

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

IN RE: LIPITOR : 2:14 MN 2502

Telephone conference in the above-captioned matter  
held on Wednesday, June 8, 2016, commencing at 2:06 p.m.,  
before the Honorable Richard M. Gergel, in camera,  
United States Courthouse, 83 Meeting Street, Charleston,  
South Carolina, 29401.

A P P E A R A N C E S

APPEARED FOR PLAINTIFFS VIA TELEPHONE:

Mark C. Tanenbaum, Esquire  
Blair H. Hahn, Esquire  
Justin R. Kaufman, Esquire  
Derek Ho, Esquire

APPEARED FOR DEFENDANTS VIA TELEPHONE:

Michael T. Cole, Esquire  
Mark S. Cheffo, Esquire

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1 THE COURT: Good afternoon.

2 First of all, this is the matter of the MDL In Re:  
3 Lipitor, 2:14-2502.

4 Could counsel identify themselves for the record, please.

5 MR. HAHN: Your Honor, for plaintiffs it's Blair Hahn  
6 and Mark Tanenbaum. And we also have Derek Ho, who is a PSC's  
7 appellate counsel, and Justin Kaufman is on the phone as well,  
8 Judge, who is representing the plaintiffs for the remand issue  
9 only.

10 THE COURT: Okay.

11 MR. CHEFFO: Afternoon, Your Honor. For Pfizer it's  
12 Mark Cheffo and Michael Cole.

13 THE COURT: Okay. We aren't seeing each other as  
14 frequently, so I hope everyone is doing well. There's  
15 silence. Not so good.

16 MR. CHEFFO: We are indeed.

17 THE COURT: I first want to address this issue of  
18 interlocutory appeal versus summary judgment.

19 Mr. Cheffo, can you explain to me, as precisely as you  
20 can, what issues you would view as being part of the omnibus  
21 summary judgment motion.

22 MR. CHEFFO: Sure, Your Honor. And I will try and be  
23 as precise and direct as I can. I think -- and certainly no  
24 slight or intention to the plaintiffs -- but I think that they  
25 may have thought more about our contemplated motion than we

1 actually think. So in terms of -- and let me just put aside  
2 for a minute Daniels and Hempstead. In terms of what we  
3 perceive would be one relatively short, I hate to say page --  
4 but we're talking less-than-ten-page, you know, motion, would  
5 be an omnibus motion that would be on two grounds only. It  
6 would be general causation with respect to any 10, 20 and 40,  
7 as Your Honor knows, and then it would have a second part that  
8 would be on specific causation based on, you know, the Murphy  
9 decision and Your Honor's subsequent order to show cause. So  
10 very streamlined. Essentially, you know, it would say you  
11 need an expert, black letter law in every state, every place,  
12 in order to get past go, if you will, with respect to -- you  
13 need an expert on these medical and scientific issues, and at  
14 10, 20 and 40. They don't have that, and summary judgment  
15 should be granted. And independently, there would be a  
16 summary judgment ground with respect to specific causation on  
17 all of the folks.

18 THE COURT: Now, Mr. Cheffo, let me ask you this.

19 MR. CHEFFO: -- Hempstead and Daniels, I think to  
20 some extent -- Let me say this. We certainly would be guided  
21 by, you know, Your Honor's preference on this. In other  
22 words, whatever you think is most efficient. But really, our  
23 motion there would also be very streamlined. And that's, to  
24 some extent, because if Your Honor will recall, we made a more  
25 omnibus summary judgment motion in those two cases for two

1 reasons, I think. One, the plaintiffs' complaint was far more  
2 fulsome, if you will, at the time, in terms of causes of  
3 action. They ultimately, in advance of trial, I think in the  
4 pretrial, streamlined that. So there were many things on  
5 warranty and other claims that we had made previously. But  
6 our intention would be either to do a very similar general on  
7 specific causation motion that would be very much like the  
8 omnibus. The only thing probably at this point that we might  
9 add -- and again, Your Honor can weigh in whether you think  
10 that this would be appropriate for this time -- would be kind  
11 of intermediary proximate causation. Essentially the argument  
12 being, you know, if you were to read the doctors' testimony,  
13 our view -- the plaintiffs, I'm sure, may disagree with  
14 this -- but our view would be that they would say even if they  
15 knew then what they know now, they would have prescribed  
16 Lipitor because the women needed it, it was appropriate and  
17 they were candidates; and, therefore, that would break the  
18 causal chain, and it's just a separate independent proximate  
19 cause basis. You know.

20 And the last thing I guess I would say is -- So that's it.  
21 We're not talking about 50-page motions or anything  
22 particularly burdensome to deal with. And obviously Your  
23 Honor could either tell us that, you know, even as to that  
24 ground, it's not timely right -- or we don't need to make it  
25 now. Or certainly you, as any judge, has the discretion, of

1 course, as you know, Judge, not to reach that issue, you're to  
2 reach the others.

3 The reason I'm saying all this is because I think we are  
4 very much, you know, our core issue here is we do not want  
5 Your Honor to be kind of burdened with lots of different  
6 motion practice and lots of different issues that you don't  
7 need to reach, that might take time or delay. We don't want  
8 that either. So we are going to make an absolutely  
9 streamlined motion that would be kind of bite size and user  
10 friendly for the parties and for Your Honor.

11 THE COURT: And you -- and this would be the  
12 understanding -- that should the plaintiff succeed in their  
13 appeal, they would -- nobody would be prejudiced as to any of  
14 these other -- the ability to raise any of these other issues  
15 in the future.

16 MR. CHEFFO: Yes, Your Honor. And there we, I think,  
17 share the plaintiffs' goals, meaning efficient and not  
18 necessarily taking up the Court or the parties' time in  
19 briefing potentially, you know, many issues that we might not  
20 ever need to, or if we do, certainly could be handled by the  
21 Court when the case -- if it ever got sent back to Your Honor.

22 THE COURT: Well, I think both -- I think everyone  
23 would have an interest in having the appellate court deal with  
24 these two issues of general and specific causation, and not be  
25 buried in the minutia of the case. It would be almost

1 overwhelming for them and not particularly productive for  
2 either side, I don't think.

3 So, Mr. Cheffo, I would almost say that these other  
4 arguments for Hempstead and Daniel could be made at a later  
5 date, if necessary. I almost think you're better off just  
6 saying, okay, here's Dr. Murphy, here's the judge's order, you  
7 know, is that a proper application of Daubert; same thing 10,  
8 20 and 40 milligrams, is that a proper application, and send  
9 it up on summary judgment. Because you've got to have an  
10 expert opinion to go to a jury anyway. And it's just a  
11 necessary ingredient of the claim that is absent. And you'd  
12 be delivering, frankly, in my view, you'd be delivering the  
13 question to the Fourth Circuit in a sort of simplified way,  
14 and without all the bells and whistles of all these other  
15 claims that we've had to address.

16 So let me ask, Mr. Hahn, if we are able to limit it in the  
17 way that Mr. Cheffo has just described it, does that in any  
18 way give you any peace of mind about the need to go to 5000  
19 plaintiffs for factual affidavits and that kind of thing?

20 MR. HAHN: No, Judge. I mean, my concern, and Mr. Ho  
21 also has an opinion on this, is actually a good bit smarter  
22 than I am on these issues, and so he may want to add to what  
23 I'm saying. But our concern is that we need to do what you  
24 had originally talked about doing, back in January, which was  
25 let's get a clean route of appeal, only on your Daubert

1 rulings. And by taking up 10, 20 and 40, your general  
2 causation opinions, and then Murphy's specific causation  
3 opinion, I don't think we can have a summary judgment as to  
4 all the other plaintiffs in the litigation, because those  
5 other plaintiffs, in some states you don't have to have  
6 expert -- New Mexico is one -- and we would have to do a  
7 50-state review of the law, A; and then B, there may be other  
8 plaintiffs that have -- haven't had the opportunity, and plan  
9 to put up a specific causation expert that's going to give an  
10 opinion that would get them to a jury.

11 THE COURT: No, no, I had -- I entered an order, Mr.  
12 Hahn, in which I said if any of you don't agree with the lead  
13 counsel's position about specific causation, you need, by  
14 designated date, to identify your case and provide me the  
15 names of your experts, so we can get on with discovery. And  
16 no one responded.

17 MR. HAHN: Yes, sir.

18 THE COURT: So I don't think we're out there with  
19 other potential cases.

20 Now, this issue of states that do not require expert  
21 testimony on causation, are there -- I wasn't aware there were  
22 such states.

23 MR. CHEFFO: I mean, I will tell you that this issue  
24 was raised in connection with Zolof before Judge Rufe, and  
25 there was a kind of, I think, a hint that, well, there are

1 other ways that you can kind of get around it. We actually  
2 did an appendix and a survey. To my knowledge, every state  
3 requires some measure of expert testimony.

4 The other issue here, more fundamentally, is that Your  
5 Honor, you know, didn't set up a situation where, well, maybe  
6 you can address general causation by experts, then if you lose  
7 that, you can kind of come back and three years later. I  
8 mean, we had an agreed process, as Your Honor knows, very  
9 aggressive, but fair, for a year and a half, where you said  
10 basically show me your cards, to both sides, on general  
11 causation. If people decided that, you know, they thought  
12 New Mexico had a different way of doing that or something  
13 else, the time to kind of put that forward as to showing  
14 general causation. Your Honor didn't say here's the formula  
15 for the plaintiffs, how you need to show general causation,  
16 nor did you say, Pfizer, here's how you could defend your  
17 case. You said, here are the deadlines, give me everything  
18 that you have so that it can be tested under Daubert and  
19 formalized. That's exactly what happened. If anybody thought  
20 that they needed more or less or different, in order to get  
21 past the general causation hurdle, that's exactly what we've  
22 been doing for the last year and a half.

23 THE COURT: Mr. Cheffo, here's what you could  
24 actually do though. If you were to move for summary judgment,  
25 and part of the opposition would be -- if, in fact, there are



1 such states -- I wasn't aware there are any -- I'm not ready  
2 to certify there are no other states. But let's assume there  
3 are. Then the brief in opposition could say all claims from  
4 the following -- from the State of New Mexico, we oppose it,  
5 because there's not a requirement. You'd still have a -- the  
6 plaintiff would still have to make a showing of whatever is  
7 required under that law to establish causation, even if you  
8 don't need an expert and what evidence they might have.

9 I'm skeptical there are such -- I mean, I have not heard,  
10 until this conversation, any suggestion that there was another  
11 path for causation. Plaintiffs haven't remotely suggested  
12 that.

13 And, you know, I am more than happy, in opposition to the  
14 motion for summary judgment, to hear out the plaintiffs'  
15 argument on that, though I've never heard it before, and make  
16 a determination which may involve from those states denying  
17 summary judgment. I mean, that's a possible thing on the  
18 basis there's another path and there's a basis for -- you  
19 know, there is a basis for surviving summary judgment.

20 I have to say, I think summary judgment's the right path  
21 here. I think interlocutory appeal leaves it you still have  
22 whether the Court is going to take it or not. Let me just  
23 tell you, they don't like interlocutory appeals. I think  
24 we're in a position to do it. But I'm going to afford the  
25 plaintiff every opportunity, in opposition to summary

1 judgment, to offer any reasons they wish why summary judgment  
2 is not appropriate, including the issue of that it's not  
3 required, and under the standard of that state, you know, that  
4 this type of evidence is present.

5 MR. HAHN: Judge?

6 THE COURT: Yes.

7 MR. HAHN: Judge, if I may, this is Blair. My  
8 problem with that is I don't have the authority to do any of  
9 that as to specific causation plaintiffs. All I have is the  
10 authority granted under the MDL statute. And so it just  
11 breaks it down to individual plaintiff issues, potentially,  
12 motions for reconsideration, that could be a mess. That's why  
13 we were suggesting doing an interlocutory appeal, which is  
14 pragmatically the same to Pfizer one way or the other at the  
15 end of the day. The only real difference is bragging rights  
16 now versus waiting until the Fourth Circuit rules.

17 THE COURT: You know, Mr. Hahn, you have never  
18 mentioned to me -- I was trying to find a bellwether case.  
19 You know I was trying to do that to give y'all a chance to try  
20 the case. And I asked you, do you have any case, of all the  
21 5000, that you would like to pursue as a bellwether? I was  
22 prepared to let you do that. And I -- you know, we did the  
23 80-milligram cases, which you had an opinion. And you told me  
24 there are no cases, that this is it, I've done what I can do.

25 MR. HAHN: Yes, sir.

1 THE COURT: And so I'm hearing now for the first time  
2 you've got other cases.

3 MR. HAHN: Yes, sir, I did. And that was in the  
4 context, as I understood it, of the 80-milligram cases and the  
5 Waters criteria. But be that as it may, I was not aware of  
6 the New Mexico exception until this week, and it was one that  
7 Mr. Ho actually pointed out to me.

8 THE COURT: Anybody other than -- any state other  
9 than New Mexico?

10 MR. HAHN: Derek, do you have --

11 MR. CHEFFO: Your Honor, this is Derek Ho.

12 THE COURT: Yes, sir. Welcome aboard, Mr. Ho.

13 MR. HO: Thank you very much. We haven't done a  
14 comprehensive survey. We do think that New Mexico is at least  
15 one state that doesn't require expert evidence, and we think  
16 there may be others. In fact, I think there's a Fourth  
17 Circuit decision that alludes to Georgia being another such  
18 state.

19 But I can't say that we've gone through the effort to do  
20 the 50-state survey. And that's part of the inefficiency that  
21 we think is part of Pfizer's proposal. We don't think there's  
22 really any need to go through all of that, if the Fourth  
23 Circuit is willing to take the interlocutory appeal.

24 THE COURT: But it wouldn't settle it anyway, because  
25 if you go up on interlocutory appeal and you've got all these

1 other cases, it's getting us nowhere.

2 You know, Mr. Ho, I'm glad they got a smart guy in there  
3 looking, but we've been in this thing for a couple years, and  
4 suddenly a new guy gets in and he has a new theory, you know,  
5 at some point, you know, we go with what everybody presented  
6 at the time, and not what a new lawyer who's handling the  
7 appellate case suddenly comes up with a new theory.

8 I will say this. In opposition to the motion for summary  
9 judgment, y'all can brief New Mexico or whatever other state.  
10 And if I'm persuaded there's a material difference, I'm going  
11 to consider denying summary judgment as to those states. But  
12 if there is such a state -- Mr. Cheffo says there is not --  
13 we'll deal with that. But we'll do it in the context of a  
14 summary judgment motion.

15 And there was a schedule proposed by the defendant, and I  
16 didn't get a response. I know that, Mr. Hahn, you were  
17 obviously proposing a different path. Assuming for a moment  
18 we're going to go with a schedule, does the proposed schedule  
19 of June 24 for the defendant to file summary judgment, a  
20 response by the plaintiff on July 22, and a reply on  
21 August 12, do you have any opposition to that schedule?

22 MR. HAHN: I would like to talk to my people about  
23 that, if I could, Your Honor, and let you know later today?

24 THE COURT: That would be fine.

25 MR. HAHN: Thank you.

1 THE COURT: And would there -- why don't you, at the  
2 same time, Mr. Hahn, would there be a desire for oral argument  
3 on summary judgment?

4 MR. HAHN: Yes, Your Honor.

5 THE COURT: I would plan for summary judgment, if we  
6 kept on that schedule, on September 7th.

7 MR. HAHN: All right, sir.

8 THE COURT: Okay? And I might suggest that to the  
9 extent you have some alternative proposal, that you and Mr.  
10 Cheffo might confer first and see if you can't reach some  
11 agreement. But I need to -- you know, this is a schedule that  
12 sort of suits the demands I have in chambers right now, so I  
13 would not want to deviate much from this.

14 MR. HAHN: Yes, sir.

15 THE COURT: I have a capital case that begins on  
16 November 7th, that I, you know, I need to be -- I won't have  
17 much opportunity for awhile after that to address these  
18 issues. Okay?

19 MR. HAHN: We'll get something to you today.

20 THE COURT: Okay. Now, there was an issue regarding  
21 a desire by counsel on the remand motions for oral argument.  
22 Who wishes to speak to that?

23 MR. KAUFMAN: Your Honor, Justin Kaufman is on the  
24 call for the plaintiffs to address that issue.

25 THE COURT: Very good. I'll be glad to hear from

1 you, Mr. Kaufman.

2 MR. KAUFMAN: Thank you, Your Honor, and we  
3 appreciate the opportunity for you letting us join this call.  
4 I'm speaking on behalf of a number of different groups of  
5 plaintiffs. So there is a large group of plaintiffs whose  
6 cases were filed in California State Court. There are  
7 somewhere around 3500 plaintiffs who had filed there. There  
8 are two cases out of State Court in Missouri, and there's one  
9 case out of State Court in Illinois. And the majority of  
10 these cases -- in the majority of these cases the Magistrate  
11 Judge has already issued an order either remanding these cases  
12 back to State Court, or suggesting a remand transfer back to  
13 the Federal Courts in California.

14 THE COURT: Well, they haven't remanded. A  
15 Magistrate Judge gives me a report and recommendation.

16 MR. KAUFMAN: That's right, Your Honor. Although the  
17 Magistrate Judge's order in the California cases, it's styled  
18 as an order of transfer back to the California Federal Court,  
19 and it is up to you to review that. And you can review that  
20 on a clearly erroneous standard and decide whether or not  
21 that's appropriate or not. So all of those Magistrate orders,  
22 to the extent they've been issued, have been appealed by  
23 Pfizer, and the briefing has been completed for some time.  
24 And it's our position that all of these cases should be  
25 remanded or transferred back, per the Magistrate Judge's

1 orders. But if you're not inclined to do that, then we would  
2 like the opportunity to have oral argument in these cases.

3 THE COURT: Mr. Cheffo, does the defendant want oral  
4 argument on the remand?

5 MR. CHEFFO: Yes, Your Honor.

6 THE COURT: I'll do -- you know, we're glad to do  
7 oral argument. So we'll set that probably not at the same  
8 time I'm dealing with summary judgment, but around the same  
9 time. Okay?

10 MR. HAHN: Thank you, Your Honor.

11 MR. KAUFMAN: That's fine. The only thing I'd ask  
12 is, you know, this is a large group of plaintiffs, and I think  
13 Pfizer will agree, most of the issues are consistent across  
14 all of the cases; there are some individual differences. And  
15 so we'd like the opportunity at least to discuss with counsel  
16 how best to address these remand positions. We want to make  
17 it efficient for the Court and for all counsel. So if we just  
18 have the opportunity to discuss that before it's time to hear  
19 those.

20 THE COURT: I urge y'all to confer and let us know,  
21 and -- but I want to give y'all -- I want to give counsel  
22 every opportunity to be heard on these matters.

23 MR. CHEFFO: Your Honor, I'm sure -- I'm pretty  
24 confident we will be able to work out any logistical concerns  
25 that the plaintiffs have in terms of presenting their

1 argument.

2 THE COURT: Good. I have raised the issue in a text  
3 order with counsel, about when we might stop allowing tag  
4 along cases to be transferred here, and when we might allow  
5 out-of-district direct filings to stop, and wondered if  
6 counsel had any thoughts on that.

7 MR. HAHN: Judge, this is Blair.

8 MR. CHEFFO: This is Mark. I don't know if, Blair --  
9 Blair, Mr. Hahn and I had a chance to speak briefly about this  
10 yesterday, so I don't know that I speak for both of us, but  
11 maybe I'll just answer your question directly, and Blair can  
12 tell me if he agrees or not.

13 But I think our view was this, Your Honor, is obviously a  
14 lot of work has been done and, you know, and it's certainly a  
15 fair question. I guess what I would say at this point, for  
16 two reasons, is that I would not kind of propose ending the  
17 MDL or kind of not having cases transferred, really for  
18 efficiency purposes. The reality is there are still a fair  
19 number of cases that are being filed, certainly not at the  
20 level that there were before, but, you know, since, you know,  
21 April 18th there was, you know, probably, I don't know, maybe  
22 15 or 20 cases, but there's over 200, 300 different  
23 plaintiffs. So to the extent that, you know, certainly Your  
24 Honor's going to have this at least until after the Fourth  
25 Circuit rules, it makes sense, at least from our perspective,



1 to have the efficiency. Because otherwise I think what would  
2 happen is we'd wind up potentially with 50, 75 or even more  
3 cases around the country in Federal Courts, and that would  
4 somewhat defeat the purpose of what you have kind of  
5 accomplished. And I know you also indicated that certainly,  
6 you know, at a reasonable point, like most judges, you will  
7 determine what to do with any cases that remain before you.  
8 But from our perspective, I think that time is probably not  
9 now, and probably would urge you to at least wait until after  
10 we get some guidance from the Fourth Circuit to then decide  
11 what else is -- what to do. And I think similarly, if you're  
12 going to do that, as we are urging, then there would be  
13 probably no reason to change the direct filing rules, again,  
14 at this point, because they seem to work in the context of  
15 what you've built already.

16 THE COURT: Mr. Hahn, what is your view?

17 MR. HAHN: Judge, to the extent that if as long as  
18 the MDL is open, I think we should have direct filing. I  
19 don't see any reason not to do that. As far as when we think  
20 the MDL should be shut down, we probably -- we agree with the  
21 defendants that we should wait until after the Fourth Circuit  
22 has ruled and we see where we are. To do otherwise would  
23 create some common benefit issues. If we're correct at the  
24 Fourth Circuit, and the MDL had been shut down, that just  
25 creates a problem that would be hard to go back and undo.

1 THE COURT: I get that. And it's frankly an issue,  
2 Mr. Hahn, I hadn't thought about.

3 You know, one of the things that occurs to me that we  
4 might need to address, is this. You know, I entered that text  
5 order awhile back about specific, you know, if you have a  
6 specific performance case -- if you don't agree with the  
7 plaintiff on -- lead counsel for plaintiff on specific  
8 causation, you need to identify your case and bring it, and  
9 identify your expert so discovery can commence. And I got --  
10 of course we mentioned earlier, no response.

11 Perhaps I should reissue that text order for all cases  
12 filed since then.

13 MR. CHEFFO: I think that might be helpful.  
14 Absolutely. I mean, again, one thing to -- you know, within  
15 30 days after filing. And again, this is something that you  
16 neither kind of, I think, put on your text order agenda, nor  
17 have I discussed with Mr. Hahn, in fairness. So I'm just kind  
18 of throwing this out there, and I know that they haven't had a  
19 chance to address it. But in some -- so I think that's a good  
20 idea.

21 I also think that in other litigations that there are --  
22 sometimes people have actually wanted to join, even  
23 afterwards, you know, and essentially said, you know, for the  
24 same reasons we reserve our rights, but we'd like to -- we  
25 will acquiesce in summary judgment being granted, just so we

1 can all go up or go down at the same time. So I don't know  
2 that any of the plaintiffs who might not otherwise be bound  
3 will do that or not, but it's not uncommon, in my experience,  
4 for counsel and the plaintiffs to do that.

5 So I think there's two issues. One is, yes, reissuing it,  
6 I think, makes sense, but also, you know, there may be an  
7 opportunity for Blair and his team to determine if anybody who  
8 arguably might otherwise be outside the summary judgment would  
9 want to fall within it.

10 THE COURT: Okay. Mr. Hahn, do you have any response  
11 to that?

12 MR. HAHN: No, I think that it probably makes sense  
13 to issue a second order, Judge. I would ask that you give  
14 more than 15 days to respond, because it's going to take  
15 longer than that for people to find an expert that --

16 THE COURT: Well, they should have already had an  
17 expert. I mean, you know, very frankly, Mr. Hahn, you bring  
18 your lawsuit, and I mean, due diligence is, you know, you've  
19 got experts. And to simply say now I'm going to start all  
20 over again as if they've never been part of the case, and  
21 we're not expecting these lawyers to have due diligence, I am  
22 not impressed with that. Now, I don't, you know, if you want  
23 me to do 30 days instead of 15 or something, that's fine.

24 But the truth is, you know, you have not gotten the result  
25 you wanted, Mr. Hahn. But if anyone asks me, you have worked

1 as diligently and conscientiously as any lawyer could have, in  
2 furtherance of your claims. And the idea that someone is  
3 going to off the wall come up with some new theory you haven't  
4 thought of, or new causation angle you haven't thought of, I  
5 think is an improbable development. And I don't want to open  
6 a new round of a new approach to try to go around what we've  
7 done for the last several years.

8 So I just think that if somebody thinks that your  
9 approach, lead counsel's approach, your and Mr. Tanenbaum's  
10 approach on specific causation is wrong, that there were  
11 bellwether cases, step forward and tell me who your experts  
12 are. Talk is cheap. Not having your experts, I'm pretty  
13 skeptical. I never brought a complicated case without having  
14 an expert. I mean, that would be ridiculous.

15 MR. HAHN: Yes, sir. And I think in a perfect world  
16 I would agree with you. But in an MDL practice, lawyers sit  
17 back and allow the PSC to do the general causation work, and  
18 they wait to get their specific causation experts when they're  
19 needed, if the case is ever remanded.

20 THE COURT: Well, they knew, everybody would be on  
21 notice of what's in the docket, they know they were asked,  
22 they know the position you've taken, they know the potential  
23 consequences of it. It's apparent to anyone. And they've  
24 done nothing. And now we're supposed to let them start over  
25 as if they have never been involved in the case? This is a

1 new case? I don't buy that.

2 MR. HAHN: No, sir, I wasn't suggesting that. But,  
3 you know, if you could give them 30 or even 45 days, I think  
4 that would be a good thing.

5 THE COURT: I need to think about all this. I don't  
6 want to disrupt the SJ briefing. So I'm concerned about this.  
7 And we may just have to deal with that issue at a future time.  
8 The implications of doing it may just be inviting litigious  
9 conduct just to avoid summary judgment. And I'm not sure  
10 that's a good idea, that I want to do that.

11 MR. HAHN: Yes, sir.

12 Judge, do you have any feel for when you'll -- assuming we  
13 have oral argument on the 7th of September, when you would  
14 issue your order?

15 THE COURT: I would have a goal sometime in September  
16 to do that.

17 MR. HAHN: All right, sir. We're just trying to  
18 figure out the timing for the Fourth Circuit.

19 THE COURT: I mean, that would be my goal. You know,  
20 sometimes, Mr. Hahn, just like you, I don't have complete  
21 control of my life.

22 MR. HAHN: Yes, sir.

23 THE COURT: I don't have judges jerking me around,  
24 but I have other things doing that. But that would be my goal  
25 is to get an order out in September.

1 MR. HAHN: All right, sir.

2 While we're on the phone, Judge, if I could also ask,  
3 assuming -- I mean if, after I speak with my people, they say  
4 they don't want oral argument, that we'll just rest on the  
5 papers, I'm assuming that Pfizer would have no issue with  
6 that, and that would probably help you out a little bit as far  
7 as getting an order issued a little more quickly, wouldn't it?

8 THE COURT: It would.

9 MR. HAHN: Okay.

10 MR. CHEFFO: And I guess we can certainly talk about  
11 that, if that's what your position is when you get it and we  
12 see your opposition and we feel similarly, then sure.

13 THE COURT: You know, one thing, y'all are now  
14 talking about oral argument, Mr. Cheffo, y'all might -- and  
15 Mr. Hahn might say at this point we don't want oral argument,  
16 but once you get into the briefing, you may say I do. And if  
17 you --

18 MR. CHEFFO: Exactly.

19 THE COURT: So I wouldn't consider that to be final.  
20 Obviously once the reply is filed, we need to know whether  
21 we're going to have oral argument or not. But there may well  
22 be developments in the briefing that cause one or both parties  
23 to want oral argument, and I'm fine with that. I'm not trying  
24 to prevent you from having oral argument.

25 MR. HAHN: Judge, if we could then just go on and

1 take the date of the 7th, and Mark Cheffo and I will talk,  
2 after the replies, and if we decide at that point that neither  
3 party wants oral argument, we'll turn you lose.

4 THE COURT: I think that's absolutely fine.

5 MR. HAHN: Thank you, Judge.

6 THE COURT: Okay. Any other matters to be addressed  
7 at this point?

8 MR. CHEFFO: No, Your Honor, not here.

9 MR. HAHN: Nothing from the plaintiffs, Judge.

10 THE COURT: Very good. I'm sure we will be talking  
11 soon. Thank you very much.

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13 (Conference concluded at 2:39 p.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

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Debra L. Potocki, RMR, RDR, CRR