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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 Thursday, April 23, 2015, commencing at 10:12 a.m., before the Honorable Richard M. Gergel, in Courtroom III, 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:

- James J. McHugh, Jr., Esquire
- Joshua M. Mankoff, Esquire
- Mia L. Maness, Esquire
- Blair H. Hahn, Esquire
- Christiaan Marcum, Esquire
- Elizabeth M. Burke, Esquire
- David F. Miceli, Esquire

APPEARED FOR DEFENDANTS:

- Michael T. Cole, Esquire
- David E. Dukes, Esquire
- Mark S. Cheffo, Esquire
- Lynn Pruitt, Esquire
- Sheila Birnbaum, Esquire
- Sheila Brodbeck, Esquire
- Kelly Evans, Esquire

1 THE COURT: Okay. We are here in the matter of In  
2 Re: Lipitor. Could counsel who plan to be speaking today  
3 identify themselves for the record, beginning with plaintiffs'  
4 counsel.

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

6 MR. CHEFFO: Your Honor, Mark Cheffo.

7 THE COURT: Okay. Are folks on line as well?

8 THE CLERK: Yes, sir.

9 THE COURT: I had a pending motion for a protective  
10 order. Mr. Cheffo, anything else you want to add to that?

11 MR. CHEFFO: No, Your Honor, I think we've laid out  
12 our positions for the Court, and I think we'd rest on that.

13 THE COURT: Very good. Mr. Hahn, it was raised in  
14 there that some of the issues in that 30(b)(6) might be  
15 narrowed by some written discovery. Does the plaintiff have a  
16 problem, before proceeding with a 30(b)(6), if I were to allow  
17 that, to try to narrow the scope of that, or even to see if it  
18 could be accomplished by written discovery?

19 MR. HAHN: Well, Your Honor, we are working to narrow  
20 the scope under nine major points, and we're working -- we've  
21 had discussions last night and again this morning about that,  
22 and we are going to be narrowing the scope.

23 THE COURT: And I understand also there was some  
24 thought that perhaps some of the other depositions that have  
25 already been scheduled might -- ended up addressing -- some of

1 the fact depositions, some of the issues that might render at  
2 least some of those questions unnecessary in the 30(b)(6)?

3 MR. HAHN: Your Honor, I am not -- pragmatically I  
4 think the answer is that's what's going to happen. I am not  
5 sure that the depositions of the sales reps would necessarily  
6 further narrow the scope more than we're going to do anyway,  
7 but we are going to narrow the scope, but pragmatically, that  
8 deposition will be after, if not all of most of the sales reps  
9 going forward. And, of course, if we get the information from  
10 the sales rep that we don't think they would have, but if we  
11 do get it from them, there would be no reason to --

12 THE COURT: If I were to grant that, you would not  
13 have a problem of, A, trying to narrow and to see if you can't  
14 resolve it by the written discovery requests, and B, taking  
15 the 30(b)(6), if necessary, after those sales rep depositions.

16 MR. MICELI: Can I address that?

17 Your Honor, David Miceli. I'm been working with Pfizer's  
18 counsel since early February on this deposition notice. There  
19 have been some productions that have been made to date, as our  
20 briefing points out, we believe they're woefully insufficient,  
21 and in certain aspects -- well, in two aspects have been  
22 nonexistent, and others simply nonresponsive.

23 It is my understanding from the discussions as reported,  
24 that we were going to be meeting and conferring to narrow the  
25 scope of the deposition, not that we would be initiating new

1 discovery more than 90 days -- or about 90 days later, that  
2 will then have another 30 days to respond. Last night, after  
3 I heard of the discussions yesterday, I went and re-reviewed  
4 both of the marketing depositions that have gone forward thus  
5 far. Both of those deponents distinguished in different ways  
6 the difference between marketing and sales.

7 So the 30(b)(6) deposition we want to take will not be  
8 obviated or covered by sales reps. I've explained to our team  
9 this morning when going over this and reviewing this  
10 deposition testimony, it's as if marketing develops plans that  
11 goes up one side of a mountain, is handed off to the sales  
12 side, and goes down the other side and is communicated to  
13 physicians. That's one aspect of marketing.

14 In the deposition of Sean Aghen, he identified 13  
15 different marketing functions that have absolutely nothing to  
16 do with the sales force. Those are items that we need to  
17 discuss with a marketing witness, not with a sales witness.

18 And as a result, because of both the functions of  
19 marketing being separate and distinct from the functions of a  
20 sales force, we're going to have to take the sales rep  
21 depositions and a marketing deposition, with very little  
22 overlap on those two topics.

23 THE COURT: What you're saying makes sense to me. I  
24 just think the -- there's been such a volume of materials  
25 produced, that sometimes some production may not get as much

1 attention as it might, in terms of completeness. I think we  
2 have gotten everybody's attention here, on the defense side,  
3 of the importance of this information.

4 And can we agree to try to get -- Mr. Cheffo, is it too  
5 much to ask to try to get the -- supplementing materials in  
6 the next 15 days on those nine categories?

7 MR. CHEFFO: Yeah, I would say this. The answer is  
8 sure, we'll continue to talk. I think we're a little bit,  
9 today, a cart before the horse. Because I just don't want to  
10 get into the details too much, unless Your Honor wants to, but  
11 I kind of fundamentally disagree with some of the issues here,  
12 and that's why I think meeting and conferring. Because there  
13 are nine categories, a lot of what I think Mr. Miceli is  
14 talking about, it's hard to understand that when you read the  
15 deposition notices and the categories, there's kind of a  
16 disconnect. So if there are areas that he thinks he wants to  
17 talk about, we need to talk about those.

18 But what we did do was go through, and I think as we  
19 talked and I think laid out in our letters, we produced 40,000  
20 pages in response to that. And that was targeted specific  
21 information.

22 So again, as we've always done in this litigation, if  
23 there are specific things they don't understand, they have  
24 some questions, of course we're going to deal with it. So if  
25 they give us reasonable follow-up requests, the answer is

1 absolutely, probably sooner than 15 days.

2 But I do think that, you know, the most sensible issue  
3 here is to kind -- we have a lot on our plate, both sides,  
4 with expert issues. And I think on one side where either side  
5 can say everything is critical, everything is so important,  
6 but if it was really so critical, I suspect you would have  
7 heard about it six months ago, not today.

8 So we understand that Your Honor's certainly inclined to  
9 allow us to proceed, we're going to continue to work with  
10 them. But I think the better course here is to take these  
11 eight or so depositions. And there is going to be clearly  
12 some overlap. And again, when you look at what's at least  
13 asked for in the deposition notice, and then there may well be  
14 things afterwards. But it will help us figure out, frankly,  
15 and also help us get some time to identify, you know.

16 The one other thing that I think is important here is, you  
17 know, not so much the blame game, but the reality is, is that  
18 all of these issues about what, you know, Mr. Aghen talked  
19 about, these are not new. This deposition was taken a long  
20 time ago, and they had an opportunity to take, you know,  
21 Mr. Sage, we sent people to London to prepare, and a week  
22 before, they said they don't want to take it.

23 THE COURT: Let's do this. I'm inclined, with  
24 certain caveats, to allow the 30(b)(6). Among those, I want  
25 to make a good faith effort to meet and confer over

1 supplementation of documentation, and let Mr. Miceli and  
2 others point out where they think there might be deficiencies.

3 I do want these depositions to be delayed until after the  
4 sales depositions. And to the extent Mr. Miceli is right,  
5 that there's no overlap, no harm done. If there is, then it  
6 might narrow the request. But I'm inclined to allow it.

7 MR. MICELI: May I ask something on the record, Your  
8 Honor?

9 THE COURT: You may.

10 MR. MICELI: So we can clarify certain things. In  
11 the narrowing of the issues there are nine specific topics  
12 that we've asked for. Numbers one and two are already off the  
13 table, because we've accepted what Pfizer has produced to us.

14 THE COURT: So we're now down to seven.

15 MR. MICELI: Right. Now we're down to seven. With  
16 regard to number eight, all Pfizer has to do is tell us they  
17 can't find a number of sales reps they had in their company,  
18 and that is off the table. If they simply can't tell us who  
19 their employees were or how many there were, that's off the  
20 table.

21 With regard to area number nine, we can cover that with  
22 the sales reps. That leaves three through seven.

23 In early February we had our first meet and confer about  
24 this. Excuse me, late February, we had our first meet and  
25 confer about this deposition notice. Items three, four, five

1 and seven ask for budgets. Not a single budget has been  
2 produced thus far, despite at least five meet and confers with  
3 Mr. Cheffo or his team. And while we're looking towards --  
4 and I think logistically it would be impossible to schedule  
5 this 30(b)(6) deposition until now, after the dates we said  
6 we're going to have the sales reps done by. That date right  
7 now stands as May 15, but Pfizer has not even produced the  
8 custodial files in the Hempstead case yet, we don't know when  
9 they're going to start doing that, we don't know when they're  
10 going to finish doing that. So we don't know what those sales  
11 rep depts or documents may show.

12 But I think what we may need to do today is at least set a  
13 bookend of, say, the 10th or 17th of July, that this  
14 deposition must go forward, and that sometime in the interim  
15 that your judge can fix -- Your Honor can fix, they tell us  
16 when they're going to actually give us the budgets.

17 THE COURT: Let's talk about that.

18 MR. MICELI: Sure.

19 THE COURT: What about the budgets, Mr. Cheffo, he's  
20 talking about?

21 MR. CHEFFO: Your Honor, again, I think we are -- We,  
22 I think, have maybe a disagreement about the meet and confer  
23 process. And I don't -- I think there is information that we  
24 talked about whether we would give it, and obviously if it was  
25 a press a button and there was a document, I think as Your

1 Honor knows, we've pressed a lot of buttons, we've produced a  
2 lot of documents.

3 THE COURT: You've got a lot of documents where you  
4 couldn't press the button.

5 MR. CHEFFO: That's true, and -- exactly, and we --  
6 there was no button, but we still produced the documents. So  
7 if this is an area where there's a specific, you know, kind of  
8 budget or document, I think then we will obviously continue to  
9 make --

10 THE COURT: You'll make a diligent search. Do you  
11 have any problem meeting that July 17 deadline?

12 MR. CHEFFO: No, I think that's a reasonable  
13 deadline, Your Honor, I think it will give us a chance to meet  
14 and confer. If there are documents -- It's in our interest,  
15 if we can take some of these issues -- I've thought all along  
16 that most of this kind of deposition is really a document  
17 request. So to the extent that we can --

18 THE COURT: It looked like a lot of documents. But I  
19 want to respect the right of the plaintiff to direct its own  
20 discovery. So I'm going to deny the protective order, but I'm  
21 going to set conditions that we discussed here, and I will  
22 issue an order in the next day or so on this.

23 MR. CHEFFO: Thank you, Your Honor.

24 MR. MICELI: Fine. And to help Pfizer out, if they  
25 look at the CVs of the two witnesses they have produced, they

1 both explain having to submit annual budgets. They can simply  
2 go to Mr. Aghen and Miss Gallagher and ask them where they  
3 keep their budgets.

4 THE COURT: Mr. Miceli, don't buy it back now, okay?

5 I don't have any other pending motions in front of me  
6 right this moment. Are there any matters that either Mr. Hahn  
7 or Mr. Cheffo would like to raise with me at this point?

8 MR. CHEFFO: Not here, Your Honor. Thank you.

9 MR. HAHN: Nothing, Your Honor.

10 THE COURT: Okay. Let me talk a little bit about our  
11 schedule going forward here, because I think we're coming to a  
12 pretty critical part of the case.

13 We've already set the May 21, 2015 status conference, that  
14 one has been set, but we have not set status conferences after  
15 that.

16 If we did the normal pattern as we've been doing it, the  
17 next one would have been June 25th, but I have a trial set  
18 that date. Y'all are not going to believe this, I actually  
19 have hundreds of other cases. So I'm going to set June 18 for  
20 the one in June, so that I will not be in the midst of trial.  
21 The one following in July will be July 23rd. The next one  
22 will be August 27. And I anticipate at that time the general  
23 causation Daubert motion arguments will be made at that time.  
24 The briefing is completed on the July 31, and unless something  
25 interferes with me getting ready, that's when I anticipate we

1 will have oral argument on general Daubert causation.

2 The next one is September 24, 2015. I anticipate that the  
3 case-specific Daubert motions will be ripe for argument at  
4 that time. The briefing is to be completed by September 11,  
5 2015, and I should have enough time to get ready.

6 I know the parties have raised with me the issue of the  
7 format for that. My present inclination is to simply have  
8 oral argument by the lawyers, but I haven't yet received your  
9 submissions. And to the extent that I think live testimony or  
10 further information would be helpful to the Court, I'll let  
11 you know that. But that generally -- I'm anticipating I will  
12 not need it, but I'm open to it once I read everyone's briefs,  
13 and more importantly, frankly, the supporting documents. As  
14 wise as I'm sure you all think you are, it's actually the  
15 underlying reports and testimony that I'm most interested in,  
16 and getting down and making my own judgment about the Daubert  
17 issues based on what the experts say, and frankly not so much  
18 what the lawyers say about what the experts say.

19 Okay. Are there other issues to come before the Court of  
20 anyone in the courtroom here, first of all?

21 Okay. How about anyone on the phone? Is there anyone who  
22 has any issues they would like to raise with the Court?

23 There being no response, the hearing is adjourned.

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25 (Court adjourned at 10:25 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  
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Debra L. Potocki, RMR, RDR, CRR