UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 20-md-02924-ROSENBERG

IN RE: ZANTAC (RANITIDINE) PRODUCTS LIABILITY LITIGATION.

West Palm Beach, FL
January 5, 2023

STATUS CONFERENCE (through Zoom)
BEFORE THE HONORABLE ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE

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THE COURT: **All right. Good afternoon, everyone. We are here in the matter of MDL 2924, In Re: Zantac Products Liability Litigation. We are here for a status conference, we are conducting the conference via the Zoom platform. I want to thank everyone for clearing your calendars to be here today. I thought the status conference would be helpful to educate me on some issues that I have been thinking about since the Court's entry of the Daubert order last month.**

I do appreciate that it may not be the case that you will have answers to all of the questions that I have, and that is okay. I just wanted to begin the conversation about some of the issues that I see, and I appreciate the input that you have given me through your proposed agenda of matters that we should be taking about and resolving at an appropriate time that seems feasible and consistent with everyone's needs.

So, I don't want anyone to feel as if, if you don't have an answer to a question that there is anything wrong with that. If we need to have a followup status conference that is fine as well.

I am grateful that you are here. I hope everyone is doing well. I want to take this opportunity to wish everybody a happy new year and I hope everyone had a nice holiday season.

With that -- let me make sure that my volume is sufficiently up. I am very low.

While you are convening the next group, I may just

take a look, Melanie is here, to ensure that the volume is up. Hopefully this is a little better. If you have any trouble hearing me, by all means let me know.

The first topic that I wanted to address, I have called it orders, judgments that need to be entered on filed personal injury cases alleging designated cancers. So, if I could ask the attorneys who will be addressing that topic to please turn your video on and I will have each of you state your name for the record. And when you speak, again, if you could kindly state your name each time you speak, that would be most helpful to us. I will have you state your appearance for the record.

MR. McGLAMRY: Mike McGlamry for Plaintiffs.

MR. BAYMAN: Good afternoon, Your Honor, Andrew Bayman, lead counsel for Boehringer Ingelheim, but on behalf of all brand Defendants.

MS. ZOUSMER: Good afternoon, your Honor, Julia Zousmer on behalf of all brand Defendants today and Patheon.

MR. YOO: Good afternoon, Your Honor, Thomas Yoo here for the generic Defendants.

THE COURT: Good afternoon to each of you.

What I thought I would do first is, bear with me, I am going to go over my understanding of the topic, which I think you all identified, but maybe in response to the fact that I identified it. I will throw out a series of questions and then

I am going to go back and break it down part by part. I figured if you know the range of issues that I am interested in hearing on, it would be probably more helpful to you in answering any one particular question.

Again, if you don't have a definitive answer, or you think you have an answer, but you need to discuss it more with the clients or co-counsel or opposing counsel, that is fine, but I thought it might be prudent to get the dialogue started at this point.

Let me go through my little rendition here of topic number one.

So, from my perspective, I am thinking about mechanically how should final judgment be entered, what cases need final judgment, and when final judgment should be entered. To that end, previously when the Plaintiffs sought Rule 58 final judgments to appeal the Court's Federal preemption ruling, the Court entered a final judgment on the MDL docket. That judgment included an attachment, Exhibit A. Exhibit A listed all the case in which an individual Plaintiff named only generic manufacturer Defendants, and the Court directed the Clerk of the Court to enter a copy of the final judgment in each individual case listed on Exhibit A. There were 18 cases that were listed on Exhibit A.

As for the how part of my question, the question is, how should -- should the same procedure be used in the present

for the Court's general causation ruling where the Court attaches a list of cases to a final judgment? Must the Clerk of the Court docket each final judgment individually? If the Plaintiffs file many thousands of cases from the registry, must final judgment be entered in each of those cases as well?

May the Court and the parties, through agreement, deem the final judgments to be entered in each individual case even if final judgment is only formally entered on the MDL docket?

Is there case law for the proposition that final judgment must be entered in each individual case, perhaps for each individual case to have -- among other reasons, for each individual case to have its own clean record? And does any party have a proposed alternative procedure?

Again, I will go back to that in a moment, but that is sort of the how.

The what is, have the parties prepared a list of cases that qualify for final judgment? Do the parties agree that every designated cancer personal injury case should receive a final judgment?

And if the parties have not prepared a list of all individual cases qualifying for final judgment, when can the parties finalize that list?

Lastly, as to the when, when should the Court enter final judgment? Should it do so as soon as possible? Should the Court resolve pending non-designated cancer cases first?

Is there any case management reason or party specific reason to enter final judgment at a certain date?

So, that is kind of the range of topics under -- sub topics under topic one, and I can let you address them all, but beginning with how, the what, and the when.

And I am happy to repeat anything I have just said, but I know you probably have the gist of it because this was an item that you had also considered to be one we should discuss today.

Happy to hear, and again, anyone who speaks, please state your name for the record before you speak.

MR. McGLAMRY: Your Honor, Mike McGlamry for Plaintiffs. Let me start by saying I am not going to be able to answer most of what you raised, nor the questions that we just remember evidence in the last ten minutes before we got on.

I do -- what I was asked to do, I thought, is report where we were with regards to trying to work this out.

As your Honor knows, we got together with the Defense coleads over the past several weeks and ultimately, about I am going to say two and a half weeks ago, we settled on the list of issues that we were going to need to address, and then about eight or nine days ago we received the first proposed order from the Defense coleads that we had been working with them on.

And with regards to this issue, the one of filed cases

alleging designated cancers, I think we had essentially come to an agreement until last night when the issue of the generics and retailers and distributors was thrown in for the first time.

And to answer your question about the list, I believe that the Defendants have put together a list. I think they would tell you, or at least they told us that there may be some tweaking to that as they look closer or further, but there will be a list and, you know, I sort of thought that what we were going to do was report to you that status, and then hopefully, based on the discussions as it related to the -- what we sort of considered non-Defendants, the distributors, retailers, and generics, that we try to work something out with the order.

MR. BAYMAN: Your Honor, Andrew Bayman on behalf of the Defendants. I am going to turn it over to my partner, Ms. Zousmer, on the details, but I would tell you as kind of an overarching view, our view is, and I don't think there is a dispute, you can do an order that attaches a list, but we would say that judgment would have to be entered in the individual cases, and we would ask that that be done as soon as practical.

But as Mr. McGlamry said, we are still working through the mechanics of some of the things and Ms. Zousmer can shed more light on that.

MS. ZOUSMER: Your Honor, it's Julia Zousmer for the record. Mr. McGlamry and Mr. Bayman have pretty much covered

it. We have reached an agreement as far as the brands are concerned on a proposed order and an exhibit that lists all the cases, very similar to the process you described with Exhibit A and 18 cases that were listed on that exhibit, although this time our exhibit includes about 1150 cases, approximately.

This was a very labor intensive project of checking all the dockets. Of course, we would say the list would be without prejudice to file future designated cancer cases, but that it will include all of the filed designated cancer cases that are still open that we are aware of. And it would be our position that to the extent registry claimants begin to file their cases, that those cases would be then added to the list of cases in that exhibit.

THE COURT: Okay. So, let me see if I understand. It seems pretty straightforward.

You envision the Court doing the same thing as it did with the first final judgment the Court entered with respect to the generics, that is, there be a proposed order, final judgment that you will be submitting to the Court that everyone will have agreed to, and if not, we will need to iron that out, but the goal would be -- and you indicated that you are close to reaching an agreement on the proposed language.

There will be an exhibit, it will have approximately 11,050 cases. It will be without prejudice, since you might have overlooked one or two. You would envision the final

judgment being entered on the master docket, MDL docket, as well as in the individual cases, and you would like it done as soon as possible, but that would be necessitated by, number one, getting it from you. So you will need to give me your time frame.

Number two, do you envision the Court waiting until it has ruled on the motion, which is also one of the topics today, regarding how the Plaintiffs want to bring the cases in the registry over to the main docket so that they could be included? I think that was your last comment.

So, does this process presuppose that I will wait until that issue has been ruled on by the Court, and how much time is the Court supposed to wait. Are the Plaintiffs going to tell the Court -- there could be some people who decide not to file, others who decide to file. So, I need to understand that a little bit more.

Also, when you say as soon as possible, is the Court to do that with respect to the designated cancers as a separate issue from what we discussed, which is another topic on the agenda, for the non-designated cancers.

MS. ZOUSMER: So, in terms of your question about the registry claimants and when your Honor would enter this order, because in -- it would contemplate potentially waiting for some of them to file their cases, our position would be that we would like the order to be entered, the judgment to be entered

as soon as possible. We understand that PTO 15 gives the registry claimants 90 days of tolling from the expiration of the registry, which I believe is either today or tomorrow based on PTO 15, 30 days from your Honor's Daubert ruling. So, that would be the back end, I think, of when we would contemplate the final judgments would be entered, but our position, as Mr. Bayman stated, would be that we think judgment is appropriate as soon as possible.

THE COURT: When you say that's the back end, in other words, the Court should wait at least the 90 days?

MS. ZOUSMER: That would be the maximum time I think the Court should wait. If the Court wanted to give those claimants their full tolling period to file their claims in order to be part of the judgment that is entered, then it would be 90 days from either today or tomorrow.

THE COURT: Okay. And what about the non-designated cancers?

MS. ZOUSMER: The non-designated cancers, we contemplated a different process for them. I know we have that as a different agenda item. I am happy to take it up now if --

THE COURT: We can take it up then, but in other words, this whole process you described relates to the designated cancers, and no one is seeing an issue or a problem with entering a final judgment whenever that may be, now or any time, let's say, over the next 90 days as to the designated

cancers only.

MR. BAYMAN: Andy Bayman, your Honor. That is correct. We view these should be treated differently and there is no reason for you to wait on final judgment for the designated cancers based on what happens with the non-designated cancers.

MR. McGLAMRY: Your Honor, Mike McGlamry for the Plaintiffs. I think there is a little bit of difference between the designated cancer order, which addresses filed cases only, and the non-designated which, you know, might extend to anybody at trial that had a non-designated, and as Julia just mentioned, I think that order has been essentially, or close to being agreed upon.

We have one concern as to whether or not, you know -- gosh -- whether or not the generics or retailers or distributors had to wait on it because we have not heard anything in that regard. Assuming they do not, then I think we are this close to having an agreed order for the non-designated.

THE COURT: Okay. As well as the designated as I understand it. Is that right?

MR. McGLAMRY: Yes, your Honor.

THE COURT: What about cases where there is both a designated and a non-designated cancer, which list do they go on?

MS. ZOUSMER: **Your Honor, we addressed that in one of our proposed orders, and we proposed a process very similar -- or exactly the same actually as what you have in PTO 72, footnote 7, which is that if there is a primary designated cancer with metastasis to a non-designated cancer that case is categorized as a designated cancer and vice versa.**

MR. McGLAMRY: **Your Honor, Mike McGlamry for Plaintiffs, and that is correct.**

THE COURT: **Okay. When do you think I will get a proposed order, judgment, and the list with respect to the designated cancers? What is your best -- that is not a question that you have to say tomorrow, just general ballpark.**

MR. YOO: **Your Honor, perhaps this would be a good opportunity for me to jump in and address the generics issue. That may affect the timing.**

The generics were not aware of earlier meetings or discussions between the brands and the Plaintiffs leading up to today. We found out that a proposed judgment had been circulated several days ago. As soon as we found out, we got involved and we have had necessary discussions within our group. We did as soon as we could proposed a requested addition in terms of some language on the proposed judgment, and then we heard last night from the Plaintiffs that they were not in agreement with that proposal.

I don't know if your Honor has seen anything in terms

of a draft of a proposed judgment, but simply put, for today --

THE COURT: I have not seen any draft.

MR. YOO: I don't want to get ahead of the work that the Plaintiffs and Defendants are doing in terms of wordsmithing that document, but our issue is simply this: We don't have anything new to add in terms of the mechanics and the timing and the issues that your Honor has raised today, but our request is that in the judgment, that judgment be entered as to all named Defendants in all of the cases that would be subject to that judgment.

What we don't want is for any potential or purported claim to arguably by some Plaintiff in the future or now survive this judgment as to the generics.

From our perspective, your Honor, you have been very clear, as clear as could be, that your Daubert ruling on general causation in this litigation would be dispositive as to all claims against any party.

So, what we want to make sure is, to the extent that there is any potential or purported claim by a Plaintiff that would seek to assert some type of claim against generics, notwithstanding all that has happened in the litigation regarding generics, that the Court's judgment make it clear that the judgment, based on the Court's Daubert order, includes any such claims, potential, theoretical, purported, or otherwise.

Just to quickly review the relevant procedural history regarding generics, you will recall that in your November 2021 order granting in part and denying in part the parties' request for entry of judgment, you entered final judgment under Rule 50(a) for all generic only cases in which the Plaintiff had filed a Notice of Appeal.

You granted judgment under Rule 54(b) in mixed generic cases on the issue of preemption, and you denied entry of judgment in generic only cases in which the Plaintiff had not yet filed a Notice of Appeal.

So, there is a category there of generic cases where we don't yet have a final judgment.

Additionally, in that same order, your Honor, you included a footnote, I believe it is Footnote 9, and this is Docket Entry 4595, you stated that the Court had not ruled on the issue of whether an individualized negligence and storage -- excuse me, an individualized negligence, storage, and transportation claim was preempted.

Now, we believe that issue has since been resolved. You will recall also, I think, an in-chambers discussion that your Honor and Mr. Barnes and I had with the Plaintiffs' leadership, and that was on January 26th of 2022, and that was shortly before the case management conference that day where the Court asked Plaintiffs' leadership whether they intended to pursue any such claims against the generics.

Plaintiffs' leadership confirmed that they did not intend to pursue any such claims, and so, the subsequent pretrial orders from the Court we believe reflect that discussion. For example, PTO 78, where the Court set a deadline for the Plaintiffs to bring individualized negligence claims was focused on retailers and distributors and it was silent as to the generics.

What we don't have at this point is a judgment that thoroughly documents that any potential claims against the generics have been resolved, and given the dispositive intent nature of the Court's Daubert ruling, we think it makes sense for the Court to make it clear there are no potential or theoretical surviving claims against the generics.

We are, your Honor, still seeing short form complaints filed where the Plaintiffs are naming generics. So, we want to make sure as a final judgment, final document, if you will, in this MDL that resolves all pending claims, that nothing is left, even arguably, for a future claimant to take up where they would say that there is some type of individualized claim that is not addressed in the Court's judgment, or that for some reason there should be another round of Daubert proceedings as it relates to the generics.

THE COURT: All right. Thanks for alerting me to that issue. It is helpful to know, but premature as I have not seen any proposed draft final judgment, and the parties are

still discussing it. I am hopeful that they can, as with every issue, most every issue, work it out, resolve it, address it. If there is still a dispute as to what kind of language should go into the final judgment, we will have to address it at that point, but we are somewhat limited in our time today.

Pauline is actually in a trial and so she has taken a break from the trial to do the status conference. So, I want to make sure we touch all of the issues. It is good to be alerted to that. I would ask the parties, through their continued discussions and negotiations, to see if you can reach a resolution that addresses concerns of all parties, including that which Mr. Yoo has raised. I am going to leave this topic alone. It may be --

MR. McGLAMRY: Your Honor, this is Mike McGlamry. Can I very briefly --

THE COURT: Do you not hear me? I was still talking.

MR. McGLAMRY: I am sorry.

THE COURT: I'll pull the mic closer. What I was going to say is it may be that you are just not able to give me a time frame at this point. I will followup with our special master shortly thereafter to give you some time all of these issues just so I can get a sense of when I might expect to get proposed orders or what is needed with respect to each of these issues that we are covering.

Was there anything else that we needed to discuss on

topic one?

MR. McGLAMRY: Your Honor, again, Mike McGlamry for Plaintiffs. All I was going to add is, in response to your question, if this were just the order that we are working through with the Defense coleads you would have that by the early or middle of next week.

The proposed orders that we saw last night involved the other nine Defendants. We have already let them know we disagree, and I know you don't want to go into all of those arguments as to why we don't agree, but that would make this longer. It is hard to then give you an absolute answer, but we will continue to work on it.

THE COURT: Understood. I appreciate it. I want to reiterate, I am not putting pressure on anybody that there is a time deadline that I have in mind, I am just trying to get a feel for all of this. So, I understand that if additional time is needed to address some late-breaking developments, that is perfectly fine and not to be concerned about that.

MR. McGLAMRY: Thank you, your Honor.

THE COURT: I will leave topic one alone for now and let me move on to the next topic. We will call this topic the process for addressing any filed personal injury cases alleging non-designated cancers. I know Ms. Zousmer was going to get into that, but my brain was focused on topic one. I know there is another group of attorneys who want to appear. If there is

anyone else wants to get on or off so we can address that topic, feel free to do so. For any of our newcomers -- well, I think it would be helpful to have, again, just have everybody state their appearance so there is a record of everyone who appeared for each of the topics even if it is a repeat of topic one.

Go ahead and introduce yourselves.

MR. McGLAMRY: Mike McGlamry for Plaintiffs.

MR. GILBERT: Along with Robert Gilbert for Plaintiffs.

MR. BAYMAN: Andrew Bayman again, Your Honor, for the brand Defendants.

MS. ZOUSMER: Julia Zousmer for brand Defendants.

MR. KAPLAN: Andrew Kaplan appearing for distributor Defendants today, your Honor.

THE COURT: This topic I will handle the same way. The Court's internal question is: How can the MDL sort of come to conclusion given that some individual cases remain with non-designated cancers? Let me give you my overview and then we'll hear from each of you.

According to an internal docket report, 2,482 cases have been consolidated into the MDL. Of those, 889 cases have been dismissed through a notice of voluntary dismissal. Of the remaining 1,593 cases, the Court is unaware of how many cases allege non-designated cancers. The Court has not conducted a

case-by-case audit, but the Court has sampled some cases at random and has confirmed that cases do remain in the MDL that allege non-designated cancers. The Court also presumes from prior reviews of newly-filed short form complaints that some of the 1,593 cases are pro se litigants who have brought non-designated cancers.

So the Court's question is: How can the MDL conclude? Do the parties -- with respect to how it can conclude, do the parties have any suggested procedures for addressing all remaining non-designated cancer cases? Do the parties have a list or know how many cases remain? How should the Court handle pro se non-designated cancer cases?

Should there be a deadline for expert reports for non-designated cancer cases? Should the Court solicit applications for non-designated cancer leadership? Should the Court require non-designated cancer Plaintiffs to affirmatively indicate their desire and intent to proceed with the litigation of their claim?

That is a litany of kind of stream of consciousness thinking about some questions that came to mind. It is not to suggest the Court is looking for new expert reports or new leadership, or anything of that nature, but how are we thinking about non-designated cancers that relates to where we are in the case at this point?

MR. McGLAMRY: Mike McGlamry for Plaintiffs. I know

that Julia started this earlier, and I would say I think this is being resolved, again, unless there is an issue that relates to the generics, distributors, or retailers. Much like with the issue of the designated cancers, we have been working on an order addressing them, the non-designated cancers, and it sets out a schedule from sort of the date of the order.

That schedule is based, not exactly because if you recall, we had PTO 30, and we had PTO 65, and PTO 77 that dealt with the scheduling of the experts in Daubert, but we for the most part used that structure to set out such a schedule. It is literally verbatim in terms of what to do. The dates are obviously almost the same, and it sort of applies to any non-designated cancer filed case, whether it is pro se or not.

Again, with the caveat that it would not change as a result of these discussions we are now hearing from what we call non-Defendants, then I think that very shortly we will have all -- first of next week have all of that to you wrapped up.

MS. ZOUSMER: Your Honor, this is Julia Zousmer. I agree with everything Mr. McGlamry said, the process we have laid out. The one thing I would point out that is different from the prior scheduling order is just the first requirement in the schedule is that we get like a disclosed list of the non-designated cancers for which Plaintiffs intend to put forward general causation experts, and after that everything is

the same, the expert reports and depositions for both sides and then Daubert motions.

So, our expected process would be that all the filed non-designated cancer cases who wish to proceed with their claims would disclose -- 60 days is what we proposed from the entry of the Court's order on the non-designated cancers that they intend to put up experts for those cancers. Then within 120 days they put up those reports, and if Plaintiffs remained on the docket with non-designated cancers who didn't have support with a general causation expert report, Defendants would move to dismiss those cases with prejudice under Rule 41.

And as Mr. McGlamry said, I think we are in agreement on that order and can have it to the Court, absent any changes from the other Defendant groups, if not by the end of this week, then certainly next week.

THE COURT: How many non-designated cancer cases are you thinking there are on the docket, and what does it look like as far as registry claimants who may come over to the docket?

MS. ZOUSMER: The numbers that you gave us when you were asking your question, I wrote down that you said there were 1,593 cases currently pending on the docket. The math is a little bit different -- or our numbers are a little bit different, what we were looking at. I am under the understanding that there are about 1100 non-designated cancer

cases currently filed. We might be double counting, that there are some what we call hybrid cases that allege designated and non-designated cancers, and that is why the 1150 that I discussed earlier with designated cancers, and then the 1,100 non-designated add up to more than the 1593 that you are counting. I am not exactly sure about that, but our understanding is there are about 1100 filed non-designated cancer cases at the present time.

With respect to the registry claimants, there are no registry claimants that are purely non-designated cancer claimants. Any non-designated cancers in the registry are hybrid cases with the primary designated cancers. Under PTO 72, they had to -- they could only remain in the registry if they were designated cancer -- or primary designated cancer cases.

THE COURT: Okay.

MR. McGLAMRY: Your Honor, this is Mike McGlamry again. Although I don't know the exact thing on the numbers, I agree with all of what Julia just said.

THE COURT: Okay. Ms. Zousmer, can you summarize what you are going to be doing with non-designated?

MS. ZOUSMER: Sure. Our process for non-designated cancer cases is that we'll propose an order to your Honor whereby within 60 days of entry of the Court's order the Plaintiffs will be required to disclose a list of the

non-designated cancers for which they will be putting forth -- or they intend to put forward general causation experts, and then 120 days from the Court's order, they have to produce their expert reports for those cancers, and any non-designated cancer cases that remain filed that are not supported by a general causation expert report at that time would be subject to a motion to dismiss with prejudice by Defendants.

THE COURT: I think you said the first was 60, when you say from the Court's order, do you mean from the Court's final judgment?

MS. ZOUSMER: No.

THE COURT: From the working order?

MS. ZOUSMER: Exactly, from the order that we would intend to submit probably this week, the jointly proposed order to govern non-designated cancer cases, or whatever your Honor wants to call it.

THE COURT: That order you think you will have by when, end of next week?

MS. ZOUSMER: Absent any new developments from the other Defendant groups, I think we could have it to you this week.

THE COURT: So, is Plaintiffs' leadership in place now going to be continuing as leadership for the non-designated cancers should certain Plaintiffs indicate that they want to proceed with expert discovery and Daubert process as to the

non-designated cancers?

MR. GILBERT: Your Honor, Robert Gilbert. That is not how things are contemplated to proceed. Plaintiffs' leadership made the decision not to pursue the non-designated cancers as part of this MDL. This order would apply to those non-designated cancer cases that are an file on an individual basis, so that if a particular lawyer or law firms have filed non-designated cancer cases, that they would be under an individual obligation to come forward with their experts if they choose to pursue those NDCs, as we call them, as part of the MDL. That is not a responsibility of Plaintiff's leadership.

THE COURT: All right. And do we have any idea at this point how many either counseled or uncounseled non-designated cancer cases may proceed to the next stage? Do you have a handle on that?

MR. GILBERT: None at all.

MS. ZOUSMER: Your Honor, I understand, and this is Julia Zousmer again, Mr. Gilbert's position that they would not be leadership. Just thinking out loud, I think it would make sense for there to be some sort of leadership for non-designated cancer cases when they disclose their -- the list for which they want to proceed, just so that we are not dealing with multiple different rounds of different experts for each type of cancer.

THE COURT: **Maybe we wait and see -- I will have to see what your proposed order looks like. If there is a proposed deadline and the Court adopts that procedure, we'll know more when we know how many come forward.**

If nobody comes forward, what is the thinking in the proposed order, that they would be subject to being -- a motion to dismiss --

MS. ZOUSMER: **We -- sorry to cut you off, your Honor. We would move to dismiss them under Rule 41 for failure to produce their expert reports after 120 days.**

MR. McGLAMRY: **Your Honor, Mike McGlamry. That is correct.**

THE COURT: **So the Court would -- if they don't come forward in 60 days from the order, you would have the Court wait another 60 days to see whether expert reports were submitted?**

MS. ZOUSMER: **I suppose if no one comes forward after 60 days, we would move at that point. Then, if they do come forward but don't produce reports, we would move at that point. So there would be two opportunities for us to move.**

THE COURT: **All right. Is there anything else that anybody wants to say on that topic?**

MR. KAPLAN: **Yes, your Honor. This is Andrew Kaplan for the distributor Defendants. I believe the Court had a question coming into this whether there had been any individual**

claims filed, and it wasn't clear to me whether it is individual negligent claims, but pursuant to PTO 78, the Court gave file claimants a 30-day period in which to file -- if the Court remembers, it said there could be these hypothetical individual negligence claims filed against potentially a distributor or retailer, and gave the Plaintiffs 30 days to do so after the Daubert rulings, and that would expire as of today.

On behalf of the distributors, we are aware of no such claims having been filed, amended short form complaints. I don't mean to speak for the retailers, but Ms. Johnston is here. My understanding is it is the same for them, and my understanding from emails last night with Mr. Gilbert, is that Plaintiffs' leadership is not aware of any such claims either.

So, we -- there are two things here. One is, we think that is relevant to the issue of what to do with the non-designated cancer claims and --

THE COURT: Yes. I know we have topic seven, which is application of Daubert order to retailers and distributors. Should we discuss this in the context of that topic so I am hearing everything that relates to retailers and distributors at the same time?

MR. KAPLAN: I am happy to. The mechanism that we will propose could address both.

THE COURT: If that's okay, can you hold your thought

until we move to that topic? Much of that topic is devoted to what to do about claims, and you are right, PTO 78, the deadline for all individual Plaintiffs to amend their complaint was today, which is 30 days after the Court's ruling on general causation. If we could hold that thought and have you revisit it at topic seven, that would be great.

MR. KAPLAN: Of course.

THE COURT: Let me move on to the next topic, which is orders, judgments that need to be entered on the class actions, including Plaintiffs' pending motion on that subject.

So, if we could have counsel appear and state your presence for that topic.

MR. GILBERT: Rober Gilbert on behalf of the Plaintiffs.

MR. BAYMAN: Andrew Bayman on behalf of the brand Defendants.

MS. DALEY: Hope Daley, I represent Pfizer, but also appearing on behalf of the brand Defendants.

THE COURT: Okay. I understand that the Plaintiffs' deadline for class certification motions pursuant to pretrial order 65 is January 20, 2023, which is 45 days after the Court's ruling on general causation. The Plaintiffs have moved for a stay of all class action litigation pending a forthcoming appeal of the Court's general causation ruling. That is Docket Entry 6148.

The Defendants' response to the Plaintiffs' motion for stay is not due until tomorrow. The conferral certification in the Plaintiffs' motion to stay reads: Defendants have not yet determined their position and will respond within the time provided under the local rules.

Does the Defendant know if you are going to be opposing the Plaintiffs' request for a stay?

MR. BAYMAN: Yes, your Honor, the Defense will be opposing the request for the stay, but the reason is because we believe your Daubert order is dispositive of all the putative class actions as a matter of law, and what we would be requesting is an order to show cause why judgment should not be entered in the economic loss and the medical monitoring class actions in the same way as the personal injury claim.

So, we are not suggesting that, yes, we should be going forward with the class certification briefing and we agree with the Plaintiffs that the original schedule doesn't make sense today, but we believe that your Honor should first decide the impact of your Honor's Daubert order on the class actions, because we believe, as your Honor said in your order, the linchpin for all the claims in the case is the proposition that Ranitidine causes cancer.

So, we believe the economic loss and the medical monitoring claims fail as a matter of law.

THE COURT: Okay. So, you are going to be filing your

response tomorrow that is going to be setting this out?

MR. BAYMAN: We agreed to an extension with Mr. Gilbert of two weeks. Our response will be filed in two weeks from tomorrow.

THE COURT: Let me go through some of the issues. In the interest of time, I don't need to hear argument on it today, particularly since there is a dispute. Keep this in mind when you are briefing your response and when the Plaintiffs brief their reply. Here are some of my questions, and you don't have to answer them right now, but it seems like maybe they should be answered in the submissions at some point, either in the response or the reply.

Do Plaintiffs concede that the Court's ruling on general causation is dispositive of the medical monitoring claims?

The motion reads as follows on page four: Class Plaintiffs recognize that the Court's rulings likely undermine the availability of medical monitoring claims. If the Plaintiffs don't concede this, the Court would like the Plaintiffs to explain how a medical monitoring claim -- how a medical monitoring claim substantiates a need for medical monitoring given the Court's ruling on general causation.

The Court understands from the motion to stay that the Plaintiffs don't concede that the Court's general causation ruling is dispositive of the economic loss claims. The

question that the Court has, and would like to have answered, is how -- again, the Defendants can address it as well in their response, but certainly the Plaintiffs should have an opportunity in the reply. How can a Plaintiff seek economic loss damages, given the Court's ruling that the Plaintiffs lack evidence that Ranitidine can cause cancer?

And then relatedly, how would economic loss Plaintiffs have standing to pursue their claims in the Eleventh Circuit under the Debernardis versus IQ Formulations LLC case, 942 F.3d 1076, at 1088, Eleventh Circuit, 2019. An economic loss Plaintiff has standing to seek a refund if the Plaintiff purchased a product that Congress, through the FDA, has banned from sale for the purpose of preventing consumers from ingesting an unsafe product.

The Court's general causation ruling is that the Plaintiffs have no evidence that Ranitidine causes cancer, and of course Ranitidine was always legal to sell, at least prior to this MDL. The Plaintiffs have not advanced an unsafe theory other than cancer. Lacking evidence that Ranitidine is unsafe, how would the economic loss Plaintiffs have standing under Debernardis to seek a refund for the product they consumed, which as the Plaintiffs previously conceded at the motion to dismiss stage, performed as advertised, it alleviated the Plaintiffs' heartburn?

Lastly, if the Court declines to stay the class

litigation, the Court would like to hear what the Defendants proposed briefing schedule for class certification would be. I know the Plaintiffs have asked for the 90 days.

In light of the kinds of questions I have, do you think that the briefing can address it as is? In other words, the response to the motion to stay can address these issues of standing and, you know, whether the Court's ruling goes to the merits of the medical monitoring and economic loss claims, and the Plaintiff then can adequately address these issues in their reply.

Is that the most efficient and effective way for the Court to hear your positions on these issues, as well as any other issues you want to let me to know about in your briefing?

MR. BAYMAN: Yes, your Honor, we are prepared to address those issues in our response. We were planning to address most of them anyway, and we'll obviously address the standing question that your Honor has raised.

Yes, we believe that is the best way to do it. I am happy to give you our position today, but I don't think in the interest of time we need to do that, but we will do it in or response.

MR. GILBERT: Judge, we will try to do it in our reply. It obviously addresses a broader scope of topics than were contemplated by the motion. We may need some more pages, and once we see the Defendant's opposition come in, we'll get

with them immediately to talk about that, and if we can't reach agreement on additional pages for our reply so we can answer the Court's questions as well as their arguments, we'll submit a motion.

With regard to the timing issue, that is one area where we are in agreement already. The Defendants and we have agreed that in the event the Court denies the motion to stay the proceedings, the Defendants do not oppose our request for 90 days from the entry of that order to move forward with whatever class certification motions and expert reports that the Court will direct us to move forward with.

MR. BAYMAN: Your Honor, Mr. Gilbert has correctly stated our agreement. The only other point to make, as I mentioned earlier, your Honor, we have agreed with Mr. Gilbert for a two-week extension of our response, which now is even more needed in light of the Court's questions. So, our response would be due tomorrow, but I would ask, your Honor, if you would orally give us an order agreeing to that extension.

THE COURT: Yes.

MR. GILBERT: Forgive me, Judge, I didn't mean to interrupt you. We do agree with that, and in light of the breadth of your questions that you raised today and the issues that are going to be addressed and the additional pages that are necessary, we will need more than seven days to get our reply in.

So, if you want to direct that now so it could be done appropriately in one series of briefing, that would be great.

THE COURT: Hold on. I am only distracted because I am getting a notice, low battery. Melanie is going to help me here.

I heard what you said. What is your proposed schedule? And then submit a proposed order -- why don't you submit -- the motion is granted. I wan to give you the time you need, so why don't you submit a proposed order tomorrow on the ore tenus motion granting whatever extension you need, whatever page enlargement you need. If you need to wait and see what the issues are that are raised in the response before you move for your enlargement of page for reply, or if you need enlargement of your response, that is fine, too. I will agree to whatever you all agree to.

Keep in mind that I think we all agree -- we should agree based on the case law that the Court does need to consider standing ideally before it gets to merits, and if you agree with that, I guess I am presuming you agree with that, then shouldn't the Court just address that now rather than staying matters only to -- I suppose if the appeal is -- well, if the Court is affirmed, I think it is the Plaintiffs' position that the ruling doesn't apply to economic loss, but wouldn't the Court have to deal with standing before class cert? And if so, why wouldn't we want to just take care of

standing now as opposed to waiting a couple years down the road when there is an opinion on the appeal?

So, I am thinking through this off the top of my head a little bet, too. That is something I really want to hear from you on. You may disagree about whether there is standing or no standing, whether this order has anything to do with standing, but if one party thinks it does, and you agree that standing should be taken up before the Court were to get to merit considerations, even if affirmed, why wouldn't I do that sooner rather than later? If the order is reversed, then everything is fair game again.

So, give that thought and try to address that if you could in your pleadings.

MR. GILBERT: Mr. Bayman and I -- sorry.

THE COURT: Uh-huh.

MR. GILBERT: Mr. Bayman and I will speak after the hearing. We'll submit a proposed order to the Court that grants the ore tenus motion for the extension of their response and our reply and extended page limits, and we will tee these up as soon as possible so we can have a meaningful discussion and argument before the Court.

THE COURT: Okay, great, I appreciate that.

The next issue is maintaining the MDL to address any transferred cases, any remand motions, or other open items.

I will have whoever is on -- let me have each of you

state your appearance for the record.

MR. GILBERT: Robert Gilbert on behalf of the Plaintiffs.

MR. BAYMAN: Andrew Bayman on behalf of the Defendants.

MR. AGNESHWAR: Anand Agneshwar on behalf of the Defendants. Happy New Year, your Honor.

THE COURT: Happy New Year. Good to see you as well.

My question was: Were the parties in agreement as to how the Court should address subsequent designated cancer case transfers or filed into the MDL in the future? Are the parties in agreement as to how the Court should address non-designated cancers transferred or filed in this MDL in the future?

One question I had is, if and when, let's say, the judgment, final judgment is entered in let's call it a designated cancer, because we all would agree the Court's order applies to designated cancers in the final judgment that will be entered, and let's say a designated cancer case is transferred into the MDL after that final judgment is entered, well, before or after, what do you say about that?

How should the Court -- if it is transferred in before, does it get wrapped up and it gets added to that list as part of the final judgment? And if it comes in afterwards, what happens at that point, and then what about the non-designated cancers?

MR. GILBERT: **Judge, Robert Gilbert on behalf of the Plaintiffs.**

Your question -- these couple of questions literally came in within five minutes of our starting the CMC today, and they go way beyond the scope of the discussion that Mr. Agneshwar and Mr. Bayman and I and others had in preparation for this hearing.

As we understood it, the sole question with regard to this topic was whether the MDL would or should stay open during the pendency of the forthcoming appeal, and the answer to that was universally yes from both sides. The questions you raise are important questions and, frankly, I am not prepared to offer answers to them sua sponte on the spot today.

They are very important questions that deal with due process rights of litigants who may not currently be before the Court, and I don't think it would be responsible of me to offer answers to those now.

MR. AGNESHWAR: **Your Honor, on the question of whether the MDL should survive, we totally agree with Mr. Gilbert. That is the general practice after a motion to dismiss is granted, there is an appeal and motions filed, there are still cases being removed. We actually have some removals pending before your Honor right now, so we agree with that.**

On these other questions, generally it is an administrative closeout. As these cases are filed and

transferred, they will be subject to orders that the Court has entered in other cases. Mr. Gilbert is right, we have not discussed that precise question with them and would be happy to do so and get back to you whether we are in agreement or disagreement.

THE COURT: All right. That is something I will give you more time to think about and we can revisit that.

Let me jump to the topic of the application of Daubert order to retailers and distributors. Let me have everybody state your appearance for the record.

MR. KAPLAN: Andrew Kaplan for the distributor Defendants.

MR. GILBERT: Robert Gilbert on behalf of the Plaintiffs and I may be joined by Mr. Keller on this one.

MS. JOHNSTON: Good afternoon, your Honor, Sarah Johnston.

THE COURT: Good afternoon.

MR. KELLER: Ashley Keller for the Plaintiffs. I am sorry to cut somebody off. Good afternoon.

THE COURT: Okay. My goal is to determine what procedure will address the closure of retailer/distributor issues. Pursuant to pretrial order 78, the deadline for all -- excuse me -- the deadline for all individual Plaintiffs to amend their short form complaints without leave of Court is January 5, 2023, 30 days after the Court's ruling on general

causation. Pursuant to pretrial order 31, Section 2(b)(4)(N), short form complaints may plead causes of action that are not pled in a master complaint. Pursuant to the Court's order granting the retailer and distributor Defendants' motion to dismiss on plausibility grounds, page 20, claims for ordinary negligence against the retailer and distributor Defendants were dismissed without leave to amend from the master complaints.

Pursuant to the Court's order granting in part and denying in part the Plaintiffs request for entry of Rule 58 final judgment, page 34, the Court's ruling on the master complaints did not preclude any individual Plaintiff from pleading an individualized ordinary negligence claim in a short form complaint.

The Court is unaware if any individual Plaintiff has pled a claim not contained in the master complaints. I think this is where Mr. Kaplan was going at the last session, but I may have him repeat what he was saying.

My question was: Does any party know of an individual claim that has been brought by an individual Plaintiff pursuant to Rule -- pretrial order 31, Section 2 -- Roman numeral II-B(4)(N) that is not contained in the master complaints? If so, how many are there? Do the retailer and distributor Defendants have a proposed procedure where the Court would address such claims?

And let me stop there on that issue, and maybe -- I

don't know, Mr. Kaplan, if you want to tell me again what you said before. I remember you were saying there were none.

MR. KAPLAN: Yes, Your Honor, Andrew Kaplan again. For the distributor Defendants, as far as we are aware, there have been no such individualized negligence claims pled, and I can let Ms. Johnston speak for the retailer Defendants, but I understand that to be the same.

MS. JOHNSTON: That is correct.

THE COURT: Okay. So there being none --

MR. GILBERT: Judge, we are having trouble hearing you.

THE COURT: Okay. Sorry. I am straddling like three different things here.

So, what happens now?

MR. KAPLAN: We think there are really two buckets; there are the non-designated cancer claims and the designated cancer claims. For the designated cancer claims, which would be subject to your Daubert summary judgment rulings, Your Honor, for the distributors and retailers we would ask that they be applied to the retailers and distributors as well, and for purposes of the non-designated --

THE COURT: Just a minute. You are saying for the designated cancers you would be seeking to have the retailers and the distributors included in the final judgment that counsel were speaking about they are in the process of

preparing?

MR. KAPLAN: Yes, your Honor, although we think there may be -- we have a different mechanism for which we propose that to be applied.

When -- the distributors and retailers are currently up in the Eleventh Circuit on -- there are two cases in which the distributor Defendants are involved. The Court of Appeals had raised -- posed to the parties some jurisdictional questions and one of them involves the jurisdiction related to our appeals, so there are some jurisdictional issues about whether -- if 54(b) was appropriate for purposes of the negligence claims as it relates to the distribution retailers.

For avoidance of any doubt, what we would ask is that the Court issue an indicative ruling under Federal Rule of Civil Procedure 62.1.

THE COURT: What did you call it, a what?

MR. KAPLAN: Indicative ruling. What that would mean would be your Honor would issue essentially an order saying if I were to have jurisdiction over these -- if the retailer and distributor Defendants were in my court I would apply these orders to them. That rule requires, under Federal Rule of Appellate Procedure 12.1, that we would immediately notify the Court of Appeals of that.

They would then do a limited remand for purposes -- for you to actually apply that order and then they could be

brought back up to the Court of Appeals.

We think this, one, avoids any uncertainty about the jurisdictional issues and also unifies all of the issues that would be relevant to the distributors and retailers in one potential appeal which facilitates a more efficient appeal process.

So, we'd ask that both for purposes of the designated cancers and the Daubert summary judgment ruling, but also for purposes of finalizing the claims as they relate to the non-designated cancers.

THE COURT: Have you discussed this with the Plaintiffs?

MR. KAPLAN: Your Honor, as Mr. Yoo alluded to, for a lot of reasons we were brought into this process a little later and so we just proposed this yesterday and were not able to reach an agreement in that time period, but we are happy to continue discussing it.

MR. GILBERT: Your Honor, before I hand off to Mr. Keller, who is going to address these issues, because they really are extremely critical appellate oriented issues, I want to disagree with my friend, Mr. Kaplan, on the other side about something.

I know Ms. Johnston, Mr. Yoo, Mr. Barnes, they participated in a meeting that was convened at your Honor's request through the special master about a week before

Christmas, I think it was about December 16th, where a number of issues were discussed about what would need to be on the agenda for the forthcoming CMC, today's CMC, and I am not begrudging anybody for not raising them then, but to say they didn't hear about anything until the 11th hour is absolutely not correct.

The only thing that happened at the 11th hour, which I know Mr. Kaplan, Mr. Yoo, and Ms. Johnston acknowledged this, we received an email from them yesterday literally at five o'clock in the afternoon suggesting this order be entered, and the issue about a Federal Rule of Civil Procedure, Rule 62.1, wasn't even raised in connection with that.

So, this is literally stuff that has never been raised or discussed with us even though they participated in a meeting that your Honor directed three weeks ago.

I will turn it over to Mr. Keller at this point because there are some very serious appellate related concerns that this imposes.

MR. KELLER: Thank you, Your Honor, Ashley Keller for the Plaintiffs.

I know you know this already from back channeling, but I want to say for the record,I apologize for my appearance. I was a pinch hitter that got called in late, so that's why I am not in a suit and tie. I would have dressed appropriately if I knew I was going to be on screen.

THE COURT: **No worries at all. Thank you, though.**

MR. KELLER: **We don't think that your Honor has jurisdiction to enter final judgment with respect to the retailers, the distributors, as well as the generics, to harken back to what Mr. Yoo said. Some of those are up on appeal pursuant to Rule 58 judgments that your Honor has entered, so the entire case is on appeal.**

Then others, as was just alluded to, are up on appeal with respect to Rule 54(b) judgments. You will recall Plaintiffs opposed Rule 54(b) entry because we said it is inefficient and will create piecemeal appeals, but your Honor disagreed and went with the other side, which is totally appropriate. We respected your Honor's ruling and filed timely Notices of Appeal.

That is why my friend is referencing now for the first time Rule 62.1, because he recognizes that the order that they proposed, that Mr. Gilbert just referenced, at the 11th hour last night isn't possible for your Honor to enter. You don't have jurisdiction over these parties because once you certified pursuant to Rule 54(b) and the Plaintiffs appropriately filed Notices of Appeal, it divested this Court of jurisdiction.

So, they can't get the benefit of your Honor's Daubert and summary judgment orders, and there is an independent reason for that. They didn't move for summary judgment, only the brands moved for summary judgment. Under Rule 56(f), you can't

grant summary judgment to a nonparty without a round of briefing and an opportunity to be heard.

They are coming in now, after they got everything that they wanted from your Honor -- they wanted an immediate appeal, they wanted to be out of the MDL, you gave them that. They have now seen your Daubert order and they are saying, wait a minute, we would like to get the benefit of that, enter judgment in our favor under Daubert so we don't have to deal with the preemption appeal. It is too late for that.

This is in the Eleventh Circuit now, and so we don't think it would be appropriate for parties who aren't before your Honor to get the benefit of your Honor's rulings with respect to different parties. They that didn't participate in the briefing, they didn't join the adversarial process. They chose to ask for and receive appellate review, and the Appellate Court has the case now and those appeals need to be resolved one way or the other before they come back to your Honor.

If they are affirmed, obviously they will have judgment entered by the Eleventh Circuit on preemption and you won't have to deal with the Daubert question as to them. If there is a reversal, then you can decide after a full airing of the parties' positions through a proper civil litigation process what the impact is of the Daubert decision, whether the parties who weren't even in front of your Honor until the

Eleventh Circuit ruled to have a fresh opportunity to present argument and the like, but they can't have a case both in this Court and in the Eleventh Circuit at the same time.

So, there is nothing properly in front of your Honor with respect to these parties is the Plaintiffs' position.

THE COURT: Okay. Does somebody want to say something?

MR. KAPLAN: If I could briefly respond to the issues.

One, in terms of the timing, I don't think it is productive to get into a timing of when the issue was raised. We have a different view of the world. The point is, I think your Honor wants the parties to discuss these issues and see if we can come to an agreement and we intend to do that.

In terms of what Mr. Keller said, I agree in part and disagree with other parts. As probably is fairly obvious, it was not the Defendants who appealed these cases, it was the Plaintiffs who chose to appeal, and they chose to appeal it at the time they did.

We didn't actually get all of what we asked for in the method of getting them under 54(b), but we think it is appropriate for the Court to enter an indicative ruling and apply these, and we think it would be a waste of time to -- there is no logical difference between application of the Daubert ruling to the brand Defendants as to any other Defendants. The science doesn't change, and going through the

enter process for the other Defendants who are part of the MDL before the appeals doesn't seem to make sense.

The point of our motion would be -- or our method of getting these cases in the Court of Appeals in a unified manner is efficiency.

THE COURT: So, given that the parties are not in agreement at this point and you need additional time to discuss it, assuming you don't come to agreement, is it the case that I would anticipate the retailer distributors filing a motion asking for this indicative ruling under 62(1), or something along those lines, and it would be briefed out for the Court to hear full argument on this issue? Is that where you see it going?

MR. KAPLAN: Yes, your Honor.

THE COURT: By what point do you need to fully discuss and contemplate whether there are grounds for agreement or not to then anticipate when you might file such a motion?

MR. KAPLAN: Your Honor, I would hope we would be able to have those discussions next week. I haven't spoken to Mr. Keller or and Mr. Gilbert about their availability, but I think that is something we should be able to conclude next week and then come back to the Court if we need the Court's help.

In terms of when we would actually file a motion, it may be -- since we haven't had these discussions in detail, it may be productive to have the discussions first before we

propose a date.

THE COURT: Okay. Let me move on to the next topic, which is topic four and nine with respect to the registry.

Topic four is procedures for closing the registry. Are the parties working on -- first let's have counsel state their appearance on this issue.

MR. PULASKI: Adam Pulaski for the Plaintiffs, your Honor.

MR. McGLAMRY: Mike McGlamry for the Plaintiffs.

MR. BAYMAN: Andrew Bayman for the Defendants.

MS. ZOUSMER: Julia Zousmer for the Defendants, your Honor.

MR. AGNESHWAR: Anand Agneshwar for the Defendants, your Honor. I will only talk if the Court gets to the last couple of paragraphs of your ruling on tolling and the prejudice to registry claimants.

THE COURT: Okay. All right. So, with respect to the procedures regarding closing of the registry, the Court wants to know whether the parties have a proposed order to finalize and close the registry. That is the question for topic four.

And for topic nine the question is: In the Court's recent ruling clarifying the tolling provision of pretrial order 15, the Court left open the possibility that registry claimants could move for individualized case specific relief.

Does any party know if a registry claimant will be

moving for relief? If so, when? Should the Court impose a schedule or a deadline? Have the registry claimants received notice of the Court's ruling? Should the Court require that notice be given to the registry claimants?

If I could have you very briefly be heard, and I do have one more issue, and then we do need to let Pauline go.

MR. PULASKI: Your Honor, Adam Pulaski for the Plaintiffs. We have discussed this in detail with Mr. Zousmer and others. I think we are all on the same page for the most part. We don't have a proposed order as of yet. There are a couple of smaller items and nuances within some pretrial orders that need to be addressed just to clean things up, but I don't foresee a problem in us being able to get you a proposed order early next week or middle of next week. We haven't run into a problem as of yet.

MR. BAYMAN: Your Honor, Andrew Bayman. We agree with Mr. Pulaski that the registry should be closed, however, your Honor, the registry -- we believe the registry data should remain accessible per pretrial order 15. There might be certain registrants who filed cases in State Court and also certified as a Federal participant, for example, or in the event of a reversal by the Eleventh Circuit.

Even though the registry will be closed, we believe the order clearly provides that the registry data be accessible.

THE COURT: **Is that something you anticipate addressing in the proposed order?**

MR. BAYMAN: **Yes.**

THE COURT: **Okay. And what about topic nine?**

MR. McGLAMRY: **Your Honor, real quick, I think you asked sort of two questions. One was the individualized specific relief issue. I guess it is my role to tell you we haven't discussed it. We don't know if anyone is doing it or not doing it, so we really don't have any way to address that. If you want us to sit down with the Defense, we can do that, but as of getting that question this morning, that hadn't been on our radar.**

THE COURT: **Okay. We are probably going to have a status conference next week. I heard from Jamie that there might be some availability and it will give you the week to go over these and we might go back and touch base on all of these issues again.**

Let me try to conclude with two issues.

One was topic eight with the Eleventh Circuit's -- who is on topic eight, the Eleventh Circuit opinion, December 21st?

MR. GILBERT: **Mr. Keller and I, your Honor.**

MR. BAYMAN: **Andrew Bayman for Defendants.**

MR. BARNES: **Richard Barnes for the generic Defendants.**

THE COURT: **The Eleventh Circuit recently dismissed in**

part, reversed in part, and affirmed in part the Plaintiffs' prior appeal of the Court's rulings at the motion to dismiss stage, Docket Entry 6146 and 6147. As the Court understands it, the Court need take no action as a result of the Eleventh Circuit's decision and mandate.

I want to make sure the parties agree with that. If you don't agree, what do you think the Court needs to do?

MR. KELLER: We agree you don't have to do anything with respect to Plummer, which was the class action case. We agree you don't have to do anything with respect to Ms. Williams because there is a petition for rehearing en banc, so the mandate hasn't issued as to her.

We respectfully do not agree as to Mr. Cardi. He was also an individual who filed an appeal. He has a non-designated cancer, and what the Eleventh Circuit said, based on our reading of the opinion, is his appeal was premature so the Eleventh Circuit lacked jurisdiction, and Mr. Cardi's complaint is still in front of your Honor.

Mr. Cardi has amended his complaint, he did that prior to his appeal, to bring only one claim, an innovator liability claim under Illinois law. Your Honor has previously ruled both that there is no personal jurisdiction with respect to those claims because of the pleadings in Mr. Cardi's operative complaint and that Illinois would not recognize an innovator liability claim.

So, respectfully, we think your Honor does have to deal with Mr. Cardi. We think you should dismiss him unless you are going to reconsider your prior orders, which we haven't asked you to do. So you should say, based on the reasoning that you have articulated, his individual complaint is dismissed and you should enter a Rule 58 judgment as to him.

THE COURT: Does anybody disagree with that? Do the Defendants or anybody else -- any of the Defendants disagree with that?

MR. BAYMAN: Your Honor, Andrew Bayman. Obviously the Eleventh Circuit, as Mr. Keller said, ruled that it lacked jurisdiction over the appeal. Mr. Cardi would be similarly situated as other Plaintiffs in the MDL. I haven't thought about his further ask of you, and I, frankly, did not recall he was a non-designated cancer.

So, I think it should probably be -- he should be like other non-designated cancer claimants in the MDL, treated the same way.

MR. KELLER: Your Honor, I think it would bizarre for Mr. Cardi to be asked to put an expert on the table when you already said that the one claim he is pursuing can't go forward because Illinois would not recognize the cause of action.

Daubert is typically dealt with as a summary judgment issue. He gas lost that based on your Honor's ruling at the 12(b)(6) phase. I think it would be highly unusual to say that

he nonetheless has to submit an expert when you have already ruled that his one claim can't proceed on the merits and there is no personal jurisdiction for it.

THE COURT: If there is disagreement, what type of motion, if any, do you see, Mr. Keller, leadership filing on his behalf to seek the relief that you would be seeking?

MR. KELLER: I would probably file a motion asking your Honor to enter a Rule 58 judgment, which the Defendants could oppose if they have grounds for opposition.

THE COURT: Any objection to that being handled that way, short of the paries agreeing to another resolution?

MR. BAYMAN: I would ask that we meet and confer before any motion is filed.

THE COURT: Why don't you meet and confer on that and that will be a topic that we can revisit at the next conference and you can update me if that is the route you want to take, motion practice, or whether you can resolve that.

I think that the last topic is maybe one of the bigger ones, so I don't know that we can take it up today, and it may be that we have to take it up at the next conference.

Did I understand -- I will get with Jamie, but I thought I understood that there might be some time at the end of next week, whether it be Friday or Thursday. I don't want anybody to be surprised. I think it behooves us to give you the rest of this week and next week, and we'll set something

for next week where I get an update on pretty much each of these issues. Maybe you can submit a proposed order in advance or give me further information because you will have had another week to meet and confer, and that is fine.

Let me just let you know what my questions are with respect to topic six because I may want you to -- I may want you to be able to be heard and answer some of these questions, so I am giving you a preview of some of these things.

I know it is a fully ripe motion at this point, and here is some of the questions I have, and then we'll conclude shortly.

Pursuant to amended pretrial order -- I am sorry, do different people need to come on the screen? Do you want to state your appearance.

MR. PULASKI: Adam Pulaski for the Plaintiffs.

MR. CHEFFO: Mark Cheffo the brands.

THE COURT: Maybe you won't say anything, but I am going to tell you what I want you to hear. We ran out of time.

Pursuant to amended pretrial order 31, all Plaintiffs must file individual complaints. Pursuant to pretrial order 15, the registry will expire on January 5th, that's today, 30 days after the Court's ruling on general causation.

Also, pursuant to pretrial order 15, tolling will expire for claims that exit registry on April 5, 2023, 90 days after the expiration of the registry. In light of the April

deadline, the Plaintiffs have moved to file one consolidated complaint on behalf of each law firm with clients enrolled in the registry. The Plaintiffs therefore moved to either amend pretrial order 15's requirement for individual claims, or to be exempted from it. The Defendants oppose, arguing that pretrial order 15 should remain in full force and effect.

There are approximately 58,000 Federal forms certified claimants in the registry and there are approximately 330 law firms representing those claimants. The Court will want to hear on certain topics that relate to this issue, specific causation, remand and Court's obligation to prepare the cases is the MDL for trial.

The Plaintiffs' motion contemplates that many law firms will file multi-plaintiff complaints with thousands of registry claimants. By way of example, the Court is aware that one law firm in this MDL has 6,783 registered claimants and another has 3,894. In total, 16 law firms have greater than one thousand clients enrolled in the registry.

Going forward and assuming that the Plaintiffs are successful in obtaining reversal on appeal, how could this Court remand a case with 6,783 claimants in a single complaint? The Court presumes that those claimants would not all originate in the same Federal district.

Do the parties agree -- and again, you don't have to answer the question right now -- that at a minimum those

claimants would have to be severed by judicial district for remand should they be remanded?

Suppose that of the 6,783 claimants represented by a single law firm 100 reside in the same Federal district. How could a District Court Judge upon remand address specific causation for those hundred claimants?

Do the parties agree that a District Court Judge would likely sever the individual claims for specific causation and eventually trial? Thus, the Court's ultimate question for the parties is, given that these cases must likely be severed for specific causation and trial, what case management reason is there for the Court to exempt the registry claimants from pretrial order 15's requirement for individualized short form complaints?

Relatedly, why did the Plaintiffs wait until now at the end of the registry's life cycle to argue that the terms of pretrial order 15, which the Plaintiffs agreed to, are unfairly prejudicial?

Those are some of the things that came to mind in reading the briefing. What we will do is reserve and have you be prepared to present your answers to these questions and anything else that you need to argue with respect to the motions so the Court can continue to consider, you know, the merits of the motions which have very big implications administratively from a Clerk's perspective.

I suppose I would ask you to think about -- is the Court -- let me get this straight. Is the Court's understanding of what the Plaintiffs are requesting, there is approximately 330 law firms representing the 58,000 claims and so we would be seeing 330 cases with myriad numbers of Plaintiffs attached to any one lawyer or law firm?

MR. PULASKI: In a nutshell, your Honor, boiling it down, yes.

THE COURT: Okay. If the Court were to deny the motion, is the Court expecting to have 58,000 cases filed and would they be direct filed, or would they be filed in the other -- another district and then subject to being transferred?

MR. PULASKI: I believe the procedure has been to file them in another district and have them transferred, so I guess that would be the case. I can't speak on behalf of every firm and every Plaintiff and every certified Federal participant in the registry, all 58,000 of them, as to who would or would not file their claim.

For instance, my thousands of Plaintiffs, they will be filed and end up in your court in some fashion, either direct or transferred.

MR. CHEFFO: Your Honor, we can talk more about it, but my understanding is a little different. I thought the mechanism is the short form complaint process just like they

have been, so it would all be -- it's not like starting a separate lawsuit, albeit, we recognize there are some administrative issues that we would be willing to talk about with the Plaintiffs and your Honor and the Clerk's Office, but I didn't understand it to be that they were going to file it in those jurisdictions. That is something we can talk about and -- for next week.

THE COURT: All right. I suppose if you have thoughts on, if the motion is denied -- and again I am not suggesting it is or is not, but I am trying to think about the implications, just as I stated what the implications were if the motion was granted and some of the scenarios that I outlined in terms of one case with 6,000 Plaintiffs, how does that work.

But also, if -- if the Plaintiffs were filing in a different district, not direct filing, wouldn't it be each Plaintiff would file his or her own case in her home district and then it would be subject to transfer? You wouldn't be adopting that same process, would you, of 330 law firms, one law firm -- I would imagine one law firm could have cases in many different districts.

MR. PULASKI: Correct, your Honor, the filing we would hope would be within this MDL Court, and when you ask what would occur, and I don't know if you are asking hypothetically or you want an answer to that, but I guess once the tens of thousands of cases reach the Court, then there would need to be

tens of thousands of cases of motions to dismiss and tens of thousands of dockets set up and tens of thousands of dockets dismissed, so procedurally I guess that is what would happen, and tens of thousands of rulings by the Court. So I don't -- the process of getting it --

THE COURT: Why are you talking about motions to dismiss? These are for the most part -- why wouldn't they be -- however they get to the Court -- isn't the idea you want to get them here, well, expeditiously and cost effectively and you want to bring them in as part of an appeal?

MR. PULASKI: Yes, your Honor. That is the purpose of that, but we need a final order, obviously, to appeal and --

THE COURT: How does it matter how it gets to me?

MR. PULASKI: It doesn't matter how it gets to you, so whether it is direct filing or transferred from another Court, it doesn't matter.

THE COURT: There would be no motion to dismiss practice, would there be?

MR. PULASKI: No.

MR. CHEFFO: I am sorry to interrupt, but that is -- even under their scenario with 300 claimants, there is no motion to dismiss, we do what we always do, which is file one and attach a list, whether it is 300 or 50,000. I don't think this is going to require thousands of separate motions. We would do it in a way that made sense for the Court and the

Clerk and the Plaintiffs like we always do.

THE COURT: Well, they do require new cases to be opened.

MR. CHEFFO: They do, but then -- I think we all agree that judgment will be entered, but the Plaintiffs are saying let us file a bunch of cases and have 330 something complaints, and we agree that judgment should be entered, but for the reasons we'll talk about next week, we think you have to file individual complaints, but that doesn't really impact ultimately, which is we all agree that the cases need to be filed in some form or fashion and then judgment needs to be entered so they could go up on appeal.

It's not like if you do it one way or the other it is going to create thousands of motions.

THE COURT: Administratively it would be a matte of 330 new cases versus 358,000 new cases potentially.

MR. CHEFFO: Right, but there is a whole host of issues when you have 6,000 people in a complaint.

THE COURT: Yes, that is one of my points here. Okay. I think -- I appreciate it, but I do want to let Pauline go because another judge and jury are waiting for her. I will get up with Jamie, I think she has previewed it, really it was an accommodation to -- in recognition that I didn't expect everybody to have answers today. I didn't want you to feel you had to, that there needed to be more meet and confer, but I

have been very candid and transparent and told you everything that was on my mind. I can't promise there won't be a few more things that come to my mind next week, or whenever it is.

I will aim for next week to have a followup status conference that will look much like this, although the difference will be you will have been given more time to meet and confer and you will definitively say we can't reach agreement and this is where we need to go and lay out that process or that time, or say we have reached an agreement, we are submitting it today or next week.

I want greater clarity as to the process when we get together. This is helpful to me. I am glad we kept it on the calendar today.

With that, I will say so long until we see each other soon.

(Thereupon, the hearing was concluded.)

* * *

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

Date: January 8, 2023

/s/ Pauline A. Stipes, Official Federal Reporter

Signature of Court Reporter