

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 WEST PALM BEACH DIVISION

4 CASE NO. 20-md-02924-ROSENBERG

5 **IN RE: ZANTAC (RANITIDINE)** .
6 **PRODUCTS LIABILITY** . West Palm Beach, FL
7 **LITIGATION.** . June 29, 2021
8 .
9 .

10 MOTION for PROTECTIVE ORDER (through Zoom)
11 BEFORE THE HONORABLE BRUCE REINHART
12 UNITED STATES MAGISTRATE JUDGE

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1 *THE COURT:* Good afternoon, everyone. This is Case
2 Number 20-md-2924, In re: Zantac (Ranitidine) Product
3 Liability Litigation. We are here for a hearing on the
4 expedited motion filed by GlaxoSmithKline, LLC for a protective
5 order at Docket Entry 3701, and the response filed earlier
6 today by the Plaintiffs at Docket Entry 3710.

7 Let me begin with appearances. I'll recognize counsel
8 for the Plaintiffs, please.

9 *MS. FINKEN:* Tracy Finken on behalf of Plaintiffs.

10 *MR. McGLAMRY:* Mike McGlamry on behalf of Plaintiffs,
11 your Honor.

12 *THE COURT:* Good afternoon. On behalf of
13 GlaxoSmithKline.

14 *MR. SACHSE:* Good afternoon, your Honor, Will Sachse
15 on behalf of GSK.

16 *MR. OOT:* Your Honor, Patrick Oot on behalf of GSK.

17 *THE COURT:* Good afternoon. I received the motion the
18 other day, I did review the motion, I did review the response
19 that was filed earlier today.

20 My preliminary question is, it seemed to me in reading
21 the response and the attachment as well that the July 9th date
22 for this deposition is a, can I say a soft date right now, it's
23 a flexible date from the Plaintiffs' perspective.

24 Am I correct, Ms. Finken?

25 *MS. FINKEN:* Yes, your Honor. We have indicated to

1 Mr. Sachse and Mr. Oot that we were willing to work with them
2 on scheduling a date that is mutually convenient sometime in
3 July.

4 *THE COURT:* If that is the case, I am less concerned,
5 I am not going to address the concern about PTO 54. The
6 purpose of PTO 54 is to make sure there is sufficient time and
7 for notice and an opportunity for negotiation and consultation.
8 I know you have been working with the special master since the
9 motion was filed, and it seems to me, with the flexibility of
10 the date there is time going forward for those discussions.

11 Unless anybody feels strongly, I don't feel that I
12 need to rule on the PTO 54 issue.

13 Ms. Finken, is that okay with you?

14 *MS. FINKEN:* That is fine for me, your Honor.

15 *THE COURT:* Mr. Sachse or Mr. Oot? I don't know who
16 is speaking for GSK on this one.

17 *MR. SACHSE:* Mr. Sachse will take the lead here.
18 Sorry for referring to myself in the third person.

19 *THE COURT:* That is okay.

20 *MR. SACHSE:* I do want to note for the record that we
21 continue to believe we should all be abiding by PTO 54, but I
22 hear what you are saying, Judge. Let's try to get to a
23 solution here. That is what we want to do.

24 On the issue, though, of what I call the soft date,
25 the offer which -- the very important words from our

1 perspective are in July, maybe from both parties' perspective,
2 is in July. That is not something that is doable for us, but I
3 am sure we will get there.

4 *THE COURT:* We will get there, but there is a big
5 difference between a deposition that is noticed to happen in
6 ten days and a deposition that could occur in 30 days.

7 That is why I am saying -- look, you all have been
8 fantastic throughout this litigation in scrupulously complying
9 with all your obligations under the PTOs. I don't want to get
10 into a discussion whether this was an exigent circumstance that
11 mandated an exception to PTO 54.

12 Let's deal with the realities, which is you have the
13 notice, you have had consultation, you are with me now, we are
14 going to work this out. That's why I say I don't want to take
15 a hyper technical view or spend too much time on the PTO 54
16 issue today.

17 Let's turn to the real issue, the meat of the issue
18 here. It seems to me this is what we need to work through
19 today together. There is a cause and effect relationship here
20 between the scope of the request and the amount of time needed
21 to prepare a witness to respond to the request.

22 I've looked at the deposition topics that were
23 propounded. If you read them literally, they call for 40
24 years -- 44 years worth of information on lots of things that
25 begin with the word "all". I really don't think that is what

1 the Plaintiffs are going to spend their time questioning the
2 witness about, but they want to cover their bases and make sure
3 they have asked for everything that could conceivably come
4 through. I get that.

5 That is what I really want to address today, is
6 what -- and let me make this other comment. 30(b)(6)
7 deposition is a deposition of one -- there is one deponent in a
8 30(b)(6) deposition, it is the corporate entity. Now, that
9 deponent may speak through multiple human bodies, and may speak
10 through multiple human bodies on different days about different
11 topics.

12 What I would really like to drill down on right now
13 is, in this very broad subpoena calling for lots of information
14 in a very important case, what do we need to deal with now and
15 what do we not need to deal with now. When we figure out what
16 we need to deal with now, then I can turn to GSK and we can
17 have a conversation about how long is it really going to take
18 you to prepare the person.

19 If it is 40 topics that are each a mile deep, that is
20 very different from there are really five topics, and they are
21 really actually not as deep as you think they are. That is
22 what I really need to get a sense from.

23 Ms. Finken, let me turn to you. My impression was --
24 not to project onto you, my impression sort of as we have been
25 coming along is, what you really want to find out is what is

1 the deal with all these things in the MedTrack database, like
2 literally sit down and just go through here on page four, at
3 line 17, it mentions this study. We don't have it. What is
4 it, where is it, and what did you do to look for it? Now let's
5 turn to page five.

6 That was, at a very simplistic level, kind of where I
7 thought you were going, but I don't want to put words in your
8 mouth. Please help me.

9 MS. FINKEN: Actually, your Honor, I agree with you
10 that that is an important area of inquiry, and that is
11 something that I believe eventually we will get to once we
12 receive some answers from GSK on where they are with that
13 search.

14 But we were really trying to get to the bottom of two
15 topical areas and really nail down questions and explore these
16 two areas, one being the clinical trials and where those are
17 housed.

18 What we did was, we served an interrogatory to GSK
19 after your Honor had issued that advice back in April. We
20 received those responses in June that identified different
21 systems that could house clinical trial material, legacy and
22 current, and what we intended to do with this deposition
23 notice, and I have conveyed this to Mr. Sachse and Mr. Oot, is
24 to narrow the scope of this ESI 30(b)(6) to deal with the
25 systems in place that deal with the clinical trials and being

1 able to focus our inquiry on the clinical trials and where they
2 are housed, their retention policies, things of that nature.

3 Then, the other area of inquiry was the analytical
4 testing systems, which is, as your Honor is aware, the ongoing
5 discussion regarding batch records and the availability of
6 those types of stability testing and things like that.

7 So, we were really trying to focus our efforts on
8 those two topical areas and the ESI systems that are in place
9 now and in the past related to those areas, and really be able
10 to follow up on the interrogatory answers that we were provided
11 in June and ask specific questions related to those.

12 We had a meet and confer with GSK yesterday. We
13 provided them with -- we explained our intent to them and we
14 also provided them with a Word version of our 30(b)(6) notice
15 and invited them to redline it so that we could have a
16 meaningful discussion about the scope, and conveyed our intent
17 to really delve into just those two topical areas and the
18 systems that cover those areas.

19 We also offered to break it into two depositions,
20 knowing that there is probably two different people that may
21 want to address the clinical versus the analytical testing,
22 they don't necessarily overlap, and break those into two
23 depositions at a convenient date.

24 *THE COURT:* Just to be clear, because I don't want you
25 to bargain against yourself, it is one deposition conducted on

1 two days, not two depositions, right?

2 MS. FINKEN: Yes. Thank you for that.

3 THE COURT: Of course. If I understand you, then,
4 what you really want to do is, you are going to take -- your
5 outline, or your road map, at least for the first part, the
6 clinical trials part, is going to be the interrogatory
7 responses you got. I am assuming in the interrogatory
8 responses it would list these are the names of the systems.
9 You got some information about these systems, and if I
10 understand you, you just want to kind of flesh that out, put
11 some meat on the bones?

12 MS. FINKEN: That is correct, your Honor.

13 THE COURT: Okay. What about the analytical -- the
14 batch records? Let's call it by its easier term.

15 MS. FINKEN: It is the same exact thing, just a
16 different topical area. Those were -- there were systems
17 provided in the interrogatory responses, same exact thing, we
18 want to flesh out those responses and those systems, how they
19 interact with one another, how that data is maintained.

20 It will help focus this inquiry that we have been
21 having on an ongoing basis related to the discovery on these
22 two topical areas.

23 THE COURT: Again, if I understand you correctly, your
24 questioning is going to be at the system level, what systems
25 exist, what data is kept in those systems. It is not going to

1 drill down farther into a particular batch or a particular
2 clinical trial or anything like that. It is just going to be
3 at the IT level, like what do you have, how does it fit
4 together, and what do you keep there, what is in that file
5 cabinet?

6 *MS. FINKEN:* Correct, your Honor, and the retention
7 policies, the migration policies of moving that from legacy
8 systems to current systems, and things of that nature. It was
9 not to address a specific study in that level of detail.

10 We do have a clinical trial 30(b)(6) deposition that
11 we are going to be taking in September where I anticipate we
12 might address other issues that are more particular to a
13 specific study, which is why it is important for us to really
14 understand what these systems are and all the potential sources
15 of information there before we move forward with that
16 deposition in September as well.

17 *THE COURT:* Thank you. I understand. Let me turn to
18 Mr. Sachse.

19 Mr. Sachse, with that clarity and sort of that level
20 of abstraction to the request, why can't your client prepare
21 somebody in the next 30 days? I can't believe these are not
22 questions you and Mr. Oot have been asking for a year to figure
23 out what systems are they, what is in them, where is it kept,
24 and what is the retention policy.

25 *MR. SACHSE:* So, let's just take a step back here

1 and talk about what the deposition notice -- I appreciate Ms.
2 Finken's putting on the record precisely what they are looking
3 for. There are some issues there with which we disagree and we
4 think are not appropriate for a 30(b)(6), or a deposition at
5 all, namely the retention issues.

6 But with respect to the clinical trials, with respect
7 to the analytical testing and this question of where is the
8 stuff housed, what is the system, etc., etc., as your Honor
9 knows, because we were in front of you in April and we had a
10 dialogue about the systems disclosures we did, they were
11 informal originally back in 2020. We supplemented those in
12 April 2021.

13 Ms. Finken said that is not good enough, we want it in
14 some kind of admissible form, and we either want a 30(b)(6) or
15 we want interrogatory responses. And you said, it sounds like
16 what you really want is interrogatory responses that are
17 binding, and Ms. Finken said correct. That is page 69 of that
18 transcript.

19 So, that is exactly what we gave them. On June 8th we
20 provided detailed systems interrogatory responses. It
21 includes -- let's stick with the studies -- the PIER, you know
22 all about PIER. For PIER, we gave them the system name, the
23 type of information maintained in the system and primary
24 business purpose, the periods of use, the predecessor systems,
25 if any, the successor systems, if any.

1 And I know, Judge, you noted that you looked at the
2 notice and the topics. That is the -- you know, that is a big
3 part of topic one, and I think it is topic two A through D
4 asking about what are the systems. So, they have that
5 information.

6 They also have information about the software
7 application used for that system. They have information about
8 the business unit or internal group supported by that system
9 and the search and reporting functionality of that system.
10 They also have, again, formal ROD responses, the same
11 information related to ETrack and its predecessor, the infamous
12 MedTrack. They also have that information again in formal ROD
13 responses with respect to Empower and Lift.

14 I am not going to go through the alphabet soup of all
15 of the other batch record systems, but they have those answers,
16 and they have had them since June 8th.

17 They never said, oh, we actually need more detail, we
18 don't understand this. Instead, on Bloomsday, I got the
19 Bloomsday surprise on June 16th of an ESI 30(b)(6) notice that
20 was very wide ranging, and to be fair, we have had a meet and
21 confer, we had it yesterday. I think we did make progress.

22 I thought it was a good idea for Ms. Finken to send
23 along the notice in Word format so that we could see what are
24 we willing to do and where are the topics that we think are out
25 of bounds. We did provide that to Ms. Finken today, sort of a

1 markup on that.

2 Obviously, this is kind of all unfolding in real time,
3 and that really gets me to the punch line of all of this, which
4 is, I think that this is premature and I think it is helpful to
5 have the Court's guidance and thoughts on where you are
6 thinking and kind of the practical implications of this, but I
7 think there is still work that the parties can do on this.

8 We are kind of waiting for a response on our proposed
9 compromise, also waiting for a response on whether we need to
10 even do a deposition versus some of these things like
11 functionality, search capability. We could do written
12 responses that satisfy the Plaintiffs.

13 So, it seems to me that there is more work to be done
14 and it should be done through the prism of Rule 26. It should
15 be done through the prism of, is this what they are asking for,
16 is this really adding to information that goes to the claims in
17 this case, or is this cumulative of what they already have and
18 unnecessarily burdensome. That is sort of where we are on the
19 substance.

20 And then on the timing, you know, I think the issue
21 here, and we have shared this with the Plaintiffs, and
22 Ms. Finken knows this very well because in the Zofran
23 litigation, in which she was involved, there was a 30(b)(6)
24 deposition of GSK, I think it was at an earlier stage of the
25 litigation. I was not involved in it. But GSK, to the choice

1 of GSK -- and it is GSK's right to choose a corporate
2 representative to bind the company on these topics. The choice
3 of GSK is to have somebody do a comprehensive kind of forensic
4 analysis so that they can answer the questions put to them
5 about the various systems. That is precisely -- if we are
6 heading to a deposition in this case, that is precisely what
7 GSK intends to do, and that investigation doesn't happen at the
8 snap of a finger.

9 I hear what Ms. Finken is saying and Mr. McGlamry has
10 made this point about, look, you have been talking to various
11 people in the company about these various different systems,
12 but there isn't one IT head at the company who could sort of
13 answer all of these questions and, you know, it is our choice
14 not to put up multiple witnesses from multiple departments, all
15 of whom have many competing obligations, to answer this by
16 little bites. So, that is kind of where we are on this.

17 I think that the timing of that prep and, frankly, the
18 timing, given everything else we have in front of us, sort of
19 dictates that that deposition needs to happen, if it happens at
20 all, in the fall. So, that is kind of where we are.

21 *THE COURT:* Okay.

22 *MR. OOT:* Your Honor, I would just like to add, Mr.
23 Sachse did focus on the overall burden, I think the rules do
24 have a specific provision to deal with just this. We weren't
25 given the opportunity to brief this because we were in such a

1 rush to deal with the PTO 54 issue, but I would like to point
2 out 26(b)(2)(c) really has specific provisions that would
3 address cumulative and also duplicative discovery. There is
4 even a provision there that also pulls in 26(b)(1), and the
5 traditional course of discovery that we are used to.

6 So, really getting at what Mr. Sachse was getting at
7 is that Plaintiffs have had ample opportunity for discovery.
8 We first gave them these informal disclosures back in May, I am
9 not going to go through the history, but we supplemented those
10 disclosures in April, and we were before you with the
11 transcript that Mr. Sachse focused you on earlier.

12 So, our big picture here is, there are more important
13 things to focus on rather than discovery on discovery, which is
14 really what this is getting at at this stage in the litigation.

15 Sure, I understand if they want to learn more about
16 the systems, or they want to have a discussion about those
17 systems, but at this point a deposition isn't an effective or
18 efficient methodology to do that.

19 *THE COURT:* Why not? Why isn't it actually the most
20 efficient way to do things?

21 If I limit it to they can't repeat what is in the
22 interrogatories, the interrogatories are a baseline, but they
23 are not going to have somebody sit there and read the
24 interrogatories, they can just use the interrogatories as a
25 launch pad, why isn't an interactive interrogatory where they

1 can ask questions in real time and get answers in real time and
2 it is more fluid, why isn't that more efficient than this
3 serial, S-E-R-I-A-L, we ask, you answer, then we ask again,
4 then you answer, then we wait three weeks and then you ask
5 again and we answer?

6 Why isn't it the most efficient way to simply say what
7 I think I said to you all a year and a half ago, bring somebody
8 in for a high level, which is what Ms. Finken is talking about,
9 a systems level discussion about, okay, you gave us these
10 interrogatories -- I can't imagine they are going to spend 15
11 hours if they have detailed interrogatories. They just want to
12 fill in some gaps and fill in some holes.

13 Why isn't that the most efficient way to go? Either
14 one of you.

15 MR. OOT: Let me start there. So, Ms. Finken is
16 familiar with what happened in the PPI litigation, so there it
17 was managed with a meet and confer. So, through an informal
18 process of question and answer and bringing the right people,
19 the investigation around the systems was complete that way.

20 Now we are kind of far along in this litigation. We
21 provided the informal disclosures, we provided the supplemental
22 responses, and we provided the interrogatory responses, and we
23 are still moving down this pathway.

24 So, I think I would advocate that the PPI litigation
25 that Ms. Finken was involved in and the process that was

1 followed there is more appropriate than a formal deposition and
2 the costs associated with that.

3 *THE COURT:* Well, except that we -- I am looking here.
4 My records are that the first hearing I had on this topic was
5 on February 26th, so that was 120 days ago, and your client
6 hasn't really moved the ball much farther forward as far as I
7 can tell. I am still being told there are hundreds of studies
8 that they have questions about, and I think they are entitled
9 to get answers to their questions about the studies.

10 Your client has been in this litigation for over a
11 year, and I would have thought the most important evidence that
12 they would want to retrieve is their clinical trial history as
13 it relates to this drug.

14 I understand Mr. Sachse is going to tell me a lot of
15 what is in the MedTrack database is in clinical trials and you
16 have turned over all the clinical trials. I get that. But the
17 Plaintiffs are allowed to probe that. They don't have to take
18 your word for it.

19 *MR. SACHSE:* There are a couple of things, though,
20 going back to your point, Judge, about why isn't this the most
21 efficient way to go about it.

22 Where I am struggling is, I hear what Ms. Finken is
23 saying, and I look at the notice, and it seems to me that if
24 they had specific questions about, for example, system
25 functionality, system interplay with other identified systems,

1 okay, we can talk about -- whether it is a deposition or
2 whether it is by a written response, a supplemental response,
3 we can talk about getting them that information in some kind of
4 binding form.

5 But we have not heard from them that the interrogatory
6 response is in any way -- that there is something missing from
7 there, that they think that we didn't give them the full
8 information or anything like that. When we look at this
9 notice, and this came up when we had discussions, it seems to
10 me like the focus, the true focus here, it is about document
11 retention and document destruction.

12 When I put that question to Ms. Finken and said it
13 seems like you are fishing here and you are trying to get
14 evidence to build some kind of spoliation argument, she said
15 unequivocally twice, no, I am not, that is not what this is
16 about.

17 So, if that is not what this is about and it is really
18 just about a little bit more detail about the mechanics of the
19 systems, that, to me, seems like something that we could do
20 very efficiently through a supplemental response, and then be
21 done with this.

22 *MS. FINKEN:* Your Honor, may I respond?

23 *THE COURT:* Yes, Ms. Finken.

24 *MS. FINKEN:* Thank you. First of all, I want to put
25 this in context in the history of this particular case. My

1 very first meet and confer with Mr. Oot on discovery matters
2 occurred late last April of 2020, early May of 2020. At the
3 very first meeting I inquired if GSK had a spreadsheet or a
4 master listing of the clinical trials that were performed on
5 Zantac. I was told unequivocally no.

6 I asked again in August, after finding some documents
7 in the document production that indicated that perhaps there
8 was a clinical trial database that might have such information.
9 I was told again unequivocally no, that there is no such master
10 list related their clinical trials.

11 Well, lo and behold, in March, while we were looking
12 at custodial files, we came across the MedTrack spreadsheet,
13 which was an attachment in a custodial file. That is the first
14 time we learned about that database, that is the first time
15 that we have seen a listing of clinical trials.

16 We brought it to Mr. Oot's attention and he described
17 it to us as a card catalog of sorts of -- a tool to track the
18 clinical trials that had been done. That was the first we
19 heard about it, in March of 2021, almost a year after the first
20 time I made that inquiry.

21 Since then, we received updated systems disclosures
22 informally from GSK, and there were certain systems, including
23 MedTrack, that was now included in that disclosure. We had a
24 hearing with your Honor, we discussed these issues, we served
25 an interrogatory about the systems, and lo and behold, in June

1 we received responses to those interrogatories and there were
2 yet new clinical study databases identified in the
3 interrogatory response that had not previously been identified
4 in the April disclosures, in the disclosures from last May of
5 2020, and that we had never heard of before.

6 We are trying to get to the bottom of this once and
7 for all, where the potential clinical studies could be, how
8 they are maintained, what their retention policy is, how that
9 data is migrated from legacy systems to new systems, if there
10 are standard operating procedures on how that information is
11 kept, so that we can finally put this issue to bed, so to
12 speak, on the clinical trials.

13 We are at the point where we have five months left in
14 discovery in this case and time is fleeting. That is what we
15 explained to Mr. Sachse and Mr. Oot yesterday, and that is
16 something that is -- it is a commodity that we don't have a lot
17 of. As your Honor has indicated, we had a very generous
18 extension, we are not going to get another one, and we are
19 trying to get to the bottom of this in the most efficient way
20 possible.

21 Just one other item. Initially, when we met last
22 April and May with Mr. Oot on discovery issues we requested
23 that they provide a company witness informally so that we could
24 get to the heart of these matters, and they refused to do that
25 back then. Now, over a year later, after we have been spinning

1 our wheels trying to get to the bottom of these issues, they
2 want to put up an informal witness. That is something that,
3 your Honor, I don't think is productive.

4 I think the easiest way for us to get the answers to
5 the questions that we need would be through a 30(b)(6)
6 deposition on these limited topics that we can ask the
7 questions that we need to ask under oath from a witness from
8 the company, and finally get the answers that we need as it
9 relates to the clinical production.

10 *THE COURT:* Okay. A couple of thoughts. I applaud
11 that you are talking and trying to make progress on this, and I
12 think that is a process that you should continue to do, first
13 of all.

14 Second of all, it is clear to me that -- look, we have
15 all have done it, I did it when I was in practice. What is
16 actually written down in the subpoena -- in the subpoena notice
17 is well beyond what Ms. Finken and Mr. McGlamry really want
18 right now. So, continue to have the dialogue about this is
19 what we are -- what we really want, this is what we -- look, at
20 the perfect end of the spectrum Ms. Finken would just give GSK
21 all the questions she is going to ask at the depo and say, now
22 prepare somebody to answer these. That would be the gold
23 standard for how you help the other side prep for a 30(b)(6)
24 witness.

25 I know you are not going to go all the way to that,

1 Ms. Finken, but go as close as you can. This is historical
2 data, it's there or it's not there. So, the more help you can
3 give Mr. Sachse and Mr. Oot, it is going to be a lot easier for
4 them to prepare their witness.

5 I do think it is appropriate to do this by deposition
6 at this point, not by further written discovery, so I will
7 allow a deposition of this nature to go forward.

8 That is the first topic.

9 The second issue is, GSK may want to have someone do a
10 forensic examination before they testify. I don't think that
11 is what the rules require. If I asked someone to help me
12 figure out how to get around in Moscow and they say, I won't
13 answer that until I read War and Peace, that doesn't fly, and
14 that is essentially what you're telling me.

15 We can't answer questions about what system replaced
16 what system, or where we keep stuff, or how long we retain it,
17 without conducting a full-blown forensic examination of all of
18 our systems? I don't accept that.

19 You can prepare a witness at the level of abstraction
20 that Ms. Finken and Mr. McGlamry are asking, and if you feel
21 that they are asking too detailed a question and that the
22 witness really isn't prepared to answer it, you will instruct
23 the witness not to answer it. If I am asked to rule on it
24 after the fact, and the truth of the matter is it was too
25 detailed and the witness couldn't answer it, and that was

1 reasonable, then that was reasonable. You don't have to
2 prepare a witness with perfect knowledge, you have to prepare a
3 witness who can reasonably respond to the questions that are
4 propounded.

5 I get back to where I started, the cause and effect.
6 The more detail Ms. Finken and Mr. McGlamry give you, the more
7 detail they give about what they are going to ask, the more I
8 am going to expect of GSK. The more abstract it is and the
9 wider it is, I am not going to expect GSK to prepare somebody
10 to answer granular questions. I do think there is a happy
11 medium there and I think it can be accomplished by the end of
12 July.

13 I am going to order the deposition to go forward. I
14 am going to order it to go forward before July 31st, at a
15 mutually convenient date agreed to by the parties on deposition
16 topics mutually agreed to by the parties, but along the lines
17 of what Ms. Finken has put on the record here. I think that
18 level of abstraction is an appropriate level to conduct this
19 deposition.

20 Okay. Any other guidance I can give the parties I am
21 happy to give you.

22 Ms. Finken, anything else you think we need to take up
23 this afternoon? Do we still meet on Thursday to talk about
24 batch records or should we try to deal with that now as well?

25 *MS. FINKEN:* I think that we are scheduled to meet on

1 Thursday and we have BI as well, so I think we should keep our
2 schedule for Thursday afternoon and we can address those issues
3 then. Thank you, your Honor.

4 *THE COURT:* As I mentioned, that is like the 158th
5 anniversary of Pickett's Charge, so I hope we will not recreate
6 Pickett's Charge for this litigation on Thursday, but we will
7 have our meeting.

8 Mr. Sachse and Mr. Oot, not waiving any objections you
9 might have to any rulings I have made or anything I have said,
10 anything else you want to take up this afternoon?

11 *MR. SACHSE:* Yes, your Honor. So, another issue I
12 raised with the Plaintiffs and I have gotten no response, by my
13 count the Plaintiffs are now over their presumptive limit of
14 depositions for GSK.

15 So, I will again ask, please tell us which deposition
16 you are withdrawing your request for or canceling, because I am
17 flying to London, as you know, in a couple of weeks and we are
18 going to be defending a whole bunch of Glaxo -- GSK witnesses,
19 and if one of those is coming off calendar, that would greatly
20 help me in terms of planning travel.

21 Otherwise, I think we might be litigating this issue,
22 too, because I know that just today I got a request for
23 additional depositions even above and beyond the 28 that you
24 have currently asked for.

25 *THE COURT:* I am not going to require Ms. Finken to

1 answer that question on the record at this time. You can talk
2 about it, but as I said earlier, 30(b)(6) is one deposition, it
3 is one deponent, that is just the way it is, it is one
4 deponent. You get seven hours, it's one deponent.

5 *MR. SACHSE:* Understood. Sorry.

6 *THE COURT:* If this is just a continuing flow of
7 one -- I don't know. I don't know what other depositions have
8 been noticed, I am not involved at that level of granularity.
9 I will leave it to you all to work it out. I just wanted to
10 share that it is my view that a 30(b)(6) deposition is one
11 deposition, it is one deponent, the party.

12 *MR. SACHSE:* Absolutely, your Honor, and that is the
13 way I have been counting them. Even doing that, I can assure
14 you we are above that limit.

15 *THE COURT:* That is fine. Again, I am not ruling on
16 that. If anybody wants to bring it to my attention in a formal
17 way, I will be happy to get involved and we will deal with it
18 when we have to deal with it.

19 You have made your record, Mr. Sachse, and it is out
20 there.

21 *MR. OOT:* Your Honor, a couple of procedural things
22 I'd like to address. I apologize for interrupting.

23 *THE COURT:* Yes.

24 *MR. OOT:* A quick question. We are having some issues
25 related to the cross noticing in the State cases. We would ask

1 that Plaintiffs take down the July 9th date so we don't have
2 the cross notice issue in the State cases and the disputes
3 there, would be kind of a first ask.

4 Also, I think it would be helpful if we had -- in
5 Zofran we got a defined list of the questions or topics from
6 Plaintiffs before a deposition like this, and it would be nice
7 to have that, whatever you are ordering here, perhaps in the
8 next couple days, because we may have scope objections.

9 For example, Mr. Sachse raised the retention policy
10 issue. That might be an issue that we would object to as
11 discovery on discovery and have to discuss that later on. So,
12 the faster we get those topics, obviously, the faster this
13 moves forward.

14 *THE COURT:* Again, I will leave that to Ms. Finken and
15 Mr. McGlamry to work out with you.

16 Two comments on that. As you know from my PTO 32, I
17 don't rule on scope objections before 30(b)(6) depositions.
18 You take the deposition, you object in real time.

19 Second of all, I think the retention policy is
20 completely fair game for this deposition. You can object to
21 the scope as to retention policy, I will overrule that
22 objection. I think they can ask you what the retention
23 policies have been.

24 It has been represented to the Court repeatedly here
25 that some of the things that are referenced in the MedTrack

1 database don't exist any more. I think Plaintiffs are
2 perfectly entitled to know, and that is fine, if GSK had a
3 retention policy that we don't keep things after ten years,
4 okay, but I think the Plaintiffs are entitled to know that.

5 Anything else for either side? Yes, Mr. Sachse.

6 MR. SACHSE: Just to note for the record, obviously,
7 and respect my objection to that, we are probably going to be
8 back in front of you on that issue down the road, but we'll
9 cross that bridge when we get to it.

10 THE COURT: Understood. I hear you and you have
11 preserved your objection.

12 Anything else, Ms. Finken?

13 MS. FINKEN: Nothing, your Honor. Thank you.

14 THE COURT: Thank you all very much. I will see you
15 in about 48 hours. Have a good week, everybody.

16 MR. SACHSE: Thank you, your Honor.

17 MR. McGLAMRY: Thank you, your Honor.

18 *(Thereupon, the hearing was concluded.)*

19 * * *

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

22
23 Date: June 30, 2021

24 /s/ Pauline A. Stipes, Official Federal Reporter

25 Signature of Court Reporter

Pauline A. Stipes, Official Federal Reporter

<p>MR. McGLAMRY: [2] 3/9 27/16 MR. OOT: [5] 3/15 14/21 16/14 25/20 25/23 MR. SACHSE: [10] 3/13 4/16 4/19 10/24 17/18 24/10 25/4 25/11 27/5 27/15 MS. FINKEN: [12] 3/8 3/24 4/13 7/8 9/1 9/11 9/14 10/5 18/21 18/23 23/24 27/12 THE COURT: [25] 2/2 3/11 3/16 4/3 4/14 4/18 5/3 8/23 9/2 9/12 9/22 10/16 14/20 15/18 17/2 18/22 21/9 24/3 24/24 25/5 25/14 25/22 26/13 27/9 27/13</p> <p>/</p> <p>/s [1] 27/24</p> <p>1</p> <p>1000 [1] 1/22 1130 [1] 1/13 120 [1] 17/5 130 [1] 1/12 15 [1] 16/10 158th [1] 24/4 1600 [1] 1/12 16th [1] 12/19 17 [1] 7/3 1800 [1] 1/22 18th [1] 1/12 19103 [1] 1/12 19104 [1] 1/19</p> <p>2</p> <p>20-md-02924-ROSENBERG [1] 1/3 20-md-2924 [1] 3/2 20006 [1] 1/23 202-783-8400 [1] 1/23 2020 [4] 11/11 19/2 19/2 20/5 2021 [4] 1/5 11/12 19/19 27/23 215-735-1130 [1] 1/13 215-994-4000 [1] 1/20 26 [3] 13/14 15/2 15/4 26th [1] 17/5 28 [1] 24/23 29 [1] 1/5 2924 [1] 3/2 2929 [1] 1/19</p> <p>3</p> <p>30 [17] 5/6 6/6 6/8 7/24 8/14 10/10 10/21 11/4 11/14 12/19 13/23 21/5 21/23 25/2 25/10 26/17 27/23 300 [1] 1/15 30326 [1] 1/16 31st [1] 23/14 32 [1] 26/16 3391 [1] 1/15 3701 [1] 3/5 3710 [1] 3/6</p>	<p>4</p> <p>40 [2] 5/23 6/19 4000 [1] 1/20 404-523-7706 [1] 1/16 44 [1] 5/24 48 [1] 27/15</p> <p>5</p> <p>54 [7] 4/5 4/6 4/12 4/21 5/11 5/15 15/1</p> <p>6</p> <p>69 [1] 11/17</p> <p>7</p> <p>7706 [1] 1/16 772.467.2337 [1] 2/2</p> <p>8</p> <p>8400 [1] 1/23 8th [2] 11/19 12/16</p> <p>9</p> <p>9th [2] 3/21 26/1</p> <p>A</p> <p>abiding [1] 4/21 able [2] 8/1 8/9 about [41] above [3] 24/23 25/14 27/21 Absolutely [1] 25/12 abstract [1] 23/8 abstraction [3] 10/20 22/19 23/18 accept [1] 22/18 accomplished [1] 23/11 across [1] 19/12 actually [5] 6/21 7/9 12/17 15/19 21/16 add [1] 14/22 adding [1] 13/16 additional [1] 24/23 address [8] 4/5 6/5 8/21 10/9 10/12 15/3 24/2 25/22 admissible [1] 11/14 advice [1] 7/19 advocate [1] 16/24 after [6] 7/19 19/6 19/19 20/25 22/24 27/3 afternoon [7] 3/1 3/12 3/14 3/17 23/23 24/2 24/10 again [10] 9/23 12/10 12/12 16/3 16/5 19/6 19/9 24/15 25/15 26/14 against [1] 8/25 ago [2] 16/7 17/5 agree [1] 7/9 agreed [2] 23/15 23/16 all [27] 4/21 5/7 5/9 5/25 7/1 10/14 11/5 11/22 12/14 13/2 13/3 14/13 14/14 14/20 16/7 17/16 18/24 20/7 21/13 21/14 21/15 21/21 21/25 22/17 25/9 26/19 27/14 allow [1] 22/7 allowed [1] 17/17 almost [1] 19/19</p>	<p>along [4] 6/25 12/23 16/20 23/16 alphabet [1] 12/14 already [1] 13/17 also [9] 8/14 8/19 12/6 12/10 12/12 13/9 15/3 15/4 26/4 am [22] 3/24 4/4 4/5 5/3 5/7 9/7 12/14 15/8 17/3 17/7 17/22 18/15 22/23 23/8 23/9 23/13 23/14 23/20 24/16 24/25 25/8 25/15 amount [1] 5/20 ample [1] 15/7 analysis [1] 14/4 analytical [4] 8/3 8/21 9/13 11/7 Anapol [1] 1/11 and talk [1] 11/1 anniversary [1] 24/5 another [3] 9/19 20/18 24/11 answer [15] 14/4 14/13 14/15 16/3 16/4 16/5 16/18 21/22 22/13 22/15 22/22 22/23 22/25 23/10 25/1 answers [7] 7/12 8/10 12/15 16/1 17/9 21/4 21/8 anticipate [1] 10/11 any [7] 11/25 11/25 18/6 23/20 24/8 24/9 27/1 anybody [2] 4/11 25/16 anything [7] 10/2 18/8 23/22 24/9 24/10 27/5 27/12 apologize [1] 25/22 appearances [1] 3/7 applaud [1] 21/10 application [1] 12/7 appreciate [1] 11/1 appropriate [4] 11/4 17/1 22/5 23/18 April [7] 7/19 11/9 11/12 15/10 19/2 20/4 20/22 April 2021 [1] 11/12 April of [1] 19/2 Arch [1] 1/19 are [74] area [3] 7/10 8/3 9/16 areas [7] 7/15 7/16 8/8 8/9 8/17 8/18 9/22 argument [1] 18/14 around [2] 16/19 22/12 as [24] 3/21 6/21 6/21 6/24 8/4 10/16 11/8 15/24 17/6 17/6 17/12 19/17 20/17 21/8 22/1 22/1 23/24 24/1 24/4 24/17 25/2 26/10 26/16 26/21 ask [13] 8/11 16/1 16/3 16/3 16/4 21/6 21/7 21/21 23/7 24/15 25/25 26/3 26/22 asked [5] 6/3 19/6 22/11 22/23 24/24 asking [5] 10/22 12/4 13/15 22/20 22/21 associated [1] 17/2 assuming [1] 9/7 assure [1] 25/13 Atlanta [1] 1/16 attachment [2] 3/21 19/13</p>
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