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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, August 15, 2014, commencing at 10:00 a.m., before the Honorable Richard M. Gergel, in Courtroom I, United States Courthouse, 83 Meeting Street, Charleston, South Carolina, 29401.

REPORTED 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

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A P P E A R A N C E S

APPEARED FOR PLAINTIFFS:

- Margaret Branch, Esquire
- Turner W. Branch, Esquire
- Martin D. Crump, Esquire
- Robert D. Cain, Jr., Esquire
- Jayne Conroy, Esquire
- Laura Singletary, Esquire
- Mitchell M. Breit, Esquire
- Ramon R. Lopez, Esquire
- Joshua M. Mankoff, Esquire
- Mia L. Maness, Esquire
- Mark C. Tanenbaum, Esquire
- Frank M. Petosa, Esquire
- Joseph F. Rice, Esquire
- Christopher L. Coffin, Esquire
- Blair H. Hahn, Esquire
- Christiaan Marcum, Esquire
- Elizabeth M. Burke, Esquire
- Eric S. Johnson, Esquire
- David F. Miceli, Esquire
- Catherine Heacox, Esquire
- Michael Heaviside, Esquire
- Jesse Mitchell, Esquire
- Casey Lott, Esquire
- Chad E. Ihrig, Esquire
- Laura L. Voght, Esquire
- Daniel N. Gallucci, Esquire
- Mary Lou Boelcke, Esquire
- David L. Suggs, Esquire
- Frank Woodson, Esquire
- Matthew Munson, Esquire
- Elisha Hawk, Esquire
- Elizabeth Chambers, Esquire
- Kristian Rasmussen, Esquire
- Lisa Gorshe, Esquire

APPEARED FOR DEFENDANTS:

- Michael T. Cole, Esquire
- David E. Dukes, Esquire
- Amanda S. Kitts, Esquire
- Mark S. Cheffo, Esquire
- Mara C. Cusker Gonzalez, Esquire
- Lyn Pruitt, Esquire
- Theodore Mayer, Esquire

1 THE COURT: This is the monthly status conference in  
2 the matter In Re: Lipitor MDL, 2:14-2502. Could counsel who  
3 will be speaking identify themselves for the record.

4 MR. HAHN: Blair Hahn for the plaintiffs, Your Honor.

5 MR. CHEFFO: Mark Cheffo, Your Honor, for defendants.

6 THE COURT: Good. Okay. Folks, any matters y'all  
7 would like to bring to my attention?

8 MR. HAHN: Your Honor, first, we filed with the Court  
9 a joint status --

10 THE COURT: I read it, yes.

11 MR. HAHN: -- report. I would like to just note for  
12 the Court that while we are in agreement, plaintiffs are in  
13 agreement with the report, Pfizer has, on both A and B, put a  
14 safety sentence in there, Judge, that says to the extent they  
15 need additional time, they'll let us know. And it is -- we  
16 were expecting a large document production today, and it's my  
17 understanding that we're now going to get that on a rolling  
18 basis starting today, but ending sometime next week. So let  
19 the Court know of our continued concern.

20 THE COURT: Well, I appreciate you bringing it to my  
21 attention. You know, you only have the ability to absorb and  
22 review only so much at a time. And though I'm sure you'd like  
23 to get it all, it sounds like to me the volume of this stuff,  
24 you won't have a lack to do waiting for it all to come in,  
25 because y'all have got one heck of a job ahead of you of going

1 through the material, right?

2 MR. HAHN: We do, Your Honor. And that's -- we're  
3 nervous, we're on the beach, we see the tsunami coming.

4 THE COURT: I wouldn't complain that maybe the first  
5 wave isn't that big. Because it seems to me that -- I mean,  
6 you know, you were successful in persuading the Court to  
7 broaden the discovery scope, and now here is the consequence  
8 of it, right?

9 MR. HAHN: Yes, sir.

10 THE COURT: And, you know, y'all are going to have  
11 quite a challenge. I got the feeling anyone serving on the  
12 steering committee is going to say this was not just an  
13 honorific position, it's going to impose upon everybody  
14 serious responsibilities. Because what you don't want to do  
15 is you have a theory of the case, and some document may  
16 confirm it, and somehow you don't even find it because you  
17 don't have the capacity to process the documents. So, you  
18 know, I'm sure y'all have been thinking strategically about  
19 how do you orchestrate such a huge document review process,  
20 and --

21 MR. HAHN: We have, Judge, and we're ready to go.

22 THE COURT: I'm sure you are, so that first wave,  
23 just get your team well oiled for the next wave to hit.

24 MR. HAHN: All right, sir.

25 Second issue on the agenda for plaintiffs is the Japanese

1 label confidentiality designation.

2 THE COURT: You know, it's not really in front of me  
3 yet. I know that there was a response due, y'all objected to  
4 the confidentiality, and then I think Pfizer had a chance to  
5 respond by the 13th or something, is that right?

6 MR. HAHN: They responded this week, yes.

7 THE COURT: And what was their position?

8 MR. HAHN: Their position was -- we asked originally  
9 for the English translation of the Japanese label to be  
10 de-designated. They responded yesterday, I believe, that they  
11 will de-designate and have de-designated the Japanese label in  
12 Japanese. They are continuing to object to de-designating the  
13 English translation, simply because they say it was for  
14 internal use only, apparently not wanting English-speaking  
15 people to know what the Japanese label says.

16 THE COURT: Mr. Cheffo, all you have to do is hire a  
17 Japanese professor somewhere to translate it. Why put them  
18 through that?

19 MR. CHEFFO: Sure. Well, first, let me say, thank  
20 the plaintiffs for a nice party yesterday. And --

21 THE COURT: These guys do know how to party.

22 MR. CHEFFO: That they do, I'll give them that. And  
23 secondly, the agenda is pretty narrow, because we have worked  
24 out a lot of things, and I think there are a few things, and  
25 will address specifically this.

1 So the question here is, they wanted two things. They  
2 wanted Japanese labeling, and we talked about we're going to  
3 give them that, and we've given them the label, and we said as  
4 to the actual label, of course, we're not going to deem that  
5 to be confidential.

6 Here's the crux of the issue. You know, you have a  
7 protective order. So if you or I were to walk into Pfizer and  
8 say, hey, can I have your documents, let me look at your  
9 internal documents, there's a protective order at this point,  
10 because it protects it. So, for example, we don't know,  
11 because we haven't had a chance to look into it, is it  
12 accurate, was it done by an outside service, is it something  
13 that was a draft, is it something that the person did kind of  
14 on the fly, or is it something that was commissioned by an  
15 outside translation service. And obviously those would guide  
16 us.

17 If, for example, we find out, when we have a little bit of  
18 time to do our due diligence, that this was something that was  
19 commissioned, and perhaps there's no basis for  
20 confidentiality, if that's the case -- So here's the bottom  
21 line. What -- unless you have to ask -- I'm asking, what's  
22 the urgency for this document? Because we're not saying we're  
23 holding back, unless they want to leak it --

24 THE COURT: How quickly can you get somebody -- I  
25 mean, obviously you have at your -- you know, your company can

1 consult with someone, you do business in Japan, someone can  
2 quickly assess, is this a reliable translation or not. I  
3 mean, I think that could be done very rapidly. And to the  
4 extent that it's reliable, it just seems to me, in our efforts  
5 under Rule 1, to do least expensive, save money, quick  
6 justice, or as quickly as we can do, just don't make them run  
7 down that rabbit trail. Because all they have to do is call  
8 over to the College of Charleston and find the guy who teaches  
9 Japanese and translate it for them. I mean, we're not talking  
10 about some huge undertaking. It's just somewhat wasteful to  
11 have to go pay that amount for someone.

12 So here's what I want you to do.

13 MR. CHEFFO: Sure.

14 THE COURT: Today is Friday. By the end of the day  
15 Tuesday, tell them whether you're going to give it to them or  
16 not.

17 MR. CHEFFO: We have given it to them.

18 THE COURT: In Japanese. Somebody just confirm,  
19 whether it's a document, and if it's just something that, you  
20 know, somebody who doesn't speak great Japanese, just try to  
21 do it internally or something, tell them you just don't have  
22 the confidence in it to release that.

23 I have trouble believing that there's like not a reliable  
24 document within Pfizer about what the label says.

25 MR. CHEFFO: Let me, just so we're clear, Your Honor,

1 we have given them the Japanese label, and we have given them  
2 the English translation, so they have both.

3 THE COURT: What are they objecting to?

4 MR. CHEFFO: This whole issue, that's why --

5 THE COURT: I'm confused. If they have the English  
6 translation, what -- Mr. Hahn --

7 MR. CHEFFO: They're trying to de-designate it. And  
8 the only question we have is, why do you want, at this point  
9 in the litigation, unless you're going to litigate through the  
10 press or do something else, it's subject to the protective  
11 order. We've given them -- this is kind of, for us, a little  
12 bit of a side show. Let's take this document and let's have  
13 an argument about whether it should be de-designated.

14 THE COURT: Why do we need, at this stage -- I'm not  
15 trying to limit your ability to use it at trial or whatever --  
16 why do you need to de-designate the English translation? I'm  
17 not sure why they care about it, but I want to know why you  
18 care about it. Because let me say this. I don't care about  
19 it.

20 MR. HAHN: I understand, Judge. We want to make sure  
21 that we don't run afoul of the confidentiality order. And we  
22 want to use this document with different people in preparing  
23 our case. And preparing people for deposition.

24 THE COURT: What people?

25 MR. HAHN: Doctors, experts.

1 THE COURT: Well, that's subject to confidentiality,  
2 no problem. If you have a question, Mr. Hahn, let's do this.  
3 If you have a problem, you have a question as to whether  
4 giving it to somebody in particular creates a violation of the  
5 confidentiality order, talk to Mr. Cheffo about it. If y'all  
6 are not happy, we'll do a telephone conference and I'll  
7 promptly deal with it. But this is like a nonissue, okay? I  
8 mean, surely you have, under the confidentiality order, the  
9 ability to consult with experts and so forth, and not one of  
10 them will be able to speak Japanese. So you will need the  
11 English translation. So what we're talking about is  
12 de-designating it, and unless it actually comes up to be a  
13 practical problem, let's just move on; how about that?

14 MR. HAHN: All right, sir.

15 MR. CHEFFO: I think, Your Honor, that really leaves  
16 us with one -- the issue of -- and that's the issue kind of  
17 the scope of the collection process. And I think it's  
18 relatively straightforward, we tried to lay it out in our  
19 papers.

20 THE COURT: I read your papers. Let me ask you this.  
21 You're skeptical when, of these 14 people, they start saying  
22 give me all your e-mails when you talk about your illness, and  
23 the answer is zero, or very little. If I'd been sitting in a  
24 room when y'all were drafting that discovery request, I'd say  
25 that's a fine discovery request, but you're likely not to get

1 much response. Why would I think that? Because of this age  
2 group, I don't think they nearly do the social media type  
3 thing like younger people do. And, you know, we're talking  
4 about women talking about their health condition. I just  
5 wouldn't have expected a lot of e-mailing back and forth about  
6 this. So I would not be -- you seem like very surprised  
7 there's little, and I would have been very surprised if there  
8 had been a lot.

9 Now, I think you make a reasonable point, that they should  
10 tell you what they did. Okay? So if somebody says, if you're  
11 communicating with your client and you send them these  
12 discovery requests, we all have represented people who are not  
13 particularly sophisticated, and you send it to them, it may be  
14 like Greek to them, they may not understand. And if they say,  
15 I've got nothing, there's more you need to do to comply with  
16 26(g), which is to make some reasonable effort, which would be  
17 to go back to them and say, let me just make sure we're all  
18 speaking on the same page here. Do you have any e-mails to  
19 your children, or do you have photographs, or do you -- to  
20 be -- to exercise reasonable diligence. I think you make a  
21 point there. And they should tell you what they've done, I  
22 mean, what that is, other than just mailing the discovery  
23 requests to the client and saying, give me everything you've  
24 got. I don't think that's reasonable effort.

25 So what I want you to do, Mr. Hahn, is I want you all to

1 provide a response about what y'all did. Okay? I'm not going  
2 to send the plaintiffs' lawyers over to people's house to do,  
3 you know, word searches. We're not going to do that. I don't  
4 think that's reasonably necessary. But you've got to do more  
5 than just drop something in the mail to them, and then when  
6 you don't get anything, say you've done your due diligence.

7 Now, let me say this. Y'all are going to get into  
8 depositions, and I assure y'all will ask them about such  
9 things. And if there is a reflection of a pattern of not  
10 providing the information, and we need to deal with sanctions,  
11 I'll be ready to deal with sanctions about that, that may  
12 suggest there wasn't reasonable diligence.

13 So, Mr. Hahn, probably -- you know, we're down to a  
14 universe of 14 rather than a thousand, that helps a little  
15 bit. Send your paralegals back to each of them, make a very  
16 specific inquiry, just go ahead and do it one more time, even  
17 if y'all have done it, and then share what y'all have done in  
18 a written response. And if there's still an issue, let me  
19 know about it. How about that?

20 MR. HAHN: Thank you.

21 MR. CHEFFO: That works.

22 MR. HAHN: Number three, Judge, we decided is not  
23 ripe for the Court at this time. Number four has been settled  
24 at this time. And number five, we've already addressed  
25 multiple times, Judge.

1 THE COURT: Let's talk about other state proceedings.  
2 What states have pending cases in which judges have -- there  
3 has been an order to consolidate, and there's an assigned  
4 judge; how many states are we dealing with here?

5 MR. HAHN: Three, Your Honor. West Virginia,  
6 Southern Illinois and California. And Missouri.

7 MR. CHEFFO: It's actually --

8 MR. HAHN: It's still three.

9 THE COURT: It's Missouri and -- so West Virginia,  
10 Missouri and California.

11 MR. HAHN: Yes, sir. And California, we do not yet  
12 have a judge assigned, I don't believe.

13 MR. CHEFFO: There was a judge assigned before, so  
14 there's no schedule. In the City of St. Louis, Judge Garvey,  
15 I believe, is the judge handling that. And Mr. Miceli's  
16 office is kind of dealing with that. But we basically have a  
17 schedule that to a large extent tracks the MDL schedule in  
18 terms of even seven and seven. So that was largely adopted.  
19 There's some tweaks, but -- and it does follow --

20 THE COURT: How about West Virginia?

21 MR. CHEFFO: West Virginia there is a mass litigation  
22 panel, it's a little quirky, if you will, because it's decided  
23 not by the number of claimants, by the number of lawsuits. So  
24 even though there's 40 people, and these are Mr. Hahn's  
25 clients, it's actually not -- I don't believe --

1 MR. HAHN: It's been sent back. There was an order  
2 issued this week by the West Virginia Supreme Court, and it is  
3 now back in McDowell County where we filed it. There is a  
4 question as to the judge. There are two judges in McDowell  
5 County and they're, as I'm told --

6 THE COURT: They're drawing straws, and the loser  
7 gets the case. Well, here's what I think. And obviously  
8 California, since we've got this removal issue, there wouldn't  
9 be much going on in it. If the Court remanded it, obviously  
10 we would then need to know that.

11 But I raise all that simply to say that I am prepared to  
12 reach out to any state judges who have these consolidated  
13 cases. I would encourage them, to the extent that they think  
14 it's the proper decision, to track what we do here, because I  
15 think we are designing an efficient procedure for discovery.  
16 It's not perfect, we're tweaking it as we go along here. But  
17 I think, having blazed that trail, it would be very  
18 inefficient to sort of jump off on another course unless  
19 there's a good reason to do it. And, you know, for all the  
20 work we've all done here, you know, most state judges are so  
21 busy, they don't have the time to sort of want to reinvent the  
22 wheel on something as complicated as this.

23 But I want to personally be in touch with assigned judges  
24 in consolidate cases. So I'm going to ask you, to the extent  
25 there are any consolidated judges now, if y'all could jointly

1 file with me the name of the judge and the contact information  
2 on any judges appointed, and then to update it as that occurs.  
3 And I will try to keep them in the loop, and what I intend to  
4 do is keep them briefed on what we're doing here. And we may  
5 do things like routinely provide any orders we issue, you  
6 know, just routinely deliver it to them so they stay current  
7 on all of this.

8 I mean, if I were in State Court and somebody was off  
9 doing all this, I mean, I see, you know, case management order  
10 14, boom, I adopt it. Unless it doesn't seem wrong, I'd just  
11 keep doing it and try to stay on pace. Because y'all are  
12 going to have, by the end of this year, a huge amount of the  
13 discovery done in this case. And why would anybody go back  
14 and say, oh, I want to do it a different way? Unless there's  
15 a good reason to do it, the parties seem to think it's  
16 sufficient, it's kind of funny that somebody else would want  
17 to do something different.

18 So I certainly want to encourage that. I think, again, it  
19 furthers the purpose of Rule 1 of a just, speedy and  
20 inexpensive determination. Hard to think about a case like  
21 this as inexpensive, but it can be less expensive, if we're  
22 prudent about how we do things.

23 Okay. Any other issues, Mr. Hahn?

24 (Brief interruption in proceedings.)

25 MR. CHEFFO: I'm not Mr. Hahn, but I think he's done.

1 THE COURT: I know who you are, Mr. Cheffo.

2 MR. CHEFFO: The good news is I think we're very  
3 limited, and we'll attribute that to the cocktail party,  
4 again, that we resolved all these issues. This is something I  
5 think that's more informational, working together on. So we  
6 have asked the plaintiffs, and I think they're agreeable to  
7 this, to give us heads up so, as you know, we're doing  
8 these 40 custodial searches, and then we have a window of time  
9 for depositions. Some of these folks are going to be  
10 employees, some of them are not. And I think they're  
11 agreeable to this. Tell us -- we're not going to -- I'm not  
12 looking for a specific day, and if they say we want to change  
13 the order up a little bit. But as you know, we can't snap our  
14 fingers and just have these people produced and ready. If  
15 they start telling us now, here's the eight people we think  
16 first we'd like to start with, that would be great. They  
17 certainly have enough records to do that. Again, we'll work  
18 with them if they need to swap it out. So that would be very  
19 helpful to us.

20 And we just discussed this morning, because we know  
21 obviously Your Honor wants to keep us moving, we have  
22 identified two plaintiffs of the 14 that we are actually  
23 prepared to start their depositions. We're able to do it as  
24 early as the week of the 25th. Again, in fairness, we're not  
25 going to start sending subpoenas out, you know, they have to

1 find out if it works for their client and the schedule, but if  
2 it does, we'll --

3 THE COURT: Y'all have to be working on parallel  
4 tracks, where you're going to have multiple lawyers at the  
5 same time in different locations. And the more you get that  
6 going, you know, I think the sooner, the better.

7 So I think that the idea of identifying early who your  
8 next round is, understanding that there are variances in how  
9 you do these things, I mean, of course, y'all haven't gotten  
10 the custodial files yet, right?

11 MR. HAHN: That's correct, Judge, which as soon as we  
12 get them, we can get the documents, we can decide who we want  
13 to depose.

14 THE COURT: And, you know, it's like at trial, people  
15 say to me, you know, I'm not obligated to tell people the  
16 order in which I'm going to call cases; true, but don't you  
17 want to know from the other side what their order is? If  
18 there's some reciprocity there, then you have -- it just makes  
19 it easier to try the case. And I think what we're getting  
20 ready to do, and something very arduous here, and I think you  
21 can make it easier for each other, without in any way  
22 compromising the interests of your own clients, so why not do  
23 that.

24 MR. HAHN: Yes, Your Honor, I don't envision any  
25 problem with that at all.

1 THE COURT: I am fully cognizant, folks, that we are  
2 taking an approach here that is somewhat different than many  
3 MDLs, which at this point, in most cases, are slowly dribbling  
4 out the first ideas of how they might do discovery. And a lot  
5 of people, I'm telling you, around the country, are watching  
6 this model, okay? Doing it quicker, early bellwether trials,  
7 getting it done it. And I know I'm putting a lot of stress on  
8 the lawyers, I fully appreciate that. But I think in the end,  
9 it's going to be in everybody's interest to see, is there a  
10 case here, and if there is, what's it worth. Right? I mean,  
11 I just think that makes a lot of sense. And y'all will -- I  
12 have a feeling y'all will look back and say, oh, my God, who  
13 drew that guy in South Carolina. But on the other hand,  
14 you're going to appreciate that this is -- we can all work  
15 faster.

16 I remember one time I was getting ready to try a case and  
17 I was trying to get a date certain, practicing law, and I'm  
18 waiting for a judge. And this guy next to me was a bankruptcy  
19 lawyer, and he just happened to have this related matter in  
20 State Court. And he said, how long has your case been  
21 pending? And I told him. And he says, and you're trying to  
22 get the case tried? Yeah, getting ready to go on the bench, I  
23 wanted to get the case tried. And he said, you know, we do,  
24 what you guys do in a year, we do in 90 days, and we're often  
25 tens of millions of dollars involved. And we're up in middle

1 of the night doing depositions and doing stuff. He said, we  
2 just work. Y'all just don't know what it means to get to work  
3 done. And, of course, in bankruptcy, time is money, right?

4 And the truth is, in a case like this, time is money, too,  
5 because if it goes on three, four, five years, everybody is  
6 going to spend a lot more money.

7 So anyway, I'm trying to apply that model. It won't be  
8 perfect, we'll get -- something's wrong, but I appreciate your  
9 patience with it, because I think in the end we'll look back  
10 and say maybe this is a better way to design the mouse trap.

11 So anyway, anything further from anyone in the courtroom,  
12 first of all?

13 How about on the phone, anyone on the phone wishes to  
14 raise any issue with the Court?

15 Okay. Folks, our next status conference is  
16 September 19th. Fall will be coming to Charleston, we'll have  
17 a big crowd wanting to come at that point as well.

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19 (Court adjourned at 10:30 a.m.)

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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 stenographically recorded above proceedings.

S/Debra L. Potocki  
\_\_\_\_\_  
Debra L. Potocki, RMR, RDR, CRR