.

18 So I'm glad to hear from y'all, if y'all get some mutual
19 agreement on that, but I would say let's keep our eye on ball,
20 eye on the prize here, which is to get through all the
21 discovery.

22 Because in the end, Mr. Cheffo, I'm sending most of these
23 back, right? I mean, if we don't get the cases resolved and
24 we try them, I'm going to try a certain number of them, but I
25 don't want to try them all.

1 I'm very reluctant to send something this complicated back
2 to judges who know nothing about it. But we'll have, to the
3 extent we need -- we'll try a share, but I can't try 900
4 cases, right? I mean, physically I cannot do that. So at
5 some point we'd have to be sending them back anyway.

6 So anyway, but I do intend to try a sufficient number of
7 bellwether cases here so that the parties have a good idea
8 about what, you know, where they stand.

9 Does somebody want to give me a status of the Missouri,
10 the Missouri state cases?

11 MR. MICELI: I'm working as recently as this week on
12 a scheduling order in those cases. We've talked to the judge.
13 The judge has welcomed the opportunity for the MDL to have the
14 first trial date. They have -- Judge Garvey has expressed his
15 desire to set his first trial, which will be a plaintiffs'
16 pick, on October -- in October, I think it's October 19th.
17 And by early next week we'll probably have a scheduling order
18 that mirrors the MDL scheduling order as close as possible,
19 because that's what the judge there wants. And we're going to
20 have 14 cases worked up in Missouri as well.

21 THE COURT: I thought that the state courts would be
22 well advised simply to follow what we've done, and obviously
23 we've plowed a lot of ground here, and just to follow it. But
24 you know, by an October trial, we may have tried two or three
25 of these already, under my way of thinking about this.

1 MR. MICELI: Yep. We are well aware, Your Honor.

2 (Inaudible comments.)

3 MR. MICELI: I don't think there's anything else we
4 can offer.

5 THE COURT: Yeah, Mr. Miceli, tell those people in
6 Missouri they may not see a lot of you for awhile.

7 MR. MICELI: My wife and her vacation club
8 understand.

9 THE COURT: Yes. What's going on in California?
10 What's going on with the -- those here right now, right?

11 MR. CHEFFO: I think that's right, I think the quick
12 answer is nothing right now.

13 THE COURT: We have a motion to remand pending?
14 August 6th, that's fully briefed. And I know the Magistrate
15 Judge has issued something in the three Illinois cases? Is
16 that right?

17 MR. CHEFFO: He did.

18 THE COURT: What's the time to file objections for
19 that?

20 MR. CHEFFO: Fourteen days from the -- and I think
21 that was issued last week or early this week.

22 THE COURT: Yeah, early this week maybe even, the
23 29th.

24 MR. CHEFFO: So I would expect, Your Honor, we will
25 file something.

1 THE COURT: Okay. I'm going to take it up as soon as
2 you raise objections.

3 West Virginia, what's going on there?

4 MR. HAHN: Plaintiffs are back squarely in State
5 Court, Your Honor. Mr. Cheffo and I had a conversation some
6 months ago, that I expect we will continue with, which will be
7 at the first hearing the judge sets we will apprise him what's
8 going on here. And that if it's the plaintiffs' interest, and
9 I think Mr. Cheffo's interest as well, that we follow the MDL
10 through the first trial, and at that point we can look at
11 individual case issues for trial in West Virginia.

12 MR. CHEFFO: Of course, the easiest way to follow the
13 MDL would have been to let it come to the MDL.

14 THE COURT: My thought as well.

15 MR. CHEFFO: But we can do it the hard way or the
16 easy way.

17 THE COURT: I have a feeling we're going to be so far
18 along that we may render a lot of the state litigation
19 relatively irrelevant, or at least not as interesting as it
20 might have been.

21 Other states, other litigation?

22 MR. HAHN: No consolidations we're aware of, Judge.

23 MR. CHEFFO: I think that's true. The only issues --
24 I think this is a very small -- there are a few New York
25 plaintiffs, and because of diversity issues they,

1 notwithstanding our efforts to try and deal with, there may be
2 cases are too filed in New York State Court. But the -- and
3 the Supreme Court is the lowest court in New York, as Your
4 Honor may know. There is a kind of a part that deals with
5 complex and coordinated. So I don't think we're there yet,
6 but that may happen with some of the cases.

7 MR. MICELI: It may happen. It's my understanding
8 that -- we have a few cases that we filed in New York. I
9 don't know if there are others as well. But they haven't even
10 been assigned to a judge yet.

11 (Inaudible.)

12 THE COURT: Okay. Plaintiff counsel expense
13 submissions, when am I going to start seeing those?

14 MS. MANESS: Your Honor, I've been going back and
15 forth with the CPA. I got a set of submissions this morning
16 that had some stuff on them that I had not asked for. I
17 expect I -- I need to double check with court personnel about
18 how to do it, but I expect I can get this filed for the time
19 through April and for May's time, even this afternoon or
20 Monday.

21 THE COURT: Can't ask for better than that. Thank
22 you very much. Okay. I have gone through my list. The folks
23 in the courtroom, are there other issues that you'd like to
24 bring to my attention?

25 MR. HAHN: Nothing further from the plaintiffs, Your

1 Honor.

2 MR. CHEFFO: No, Your Honor, thank you.

3 THE COURT: On the line, is there anyone who wishes
4 to speak?

5 (No response.)

6 THE COURT: Very well. No one has indicated desire
7 to do so.

8 Folks, our next meeting is August 15th, and for the
9 non-Charlestonians, it will probably be the hottest day
10 they've ever seen in their lives.

11 Yes, Mr. Lopez?

12 MR. LOPEZ: I brought this up a few minutes ago when
13 you asked -- I just want -- on my issue, the adverse event
14 issue, we filed a letter brief -- the CMOs provide for that --
15 and a full motion. I just want to make sure that's --
16 that's -- Are we going to stick with that format? We filed
17 our seven-page letter brief.

18 THE COURT: I think a seven-page letter sounds a lot
19 like a brief to me. I'll look at it. If I think I need more,
20 I will ask for more. But once the defendant responds, I'm
21 going to read it, and if I -- A, if I need more briefing, I'll
22 let you know; B, if I want oral argument, I'll let you know.
23 But I will address it before the next status conference.

24 MR. LOPEZ: It is an abbreviated format of what we
25 otherwise filed. I mean, it's all in there, we're satisfied

1 with the issues being framed (inaudible).

2 THE COURT: I'm fairly familiar with --

3 MR. LOPEZ: (Inaudible.)

4 THE COURT: Well, you know, let me just say, I'm
5 pretty familiar, these are not usual issues for me, I'm pretty
6 familiar with them, so I kind of get -- I do want to see
7 what -- how it applies in the facts of this case, that's very
8 important to me about what those adverse event reports really
9 have, and the potential -- classic sort of risk-cost benefit
10 analysis that we go through on a lot of these, what it is and
11 how important it could potentially be and so forth. And I'm
12 sure y'all will address all those issues.

13 Okay. Without further, the status conference is
14 adjourned. Thank you very much.

15
16 (Conference adjourned at 11:29 a.m.)
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the electronically recorded above proceedings, to the best of my ability.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR