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2 IN THE DISTRICT COURT OF THE UNITED STATES
3 DISTRICT OF SOUTH CAROLINA
4 CHARLESTON DIVISION

5 IN RE: LIPITOR 2:14-MN-2502
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10 TRANSCRIPT OF STATUS CONFERENCE
11 THURSDAY, MAY 21, 2015
12 BEFORE THE HONORABLE RICHARD M. GERGEL,
13 UNITED STATES DISTRICT JUDGE
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23 Court Reporter: Amy C. Diaz, RPR, CRR
24 P.O. Box 835
Charleston, SC 29402

25 Proceedings recorded by mechanical shorthand,
Transcript produced by computer-aided transcription.

A P P E A R A N C E S

APPEARED FOR PLAINTIFFS:

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Christian Marcum, Esquire
Josh Mankoff, Esquire
Rob Jenner, Esquire
Lindsey Craig, Esquire
Chad Ihrig, Esquire
Ann Rice Ervin, Esquire
Margaret Branch, Esquire
Turner Branch, Esquire
David Miceli, Esquire
Mark Tanenbaum, Esquire
Lisa Ann Gorshe, Esquire
Mitchell Breit, Esquire
Michael Heaviside, Esquire
Catherine Heacox, Esquire
Mary Lou Boelcke, Esquire
Elizabeth Chambers, Esquire

APPEARED FOR DEFENDANTS:

Mark Cheffo, Esquire
Michael Cole, Esquire
Mark Jones, Esquire

1 THE COURT: Okay. Eunice, are we online?

2 THE CLERK: Yes, sir.

3 THE COURT: Very good. This is the matter of In Re:
4 Lipitor MDL 2:14-2502.

5 Could counsel who will be speaking on the record
6 here in the courtroom identify themselves for the record,
7 starting with plaintiffs' counsel?

8 MR. HAHN: Blair Hahn for the plaintiffs.

9 MR. CHEFFO: Mark Cheffo.

10 THE COURT: Very good. Folks, I'm told now that we
11 have 2,162 cases from 48 states, so at least part of our
12 constituency is here in the courtroom, it looks like.
13 Welcome everybody to Charleston. I notice we seem to get
14 more people at our monthly meetings in the spring than we do
15 in the winter. I'm sure it is just a coincidence.

16 I had -- I wanted -- as a housekeeping matter, I
17 wanted to address that I had initially scheduled for next
18 month the monthly meeting on June 18th because I had a very
19 complicated criminal case that was beginning the next Monday.
20 That has now been continued. So if it suits everyone, we'll
21 just stay on June 25th. Does that suit everybody? Very
22 good. I knew there was some conflict there and I wanted to
23 accommodate everyone on that.

24 First, Mr. Hahn, do you want to share with me
25 anything that you want to bring to the Court's attention?

1 MR. HAHN: Thank you, Your Honor.

2 The only thing that I have to share with the Court
3 is on our agenda, paragraph D, number 1, the McNair firm has
4 chosen to drop off to the plaintiffs' steering committee.

5 THE COURT: Very good. And I think under our CMO,
6 that is the procedure for handling that, as you are lead
7 counsel, to handle that, correct?

8 MR. HAHN: Yes, sir.

9 THE COURT: Thank you for advising me of that.

10 Are there any other matters that you need for me to
11 address from the plaintiffs' viewpoint?

12 MR. HAHN: No, sir, Your Honor.

13 THE COURT: You know, I think we -- just for the
14 record, we did have mid-month an issue come up, and we did
15 address it. And I issued a CMO on that matter which would,
16 had we not done it, we would have obviously been dealing with
17 it today, but that is continued. My view is that one way to
18 keep something as complicated as this moving is that you get
19 prompt court attention when you need it, and I've tried to do
20 that the best of my ability. And I would just continue to
21 invite you, to the extent you see something may slow you down
22 in any way, I am available by telephone. And if you need to
23 do it in person, we can brief things very quickly.

24 I don't like to do things off the seat of my pants.
25 So I do like when y'all have an issue, to the extent you can,

1 to put something in writing so I have some chance to sort of
2 see what both sides -- what the concerns are on both sides
3 and think about it a little bit before I actually interact
4 with y'all. But even in situations where you have something
5 like something comes up in a deposition and you need
6 immediate attention, I'm glad to address it to the best of my
7 ability. I'm generally not much anywhere else but this
8 courthouse, so I'm usually available.

9 MR. HAHN: Thank you, Judge, and we will be calling
10 you, I expect, within the next six weeks. As you know, our
11 schedule is extremely tight and we have a number of
12 depositions to get through. So sometimes tempers do flare,
13 and you have been very helpful.

14 THE COURT: You know, my view of it is is it's a
15 natural tension in a big case that people are going to be
16 sometimes a little short with each other, a little impatient
17 with each other. But if you have a reservoir of good will,
18 then it's easier to get through those than if you are yakking
19 at things that don't really matter. And if something really
20 matters, you have such a poisonous relationship that you
21 can't get anything accomplished, I'm willing to step in to
22 anything y'all need me to do.

23 If you can't resolve it -- obviously we have
24 important depositions that are coming up, sometimes there
25 will be critical moments in those depositions where we really

1 don't have time to reconvene at some later date, and I'm glad
2 to stop what I'm doing, to the extent I can. And my staff's
3 instructed if I'm in a hearing or something, we may take a
4 break and I'll come address it. I think it's important to
5 keep this thing moving.

6 You know, one of the observations I've had about
7 MDLs is that sometimes they are so taxing on the Court that
8 sometimes there is -- it's very good --

9 (Telephone interruption.)

10 THE COURT: I'm sorry? Anyway, so that sometimes
11 that they get so complicated and the issues build up and the
12 Courts don't give enough attention and the parties just don't
13 get -- nothing gets done. And I know I've had y'all a little
14 bit on the Bataan Death March here in discovery, but I think
15 it's important. Because though the issues are complicated,
16 there is a certain amount of work that needs to be done, can
17 be done if you make it your priority.

18 I told Mr. Hahn when he was appointed that I hope he
19 didn't have too many other things on his calendar because
20 this was going to take essentially all of his time.

21 And I take it it is; is it not?

22 MR. HAHN: Yes, sir, it is.

23 THE COURT: And that's understandable.

24 So I -- I do think it's important that you have
25 access to the Court on short notice as necessary. I don't

1 want to be involved in things that y'all work out yourselves,
2 but -- you haven't really been doing that to me -- but there
3 are things sometimes y'all are just going to have a
4 fundamental disagreement with each other, and that's okay. I
5 mean, that's hardly surprising that adversaries would
6 actually, you know, agree on everything. I mean, that's just
7 not the way the system works. So I want to continue to be
8 available to you the best I can on as short notice as I can
9 so we can keep this process moving.

10 Mr. Cheffo, do you have anything for the defendant
11 you need to bring to my attention?

12 MR. CHEFFO: I really don't, Your Honor. I think
13 we've laid out in our agenda -- I echo what Mr. Hahn said and
14 what Your Honor said -- we are moving in the right direction.
15 We have a lot of cases. I think just looking back sometimes
16 it's good to take stock of where we are. And I think, as you
17 will know with all of the disputes -- and we have had
18 disputes -- I don't think that there has been any dispute of
19 the typical -- there have been typical rancor of people
20 yelling at each other at the depositions. I think to the
21 extent we have issues, they have been legitimate. We've
22 tried to work them out on both sides.

23 So, you know, again I think there will be issues,
24 and you have been incredibly generous with your time about
25 kind of being available to us. So we may have disputes which

1 we will continue to bring.

2 THE COURT: I expect you to have them, Mr. Cheffo.
3 You know, when you are dealing with an MDL, there are certain
4 premises that I frankly approach it. Number one is we ought
5 to be pretty liberal in discovery because it counts for
6 2,100 cases and you all tell me 8,000 waiting in the wings
7 here. So, you know, thorough discovery.

8 But then on the other hand, you know, we have
9 certain rules that we need to maintain those to give
10 everybody to have a full shot. We don't want any surprises.
11 We want everybody a chance to do full discovery, but we have
12 to have some order. And I have been trying to, you know,
13 sort of consistently apply those rules in a way that keeps
14 the process going and gives everyone a full and fair
15 opportunity to develop their case.

16 I don't expect anything to be happening before --
17 anything to happen at trial y'all don't really know about.
18 There shouldn't be any surprises. That's not the nature of
19 "gotcha justice". These are important issues. They need to
20 be thoroughly aired and they need to be aired on the merits
21 and not on side issues that aren't important.

22 So y'all have been great. I have just great respect
23 for both plaintiff and defense here. Y'all have just really
24 done a great job. And I'm -- I won't be surprised as we get
25 closer to the discovery I hear more from y'all; that's okay.

1 I don't expect y'all to agree on *Daubert* motions or on other
2 pretrial matters, motions in limine, but we are going to
3 head -- you know, be heading towards trial of this matter in
4 November.

5 My -- you know, my goal is to try it -- we'll sort
6 out the exact date for all that -- but my goal is to start it
7 as soon as we can after we draw the jury in November. And
8 our second bellwether trial I hope to do it in the
9 January/February term. I understand there may be some
10 potential conflicts I need to work around with my fellow
11 judges, and I'm going to do that in the next couple of days
12 so that they can keep their dockets moving just like I want
13 to keep my docket moving.

14 Mr. Tanenbaum, you may be very tired at the end of
15 January and February, I might say, because the Judges will be
16 accommodating themselves and not you, you know, because I
17 know Judge Duffy on the matter you are involved, he very much
18 wants to try that case and I need to let him do that.

19 But we are -- you know, my goal is by the end of
20 the -- of my January term, we will have tried the two
21 bellwether cases. That's my intention. And I haven't seen
22 any reason why we would be deviating from that.

23 So, you know, make your plans accordingly, get your
24 vacations in now because I've got a feeling we are going to
25 be pretty busy. Between now and sometime in February of 2016

1 we are going to be going full throttle, okay?

2 So are there any other matters that anyone else in
3 the courtroom needs to raise with the Court?

4 Let me raise the issue, I think Pfizer has filed
5 motions to dismiss in 12 cases for failure to complete the
6 fact sheets.

7 Mr. Hahn, where are we on that? I think y'all got
8 responses due in another week or so?

9 MR. HAHN: Yes, sir. I mean, I believe that's with
10 various law firms that are involved.

11 THE COURT: Yeah.

12 MR. HAHN: And so I'm allowing those individual law
13 firms to file their responses and we'll just work through
14 that.

15 THE COURT: You know, I've tried to keep our focus
16 primarily on the two bellwether cases, but there are certain,
17 you know, fundamental responsibilities if you are going to be
18 in the game here you need to meet. And I know that in the
19 crazy period where people are getting clients in and bringing
20 these cases, particularly these mass tort cases, sometimes
21 some clients are going to be more serious about doing it than
22 others. And I don't think we do anyone a favor keeping them
23 hanging around, cases, and not having their required
24 materials produced. And the sooner they get out of the way
25 if they are not going to do it, the better.

1 So I urge you, you know, obviously you have a duty
2 to consult on all of these; that y'all, you know, that y'all
3 consult with each other and try to find some resolution of
4 that. If not, I will promptly address that as soon as I
5 receive a reply.

6 Are there anyone out there on the phone who have any
7 matter they would like to raise with the Court?

8 Okay. Having heard nothing, I believe our May 2015
9 status conference is at the end and I will see you, if not
10 sooner, next month.

11 Thank you.

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14 I certify that the foregoing is a correct transcript from the
15 record of proceedings in the above-titled matter.

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21 Amy C. Diaz, RPR, CRR

May 27, 2015

22 S/ Amy Diaz
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