

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.** . September 13, 2021
8 .
9 .

10 DISCOVERY CONFERENCE (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 20-02924, In re: Zantac (Ranitidine) Product Liability
3 Multi District Litigation. We are here today for a discovery
4 conference. Let me begin by recognize -- well, we have lots of
5 people, so I am not going to go by person. You can each
6 introduce yourselves as we go to your specific topics.

7 Really there are three broad topics I want to cover
8 today in this order: First, the PTO 32 request relating to the
9 production of inventory and reserved products. Secondly, the
10 issues that have arisen in the PTO 32 request relating to the
11 corporate representative deposition of GSK; and then third,
12 kind of an omnibus status update, anything else that anybody
13 needs me to know.

14 So, turning to the first issue, which is the
15 production of the reserved product, let me recognize counsel
16 for the Plaintiffs first.

17 *MS. JUNG:* Good afternoon, your Honor, Je Yon Jung on
18 behalf of the Plaintiffs.

19 *MS. FINKEN:* Good afternoon, your Honor, Tracy Finken
20 on behalf of the Plaintiffs.

21 *THE COURT:* Good afternoon. On behalf of Sanofi. No
22 one on behalf of Sanofi.

23 *MS. FINKEN:* Your Honor, I believe Mr. Nigh is going
24 to enter an appearance.

25 *THE COURT:* Yes, go ahead, Mr. Nigh. I didn't mean to

1 cut you off. Feel free.

2 MR. NIGH: I am sorry. Good afternoon, your Honor,
3 Daniel Nigh for the Plaintiffs.

4 THE COURT: All right. Now on behalf of Sanofi.

5 MR. BEROUKHIM: Good afternoon, your Honor, Alex
6 Beroukhim of Arnold & Porter on behalf of Sanofi.

7 THE COURT: Good afternoon. On behalf of BI.

8 MR. SENTENAC: Good afternoon, your Honor, Mark
9 Sentenac on behalf of BI.

10 THE COURT: Good afternoon. On behalf of GSK.

11 MR. SACHSE: Good afternoon, your Honor, Will Sachse
12 on behalf of GSK.

13 THE COURT: Thank you all. I have read the
14 submissions, and if I understand the state of the world, here
15 is where we are, as to at least Sanofi and BI, there was a
16 negotiated resolution of the request for production of
17 products, and at least from the Plaintiffs' perspective, there
18 was an agreement to produce by September 10th. It sounds to me
19 like from Sanofi's and BI's perspective, it was a softer
20 deadline in their view.

21 GSK is in a different bucket because we had a hearing
22 and I had an order as to that. We will address GSK separately.

23 I will hear from all parties, but what I am primarily
24 interested in knowing is this, whether on August 26th Sanofi
25 and BI agreed to a hard deadline of September 10th or a soft

1 deadline of September 10th, what has changed since then, what
2 do you know today that you didn't know then, and why didn't you
3 know it then when you made whatever commitments you made to the
4 Plaintiffs. That is sort of the issue I want to address.

5 Let me also address the issue I am not going to
6 address, which is the request to modify the scheduling order.
7 I don't have that authority. I understand the Plaintiffs are
8 asking for a hundred days and a change in the schedule for
9 expert witness disclosures. You are talking to the wrong
10 person. I do not have the authority to give that to you, so we
11 will put that issue to the side.

12 So, let me turn first to Mr. Beroukhim on behalf of
13 Sanofi. Can you bring me up to date on where you are in terms
14 of your production, and if you are not going to make it by
15 September 10th, what has changed since August 25th or 26th?

16 *MR. BEROUKHIM:* Thank you, your Honor. So, we have
17 gotten out -- Plaintiffs have made kind of three buckets of
18 requests from us. They have asked for some API, and we have
19 already shipped to them all the API that they requested.

20 They have asked from us bulk product that was
21 manufactured and had not yet been packaged, and we are at the
22 site collecting them today and we are planning to ship that
23 product by Wednesday.

24 The reason for the slight delay there, your Honor, is
25 we were waiting to receive these tamper-proof bottles that we

1 could put the materials in, and what happens is, once you put
2 them in and you seal it, when it is opened by someone, they can
3 tell that it has been sealed when it was being shipped, so it
4 is just a way of maintaining the integrity of the product for
5 shipping, and it took us a little bit longer to get those
6 bottles than we thought. I think we got them on -- I think it
7 was on September 8th, we finally received those bottles, and it
8 took us a little bit longer to get those than we thought it
9 would take.

10 The third bucket is recalled product. That is not
11 being maintained by us, it is being maintained by a recall
12 vendor who has over 3,000 pallets of recalled product, and the
13 difficulty in -- we have hit a snag in identifying the exact
14 products from the pallets the Plaintiffs have selected.

15 Plaintiffs have selected 150 plus different types of
16 products from that vendor and there is over 3,000 pallets, and
17 we not only have to find the pallets, but we have to try to
18 match what is in the pallets to Plaintiffs' selection, and the
19 latest I heard this morning is, one of the problems we are
20 hitting is, because of staffing due to the pandemic it is just
21 taking longer than it was originally anticipated, and we are
22 working as diligently as we can.

23 I have had several exchanges with the vendor, the
24 client and I have had several exchanges about this. We are
25 working as fast as we can to get this product to Plaintiffs.

1 By Wednesday, the Plaintiffs will have all -- excuse me, by
2 Thursday -- right now the Plaintiffs have all the API. By
3 Thursday, Plaintiffs will have 41 samples of 500 tablets each
4 that they can begin testing, and our hope is that we will
5 be able -- our expectation is that we will be able to get the
6 recalled product to them by next week.

7 *THE COURT:* When you say by next week, next week is a
8 long week, is it Monday the 20th or is it Friday the --
9 whatever day that is, 24th?

10 *MR. BEROUKHIM:* Based on my last exchange with the
11 client, I believe it is possible it will be earlier in the
12 week. It is just a matter of really how long it is going to
13 take to try to identify the specific products the Plaintiffs
14 are asking for within the pallets. We are doing our best, we
15 are putting as many people as we can on it, we are doing our
16 best.

17 It is possible that it will be early in the week, I
18 just don't have any more certainty that I can represent to the
19 Court in good faith.

20 *THE COURT:* I appreciate that. Thank you.

21 Let me turn to -- I don't know if it is Mr. Nigh,
22 Ms. Jung, or Ms. Finken, I don't know who is going to speak for
23 the Plaintiffs on this.

24 Does your expert -- help me understand. Does your
25 expert need all of this to begin doing whatever your expert

1 needs to do or can your expert at least get started with what
2 they have now and then kind of ramp up as they get additional
3 product?

4 *MS. JUNG:* Thank you, your Honor. I think, your
5 Honor, you can understand that testing and what our experts
6 need to do with this is an iterative process. You also
7 understand that they have had two years to do what we are
8 trying to do as expeditiously as possible to comply with the
9 Court's scheduling order, and while -- they will start as soon
10 as everything comes in, and as soon as it comes in the door
11 they are trying to start.

12 But to have these kind of hopes and a prayer as to
13 when we can expect the rest is what is causing us difficulty
14 because if we don't have a date certain by when we will receive
15 all of the product it is very difficult for our experts to
16 prioritize and to do the testing and to do the various amounts
17 of testing that are required.

18 Again, we are doing in three months what they have had
19 two years to do, so we will start with whatever we have as soon
20 as possible, no question, but not knowing and having these
21 potential hopes of when we will receive the rest of the product
22 is the problem we are having, your Honor.

23 *THE COURT:* I hear you, and I hear you loud and clear.
24 I understand you need it yesterday, so I got it. From your
25 perspective, you need it yesterday.

1 I am trying to understand -- I mean there is a big
2 difference between saying we are dead in the water and we can't
3 do anything until we get all of it, and saying we can't do
4 everything we want to do until we get all of it, but we can at
5 least get started now. That is what I am trying to understand
6 because that helps me understand the bigger picture.

7 Which is it, Ms. Jung? Can you at least get started
8 now -- not waiving your position that you need it all right
9 away, but I am just trying to understand. Can you get started
10 with what you have or do you need it all to get started?

11 *MS. JUNG:* Of course we will start with what we have,
12 but a lot of our testing and the critical testing may require
13 as much time as possible. So it is --

14 *THE COURT:* I understand.

15 *MR. NIGH:* Your Honor, if I --

16 *THE COURT:* Hold on. For the record, Mr. Nigh. Go
17 ahead.

18 *MR. NIGH:* It is kind of backwards in terms of what we
19 would need to prioritize for Sanofi and how it came in. API is
20 what the experts would test last. Bulk product, no container
21 would be in the middle, and what they would want to be testing
22 first and takes the longest is the returned product in the
23 container, and that is what we are going to get last.

24 *THE COURT:* Okay. Thank you. That is helpful for me
25 to understand.

1 Okay. Anything further from the Plaintiffs, at least
2 as to Sanofi? I want to think about this for a second, I want
3 to hear from the other two Defendants. I understand how -- I
4 understand where you are left given the current situation.
5 Anything further, either Ms. Jung or Mr. Nigh?

6 *MS. JUNG:* One thing, your Honor, is that after the
7 PTO hearing on the 26th, when we thought we had an agreement
8 with Sanofi in particular, the next day we were informed that
9 there were actually different products, different
10 understandings of inventory than we were provided, so we were
11 back to a different kind of, oh, we made a mistake, here is a
12 new list that we need to go from, please make a request from
13 that.

14 So, that has kind of been the examples of how we have
15 been dealing with this, and so again we were stuck on August
16 27th with yet a new spreadsheet. So, one of those, which is
17 the product that Mr. Nigh indicated, is delayed and we received
18 different information regarding a spreadsheet that we had been
19 operating under for weeks. So, I just wanted to add that as
20 another layer of what is happening.

21 *THE COURT:* I understand and, look, in some respects,
22 how we got where we are today is -- for what is before me today
23 doesn't really matter. What I am trying to figure out is, I
24 want to order this produced to you as fast as it is feasible to
25 do so, and whether we got here from good, bad, negligence,

1 incompetence, or simply best efforts, that at some level
2 doesn't matter to me. I am just trying to figure out what do
3 you need, how fast can I get it for you, and what is feasible.
4 That is helpful though.

5 Okay, let me go back to Mr. Beroukhim. Anything
6 further from Sanofi?

7 *MR. BEROUKHIM:* Your Honor, I am going to continue to
8 work as diligently as possible to get this. There has not been
9 a day where I haven't been on the phone and sending emails to
10 people trying to make this happen. We are working as fast as
11 we can. We have already gotten out a production. We are using
12 our best efforts and acting in good faith. We are trying our
13 best to get them exactly what they want.

14 *THE COURT:* I understand. Okay.

15 If I understand it correctly, all of Sanofi's product
16 is domestic, so we don't have an international shipping issue
17 with Sanofi?

18 *MR. BEROUKHIM:* Yes, sir. Yes, your Honor.

19 *THE COURT:* All right. Lucky you.

20 Let me put Sanofi to the side for a second, and let me
21 turn to BI, who I understand is at the other end of the
22 universe in that, at least from your discovery statement, you
23 are fighting at least two different Governments and lots of
24 regulations and all sorts of other logistical problems.

25 So, how much of this did you know on August 26th, and

1 how much of it have you learned in the last 14 days?

2 MR. SENTENAC: We were very clear from the beginning,
3 your Honor -- this is Mark Sentenac on behalf of BI. We knew
4 from the beginning that we were facing complicated transport
5 and primarily import issues after speaking with our logistics
6 people. Those have certainly crystallized in the last 14 days
7 for us. That is the primary issue that has crystallized for
8 us, but we have been clear with them that those were issues.

9 In fact, when we confirmed the agreement before
10 August 26th, we specifically identified that, and I think the
11 exhibit, the Plaintiffs' papers demonstrate that, too, that we
12 are continuing to deal with the nature of the beast, that this
13 product is in Mexico, and really from our perspective, Judge,
14 what is crystallized is that the issue for us is responsibility
15 for the import process. We have worked with our client's
16 Mexican affiliate to offer to handle the export processes from
17 Mexico.

18 What remains is really responsibility for the import
19 processes and, you know, our understanding is that, you know,
20 there are regulations that fall within the purview of both FDA
21 and Customs, and not having any responsibility after the
22 product is imported, that responsibility will lie with
23 Plaintiffs.

24 Being in the position -- there are financial and
25 significant penalties associated with not doing that process

1 right, making statements, and the client doesn't feel like it
2 can be in the position of making representations about what the
3 product is to be done with and what controls are in place with
4 respect to that product because Plaintiffs haven't identified
5 that for us, so it's really responsibility.

6 Plaintiffs will be responsible for this product after
7 it is imported and they need to take responsibility for the
8 import and Customs process, and frankly, our understanding is
9 that the process for doing so is pretty straightforward.

10 This is what -- when we last spoke we told them we
11 need to know from them who -- you know, they have now said
12 Saturday evening that they don't believe they need a Customs
13 broker, which is fine. We still need to know who is going to
14 file the Customs paperwork and be the responsible importer of
15 record. That is really the issue that has crystallized for us,
16 your Honor.

17 *THE COURT:* Were these issues raised in the conferrals
18 before August 26th?

19 *MR. SENTENAC:* Certainly. We flagged that we are
20 still working through import processes, and that these issues
21 could delay the timeline for this, and that they are very
22 complex.

23 *THE COURT:* Well, I am -- let me ask you, on or about
24 August 26th, you committed, at least at some level, that you
25 thought you could get things done by September 10th. You must

1 have -- you must have at that point at least thought that you
2 could get through these Customs issues relatively quickly.

3 MR. SENTENAC: Provided that we worked these issues
4 out, was our perspective. This was always the biggest issue
5 from our perspective, and we felt like at the time that we
6 could complete the shipment at the time provided that we got
7 logistics issues worked out, and I have email statements to the
8 effect that we can submit after the fact if it would be
9 helpful, but those were -- that issue was made very clear from
10 our perspective to the other side.

11 THE COURT: At what level of detail, though? It is
12 one thing to say we will get it to you by the 10th, but we are
13 going to have to work through some shipping issues, and it's
14 another thing to say we can get it to you around the 10th, but
15 you are going to have to come up with your own freight
16 forwarder, you're going to have to fill out the Customs forms,
17 we are going to do this. There is a level of specificity
18 involved.

19 At what level of specificity were the conversations?

20 MR. SENTENAC: That is the point that crystallized for
21 us, your Honor, that after speaking with Customs, more folks
22 internally, that's really the issue that crystallized for us.
23 We explained that that was the issue, that we saw that as the
24 way that this would be in everyone's interest to get it as
25 quickly as possible, I think during our conferrals last week,

1 it could be before that. That is what we have been working on
2 in the last ten days before we were told that we were going to
3 have another PTO 32 hearing.

4 *THE COURT:* But again, were these conversations had
5 before August 26th?

6 *MR. SENTENAC:* Not this specific question -- I am
7 sorry, not --

8 *THE COURT:* Had you --

9 *MR. SENTENAC:* I am sorry.

10 *THE COURT:* Had you talked -- for example, had you
11 talked to your shipping people in Mexico before August 26th,
12 and understood the detailed steps that you were going to need
13 to take to get this product into the United States?

14 *MR. SENTENAC:* Yes, we had spoken with our logistics
15 people prior to August 26th, and at the time we had an estimate
16 that this could be done within two weeks. That was the
17 information we were working off of.

18 *THE COURT:* Okay. So, what has changed? That is what
19 I am trying to understand. If these people looked at this, and
20 you talked about it with the Plaintiffs, and on August 26th you
21 thought it could be done in two weeks, what changed?

22 *MR. SENTENAC:* It is the import process from the U.S.
23 Customs perspective that crystallized for us, that -- the
24 responsibility issue and who needs to have responsibility as
25 the importer of record is the specific issue that crystallized

1 over the last now two weeks. It was -- whenever we disclosed
2 it and talked about it with Plaintiffs, it was seven days that
3 we had identified that information working with these -- once
4 we had resolved the issue on the identity of the product and
5 the terms in which it would be produced, that was an issue that
6 crystallized then.

7 *THE COURT:* Let me turn to the Plaintiffs. I feel
8 like Howard Baker at the Watergate hearings. What did you know
9 and when did you know it?

10 *MS. JUNG:* Your Honor, thank you. I think what is
11 important to remember here is that the Defendants, including
12 BI, have had the Plaintiffs' shipping instructions for weeks,
13 if not months now, and that shipping instruction includes
14 Federal Express, had Plaintiffs' account number, and to have it
15 all shipped by FedEx. We are not talking about freight, we are
16 not talking about large cargo shipments.

17 As the affidavit that the Plaintiffs submitted with
18 its briefing, it indicates that we spoke to a logistics Customs
19 expert after they raised this last week as the complex issue
20 that caused all of these delays, and we were told that this is
21 a standard routine process of international shipping with FedEx
22 and their courier release process given that the value of this
23 product is less than \$800 because it is not for commercial
24 sale.

25 I think the important piece of this is that our

1 clients are individuals with cancer. Their clients are
2 manufacturers who routinely engage in this process. So, for
3 them to say there are all kinds of complex issues that they
4 didn't recognize or realize would cause these delays I think is
5 a bit disingenuous because when we talked about it, we are
6 asking, particularly from BI, a very small amount of product
7 that will fit in a very small box, and with FedEx, that
8 commercial value that we would claim for Custom purposes only,
9 commercial sale value that is under the requirement for
10 escalating to a higher tier of complexity.

11 So, in short, FedEx has indicated to us -- or our
12 expert has indicated, who has 40 years of experience with FedEx
13 and other shipping logistics, that there is nothing there, that
14 this is a fairly routine process that FedEx handles all the
15 time with international shipping, and as long as we are clear
16 on what the invoice is for, what the manifest includes, the
17 value, that it is not for commercial sale, that there should be
18 no problems. However, if there are any problems, they are
19 ready to engage to help with that process.

20 Again, I will note that GSK has volunteered their
21 folks who are dealing with this Customs process on a routine
22 basis that they will be handling it, but for BI to raise that
23 there is this complexity that we are being told is not really
24 an issue is of concern.

25 *THE COURT:* Has your expert talked to their expert?

1 *MS. JUNG:* No. We learned of this last week from them
2 that we needed to get the Customs broker and there were all
3 these complexities, so we were reaching out and talking to
4 folks, and this all happened over the weekend, your Honor.

5 *MR. NIGH:* Your Honor --

6 *THE COURT:* Okay. Hold on. Ms. Roddy (phon), who is
7 the affiant on your exhibit, she has not had the opportunity to
8 speak to BI's shipping people; is that correct?

9 By the way, is it Ms. Jung or Ms. Jung? How do you
10 pronounce your last name?

11 *MS. JUNG:* Thank you, Judge, it's Ms. Jung.

12 *THE COURT:* Okay. Thank you. Ms. Jung, has your
13 expert had the opportunity yet to speak to their people? The
14 answer to that is no?

15 *MS. JUNG:* That is correct, your Honor, she has not.

16 *THE COURT:* Okay. Mr. Nigh, did you want to add
17 something? I'm sorry, I cut you off.

18 *MR. NIGH:* Yes, I was just going to add a couple of
19 extra points to your question, which is first off, in terms of
20 the shipping instructions, Plaintiffs have provided shipping
21 instructions months and months ago. Ultimately, Defendants
22 even sent us a protocol that included those ship instructions
23 multiple months ago and we agreed on a protocol that included
24 those shipping instructions.

25 So, this issue of product and how it was to be shipped

1 both with BI and Sanofi, this was information that was shipped
2 months and months ago, and then we heard about this for the
3 first time just recently.

4 *THE COURT:* Let me turn back to Mr. Sentenac.

5 My other question, Mr. Sentenac, is, is the product
6 ready to go? If someone can arrange shipping tomorrow, can the
7 product be picked up and shipped tomorrow?

8 *MR. SENTENAC:* We have not taken and created the
9 samples until the logistics issues were worked out because we
10 weren't sure of the timing. Creating the samples and having
11 them sit there for an unknown time until -- we had an unclear
12 picture from Plaintiffs on who was going to be responsible for
13 the import process we weren't comfortable with, so we wanted to
14 keep them in the controlled environment in which they were
15 located.

16 Our estimate -- right now, the best estimate we have
17 from the client is that once we have these issues worked out,
18 we can have it ready to go in about a week, maybe ten days, and
19 we are still -- that is our estimate, but we have not moved
20 them to create the samples.

21 This is batches of product that they have then
22 requested smaller amounts of, and then they have specific
23 instructions by which they want it bagged and packaged and then
24 ultimately shipped, which we understand, and we can move
25 quickly on that, but we didn't want to do so until the product

1 was -- until the logistic issues were cleared up.

2 *THE COURT:* Why? That makes no sense to me. Why
3 would you waste a week and not prepare the samples to go?

4 *MR. SENTENAC:* Well, we are preparing -- we are
5 prepared to move quickly once these issues -- we didn't want
6 the samples to sit out of their controlled environment until
7 the issue --

8 *THE COURT:* Why do they have to leave their controlled
9 environment? Can't you put the samples in a separate container
10 next to the old samples in the same controlled environment?

11 *MR. SENTENAC:* I don't know the answer to that
12 specific --

13 *THE COURT:* Why do you not know the answer to that?
14 Hasn't your client looked into this question? Isn't your
15 client committed to actually complying with their discovery
16 obligations in this case?

17 *MR. SENTENAC:* Absolutely. We have been working
18 extremely hard to try to resolve these issues on the logistics
19 end. We are in communications with the manufacturing folks at
20 Promeco who can move quickly to get this product ready to go,
21 but we don't know how long it was going to take to hear from
22 Plaintiffs on what the ultimate agreement would be with respect
23 to U.S. Customs responsibility.

24 *THE COURT:* What is your response to their expert who
25 says, just put it in a FedEx package and ship it?

1 *MR. SENTENAC:* Well, we have discussed this with
2 Plaintiffs, too. We could make the product available -- if it
3 is as easy as they are making it out to be, we could discuss
4 with -- making the product available in Mexico and they can
5 pick it up if it is as easy to get it across -- out of the
6 export and into the import process, but we have tried to work
7 with them to find a mutually agreeable solution that will be in
8 everyone's interest to get this product to them as quickly as
9 possible, including working with our logistics folks to help
10 with those solutions, and we have identified the easiest way --
11 my understanding is that it is a matter of telling us who will
12 be responsible and submitting the paperwork, and it can be
13 handled very efficiently from there.

14 *THE COURT:* Okay, okay, I understand.

15 Ms. Jung, anything further?

16 *MS. JUNG:* Nothing further, your Honor.

17 *THE COURT:* Okay. As to Sanofi and BI, I am going to
18 order the product be in the hands of the Plaintiffs a week from
19 today. I want all of it in the hands of the Plaintiffs a week
20 from today at five o'clock Eastern time.

21 *MR. BEROUKHIM:* Your Honor, we will do our best to
22 comply. Monday receipt is difficult because they don't want
23 the product shipped on Friday, and that would be Saturday
24 delivery. Can we have Tuesday so it could leave on --

25 *THE COURT:* You can have Friday or you can have

1 Monday. Which one do you want?

2 MR. BEROUKHIM: Okay. Okay. We will try to figure it
3 out. We will do our best, that is all I can say.

4 THE COURT: It is a defense to contempt that you
5 couldn't do it. You may have to prove that at some point, but
6 that is a defense. But you will produce it and BI will produce
7 it by next Monday at five o'clock.

8 Let me turn to GSK. Where are we, Mr. Sachse?

9 MR. SACHSE: Good afternoon again, your Honor, Will
10 Sachse for GSK.

11 So, I think we are, obviously, a little bit
12 differently situated in a few respects. First of all,
13 following the hearing that we had, we, of course, are going to
14 comply with the Court's order, and so I had a conversation with
15 Mr. Nigh early the following week, and we agreed -- certainly I
16 wouldn't say -- we did not agree on hard deadlines, but I
17 agreed that we were going to make best efforts to get this in
18 their hands as quickly as possible on a rolling basis because
19 there are some challenges unique to each jurisdiction.

20 We are shipping from, I think, 11 different countries,
21 and one of the issues that I discussed with Mr. Nigh and said
22 we were still trying to figure out with our logistics people
23 was, are we better off centralizing everything in one location
24 and then shipping it, or are we better off kind of doing it
25 piecemeal?

1 I think where we landed, after talking to our
2 logistics people later that week, was we are just going to send
3 it from individual sites.

4 So, we have been in the process of collecting the
5 materials, packing them, but in the meantime, some of our sites
6 had some specific questions and concerns about the shipping
7 instructions. For example, in Singapore, where I think it is
8 245 samples of API were getting shipped from, they can't use
9 FedEx, so we were going to use UPS. There was some back and
10 forth with the Plaintiffs last week -- or two weeks ago about
11 that.

12 There were some other sites, such as Ecuador, where we
13 learned that we were not going to be able to export expired
14 product. Apparently that's the law in Ecuador. We just
15 weren't going to be able to get -- it's only a handful, maybe
16 five samples, something like that.

17 After a lot of investigation and sort of conversations
18 internally with logistics people from around the world, we
19 decided last week that the easiest and best way to do this, and
20 fastest, would be if GSK voluntarily just agreed, we will take
21 care of all of the logistics concerns that we have heard about
22 today, we will arrange for, I think it is -- there is an FDA
23 guideline statement that needs to accompany the product, there
24 are specific numbers and specific coding that has to be done.

25 Our people who are sort of familiar with all of that

1 just agreed, let's just do it ourselves, and from a tracking
2 perspective, it would be better if we used a preferred porter
3 so that we can track it and track everything kind of through
4 one system as opposed to a more piecemeal tracking.

5 So, we did make that offer to the Plaintiffs last week
6 and told them that we were willing to voluntarily, at GSK's
7 expense, do that and they accepted that offer, but they want
8 the product yesterday, as we saw in their submission, which is
9 something that I -- I will tell you, Judge, that I have spoken
10 to the -- there are sort of two people who are coordinating
11 this, or three, I guess, one who is the finished product person
12 collecting the stuff from around the world who believes, best
13 efforts, we should be able to get product by -- finished
14 product for the ten jurisdictions to the Plaintiffs by end of
15 this week, early next week.

16 And then the Jurong API, which is the bigger ask,
17 there is 245 samples, we actually had a little -- as your Honor
18 remembers, we were supposed to go and talk about maybe there
19 was a way to kind of narrow the request that the Plaintiffs
20 were asking for. Plaintiffs, to their credit, they did come
21 back with a modestly narrowed, I would call it, request. It
22 still is a lot of samples, it is 245 samples, but it is fewer
23 grams of each.

24 So, our colleagues in Jurong have been collecting
25 those samples, have been making the labels so that everything

1 is clear in terms of which batch relates to which of the 245
2 samples.

3 I did ask last week for kind of what is your estimate
4 of how quickly this can go. The two things I heard were, we
5 won't have an accurate estimate, one that we can kind of take
6 to the bank, until probably tomorrow or Wednesday; and second,
7 apparently for Jurong there was a concern about shipping in a
8 way that ends up -- the product ends up arriving on a weekend,
9 they thought that that was not going to be feasible with the
10 porters that they use because they won't just leave the
11 product.

12 So, these are all issues around the edges that we are
13 happy to talk to the Plaintiffs about, but by and large, I
14 think we have a plan in place. I apologize, it is still a
15 little fuzzy in terms of a date certain, but we are doing the
16 best we can, and we hope that we are going to have the stuff in
17 the Plaintiffs' hands, completely in the Plaintiffs' hands, in
18 the next, I would say, one to two weeks.

19 *THE COURT:* Okay. Mr. Nigh already told me he doesn't
20 need the API first, he wants the other stuff first anyway. So,
21 maybe that gives us an ordering here.

22 *MR. SACHSE:* I was glad to hear that.

23 *THE COURT:* Before I address that let me go back to
24 one thing. What I am going to do in terms of the deadline for
25 the other two is, actually I am going to make it noon West

1 Coast -- I understand the expert is in California. Is that
2 correct, Ms. Jung?

3 MS. JUNG: Yes, your Honor.

4 THE COURT: Okay. So, I will allow the product to be
5 delivered by noon West Coast time on Tuesday. That I hope will
6 alleviate Mr. Beroukhim's concern that if the product
7 shipped -- he can ship the product Monday and that is really
8 3:00 o'clock East Coast time, and still gives the expert to at
9 least get the boxes by noon and start working on them on
10 Tuesday. I hope that balances everybody's concerns.

11 MR. SHORTNACY: Your Honor, Michael Shortnacy for BI.
12 If I could be heard on this issue very briefly.

13 THE COURT: Yes.

14 MR. SHORTNACY: I take your Honor's direction to,
15 obviously, the order and also to take steps to prepare the
16 product, to get it ready and in the hands of Plaintiffs.

17 I just wanted to note, unlike Sanofi, we are exporting
18 and importing into the country, there are intermediate steps
19 that are really beyond BI's control, which includes Customs and
20 Border Protection and FDA. I wanted to clarify that for your
21 Honor.

22 I don't want anybody to have to do a contempt hearing,
23 obviously, but I wanted to sensitize your Honor to that. We
24 certainly will take all necessary steps that we can, but those
25 things are out of our hands, and if we do drop it into FedEx,

1 chances are it really will get held up. I think that defeats
2 what Plaintiffs ultimately want as well here, which I think we
3 share, which is to get this product to them as soon as
4 possible.

5 *THE COURT:* I hear you. My order stands, next
6 Tuesday, noon, West Coast time.

7 Let me turn to the Plaintiffs as to the GSK issue.
8 Ms. Jung, it sounds like Mr. Sachse said he can get you
9 everything except the API probably by the Tuesday deadline I
10 just set.

11 Am I hearing you correctly, Mr. Sachse?

12 *MR. SACHSE:* I think that is right, Tuesday at noon
13 Pacific.

14 *THE COURT:* Ms. Jung, I will hear you on that, but
15 that sounds to me like that is okay with GSK. What about the
16 API issue, though? And Ms. Jung, I will hear from you.

17 *MS. JUNG:* Again, I think having a date certain is
18 what we seek from you and we thank you, your Honor, for giving
19 it to us. The difficulty, as you can see, and I won't belabor
20 the point anymore, is just the leaps of faith and the fuzziness
21 of the deadlines is what is causing us a lot of angst because
22 we have to get the product, and we don't want to be in the same
23 position next week coming to your Honor and going through the
24 hoops of a PTO 32 saying, your Honor, we still don't have it,
25 and there are new excuses as to why we don't, many of them

1 perhaps legitimate.

2 I think for us, a date certain that we can all live by
3 I think is really important.

4 *THE COURT:* Okay. I hear you.

5 *MR. SACHSE:* Can I just briefly respond to that?

6 *THE COURT:* Yes.

7 *MR. SACHSE:* One thing that just occurred to me,
8 listening to the back and forth with everybody else, is that I
9 appreciate the need for a date certain. It does seem to me
10 that maybe the date certain should be tied to when the -- if we
11 have put the product into the stream -- not the stream of
12 commerce, but the shipping stream, I guess, to get it to the
13 Plaintiffs' experts by noon Pacific on Tuesday, then, if there
14 is some kind of Customs thing that is out of our control, to
15 your point, Judge, we would be able to explain that, but I want
16 to make sure that we are thinking about exactly what the order
17 looks like.

18 Is it receipt in the hands of the Plaintiffs' experts
19 by noon, or is it that we have put it into the shipping to make
20 it get there in the ordinary course as of Tuesday at noon?

21 *THE COURT:* My vision is that it will arrive --
22 obviously, if you put it in the normal stream of shipment with
23 a reasonable expectation that it is going to arrive, and the
24 Plaintiffs are aware of what you are doing and they have signed
25 off, essentially, on what you are shipping, I am hard pressed

1 to believe that, consistent with Rule 11, they would come
2 running to court and ask me to hold you in contempt because
3 somebody beyond their control held it up at the border.

4 MR. SACHSE: Well, stranger things have happened. I
5 hope you are right, Judge.

6 THE COURT: I hear you. Here is what I am going to do
7 as far as GSK -- not that they are rewarded for having actually
8 fought the issue, but since they didn't actually know until I
9 ordered them on whatever day that was that they had to do this,
10 and I declined to give them a date certain, what I am going to
11 do is this:

12 I am going to order the production of the non API,
13 that is the easiest way for me to remember it, products by noon
14 West Coast time next Tuesday, and the remainder or the balance
15 of the production from the Jurong facility by five o'clock
16 Friday of next week West Coast time.

17 So, I will give you until the end of next week, Mr.
18 Sachse.

19 MR. SACHSE: Thank you, your Honor.

20 THE COURT: All right. Not waiving any objections
21 anyone may have to my rulings, have I at least ruled on all the
22 issues the parties wanted to present with regard to the
23 product? I'll start with Ms. Jung.

24 MS. JUNG: I believe so, your Honor, but I will allow
25 Ms. Finken or Mr. Nigh to weigh in if I am incorrect, but I

1 believe so. If I may ask one thing, your Honor.

2 *THE COURT:* Sure.

3 *MS. JUNG:* If you can issue an order reflecting your
4 order for today in paper so that we can have those just in case
5 we have any issues, and I just want a caveat. I understand
6 what Mr. Sachse is saying, but I want to make it clear for the
7 record that all of the stream of courier process is going to
8 start with them and to make sure that they provide whatever
9 information is necessary in order for that process to run
10 smoothly, instead of saying, well, we put it in FedEx and we --
11 there are problems later that are outside of our control.

12 I hope that we will all work in good faith for them to
13 provide the necessary information on the manifest or the
14 invoice and the FDA documents that we have been discussing.

15 *THE COURT:* Look, I would expect -- I don't think I
16 have to get to the granular level of ordering the parties to
17 exchange documents, but I would assume you all will talk to
18 each other. Just like when I ship things to my children, I
19 send them the tracking number, and they will send you the
20 tracking number and all the materials you will need. I am
21 assuming that as a matter of course, but I will do a written
22 order so that everybody has that.

23 *MR. SACHSE:* Thank you, your Honor.

24 *THE COURT:* Mr. Sachse, on behalf of GSK, not waiving
25 any objections you may have to my orders, have I addressed the

1 issues that we believe were raised today?

2 *MR. SACHSE:* Yes, your Honor, you have. I guess I
3 could invite Ms. Jung, if she wanted to do a whirlwind tour of
4 our eleven facilities and pick up the stuff individually, more
5 power to her, but we will abide by the order and we will keep
6 working as quickly as possible to get the finished product and
7 the API in the hands of the Plaintiffs.

8 *THE COURT:* I appreciate that. Mr. Sentenac, again,
9 not waiving any objections you may have to my orders, anything
10 I haven't addressed or any clarifications that you need?

11 *MR. SENTENAC:* Nothing further from me, your Honor.

12 *THE COURT:* Thank you very much. Mr. Beroukhim,
13 anything for Sanofi that is either unclear or that I haven't
14 addressed?

15 *MR. BEROUKHIM:* No, your Honor. Thank you very much.

16 *THE COURT:* Thank you all very much. I will excuse
17 the counsel who are dealing with this issue. I will move now
18 to the issues relating to the corporate representative
19 deposition of GSK.

20 Who is going to handle that for the Plaintiffs,
21 please?

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

23 *THE COURT:* Good afternoon.

24 *MS. LUHANA:* Good afternoon, your Honor, Roopal Luhana
25 on behalf of Plaintiffs.

1 *THE COURT:* Good afternoon. And on behalf of GSK.

2 *MR. SACHSE:* Good afternoon, your Honor, Will Sachse
3 on behalf of GSK. I wasn't their introduction piece of this.

4 *THE COURT:* Okay. Mr. Cotton, good afternoon.

5 *MR. COTTON:* Good afternoon. I was. Chris Cotton for
6 GSK.

7 *THE COURT:* I was having flashbacks reading this
8 transcript today, but let me retrace the steps that bring us
9 here.

10 This all started, Plaintiffs served request for
11 production, I believe it is request for production number 29
12 relating to human clinical trials and animal trials.
13 Ms. Finken, were those included as well?

14 *MS. FINKEN:* Yes, it was for human clinical trials as
15 well as all nonclinical and pre-clinical testing as well, to
16 include animal trials.

17 *THE COURT:* That's right. That was the distinction we
18 were making, human clinical trials and then pre-clinical.
19 There was a request made. There was a partial objection and
20 then there was production by GSK, and we have had a number of
21 hearings about the PIER system, the people in London with the
22 white gloves who handle the archives at GSK, and lots and lots
23 of testimony about that.

24 What I have said repeatedly, and I think we have
25 finally reached this point, is that there will never come a

1 point when GSK will say they have produced everything because
2 they are not capable of credibly saying that they have
3 recovered 40 years' worth of materials and have produced every
4 single shred of paper, but there would come a point when GSK
5 would say we have done enough, we have done everything we are
6 required to do by the rules, and I guess today is that day.

7 In the meantime, the Plaintiffs said, well, if they
8 are ever going to get to that point we want some transparency,
9 we want to know what are they giving us, what are they holding
10 back, what have they looked for, and we have had a lot of
11 conferral and a lot of good cooperation between the parties,
12 for which I thank you, but, as with many things, we have
13 arrived at the margin and we have some disputes about that.

14 In furtherance of trying to give the Plaintiffs the
15 transparency that I felt they needed to make a decision whether
16 they were going to challenge GSK's assertion that they had done
17 enough, I authorized a 30(b)(6) deposition on the ESI issue --
18 it wasn't limited to ESI, but on the status of these studies
19 and things of that nature.

20 I guess there were two representatives designated by
21 GSK, Mr. Fell, F-E-L-L, and Ms. Mitchell, and as I understand
22 it, the Plaintiffs are now asking me to do three things.

23 One is to compel GSK to produce an adequately prepared
24 30(b)(6) witness, because their contention is that there were a
25 number of topics where they asked the 30(b)(6) witness a

1 question and the answer was, "I don't know." Plaintiffs'
2 argument is that, under Rule 30(b)(6), the witness is required
3 to know and to educate themselves and be able to answer those
4 questions. That is one assertion, that they were not
5 adequately prepared to respond to the questions.

6 Another has to do with that Plaintiffs want me to
7 overrule some privilege objections that were asserted -- it
8 wasn't clear in the record, but I assume, Mr. Cotton, those
9 were work product objections. My recollection from reading the
10 transcript was the line of questioning was primarily, what
11 searches did you do, what efforts did you take, and I think the
12 assertion was privilege, but I am assuming that is a work
13 product assertion.

14 *MR. COTTON:* Yes, I think in most instances work
15 product, but there may have been attorney/client privileges and
16 whether they were direct communications with counsel.

17 *THE COURT:* Okay. I will go back over that in a
18 second.

19 So, let me -- I guess the other thing is that GSK
20 asserted that certain questions -- they instructed the witness
21 not to answer certain questions, or at least objected to
22 certain questions as beyond the scope of the properly noticed
23 topics in the deposition.

24 As I read through the transcripts and read your memo,
25 those were the three big buckets that I thought I was supposed

1 to be studying up for, so that is what I studied up for. Let
2 me address one of the buckets quickly and dispose of that.

3 To the extent the question was asked and there was no
4 substantive objection, so a form objection doesn't count, no
5 substantive objection, and the witness' answer was, "I don't
6 know," I will order GSK to provide an answer to that question.
7 It can be a written answer by declaration, but they have to
8 answer the question. Okay. They didn't object in real time,
9 you've got to answer the question. If the witness couldn't
10 answer the question, you've got to answer the question now.

11 That is how I am going to deal with that large bucket
12 of what occurred at the deposition, which leaves me then with
13 the other two buckets which were, to me, more worthy of further
14 analysis. One had to do with the privileges, one had to do
15 with the scope.

16 Let me address the privilege issue. I appreciate,
17 Ms. Finken and Ms. Luhana, that you were working off of my
18 words from the last hearing, so I don't fault you for that.
19 Sometimes I say things I probably shouldn't say without
20 thinking them through all the way, but in reading through the
21 transcript at least I didn't see that many privilege
22 objections. I think there were maybe four or five in each
23 total of the two depositions.

24 I think to the extent that the question was, what
25 searches did you do, and those searches were guided by things

1 that the lawyers told the witness to do -- not this witness,
2 but instructed the client to do, why shouldn't those be
3 privileged? Ms. Finken or Ms. Luhana, I don't know who wants
4 to address that question, but why isn't that a valid privilege
5 assertion? If you tell your client, go search for this, why
6 isn't that the lawyer's thoughts and opinion work product?

7 *MS. FINKEN:* Well, your Honor, first of all, let me
8 draw your attention to an example of one of the privilege
9 objections that Mr. Cotton asserted. For example,
10 Ms. Mitchell, who was the witness who testified about the
11 MedTrack spreadsheet, of which your Honor probably never wants
12 to hear about again --

13 *THE COURT:* Can you point me to a page at least?

14 *MS. FINKEN:* Sure, of course, yes. It would be page
15 67 and 68, the end of 67, beginning of 68.

16 *THE COURT:* Okay, I am with you.

17 *MS. FINKEN:* Sure thing. So, Ms. Mitchell had
18 testified that she was the individual who pulled the MedTrack
19 spreadsheet from the database and had provided that spreadsheet
20 of studies. I had asked her if she applied any type of filters
21 when she was pulling that information from the database. Mr.
22 Cotton said, objection. He claimed privilege for that
23 particular question, and I said -- he said, if that was at the
24 direction of counsel, then I instruct her not to answer the
25 question. And I said, I didn't ask if she was doing anything

1 at the instruction of counsel, I just wanted to know if filters
2 had been applied when she pulled the information from the
3 database. He refused to allow her to answer that question.

4 That is an example of one of the privilege objections
5 that was made by Mr. Cotton during the course of that
6 deposition.

7 *THE COURT:* But my question is this: Whether -- first
8 of all, you asked two questions. One was, when did you do the
9 search. I don't think that is privileged. When you did the
10 search is not privileged, but what filters did you apply, if in
11 fact she got those filters from counsel, whether you know that
12 or not, why isn't that privileged?

13 *MS. FINKEN:* Your Honor, if that is, in fact, the case
14 and it was at the instruction of counsel, I guess it would be
15 considered a privileged communication, but it would also
16 indicate that counsel was instructing GSK not to provide
17 information about relevant clinical trials that were requested
18 in the request for production and that pertained to Zantac.

19 So, it would go towards the fact that they are hiding
20 the ball in terms of their clinical trial production and they
21 are limiting our ability to see clinical trials that actually
22 had been conducted on behalf of their client for purposes of
23 Zantac and its safety and efficacy.

24 I would hope that would not be the case, but it would
25 be a simple yes or no answer on whether or not filters had been

1 applied. I certainly didn't ask what filters had been applied,
2 or what she had been told. It was a simple question on whether
3 or not any filters had been applied when she pulled the data.

4 *THE COURT:* Let me turn to Mr. Cotton. Did you
5 understand the question to be that limited? I understand you
6 are sitting there in real time and it is easy for us to read
7 the transcript months later, so I don't fault you if you heard
8 a different question, or maybe Ms. Finken asked a different
9 question than you thought she was asking.

10 To the extent the question is simply were filters
11 applied, that is a binary yes or no question, do you have an
12 objection to answering that question?

13 *MR. COTTON:* I wouldn't have an objection to answering
14 that question, as to whether they were applied. But I do think
15 that the next question, the answer should resolve the issue
16 here.

17 If we turn to the very bottom of that page, Ms. Finken
18 asked: So, when you did the data export from the LSC database
19 as it relates to Zantac or Ranitidine, did you pull the
20 entirety of the data that is housed there relating to those
21 projects? The answer was yes. So, I do feel like we should be
22 able to move on at least from that question and answer.

23 *THE COURT:* Okay, I understand.

24 *MS. FINKEN:* Your Honor -- I'm sorry, I didn't mean to
25 interrupt.

1 THE COURT: Go ahead.

2 MS. FINKEN: On page 67, and it's specifically lines
3 16 to 19, my question was: When you did the search as the
4 expert from the LSC database, did you use any type of filters
5 for the information that you exported?

6 That is the question that she was instructed not to
7 answer at the direction of Mr. Cotton. It's a simple question,
8 a yes or no question on whether or not any filters had been
9 applied, not about what directions she received or didn't
10 receive, what filters she had actually applied or didn't apply.
11 It was a yes or no question. So, that is an example of the
12 type of privilege objection that was being asserted.

13 THE COURT: I went through this, I used the search
14 function for the word "privilege", I think there were four
15 privilege objections in the 200 pages of deposition. We can go
16 through each one of them, but I think they were all akin to
17 this. I think there was a whole line of questions about what
18 searches did you do, what searches did you do, and that is
19 pages 54 -- was it 54? There were a number of questions about
20 that, and it seemed to me it is the same thing.

21 MS. FINKEN: Yes. Your Honor, I am looking at another
22 one on page 160 where I said: Sitting here today, can you tell
23 me where GSK looked for these particular studies? I was
24 referring to the MedTrack spreadsheet he asserted a privilege
25 objection there and instructed her not to answer.

1 Then I asked specific questions on whether or not she
2 searched different areas for the studies, which the answer was
3 she did not or she didn't know. So, they are not limited to
4 just that one.

5 I agree with you that there are very few privilege
6 objections that were asserted during the deposition. The
7 majority of the objections were to scope, and if you read
8 through the transcript, your Honor, it becomes very apparent as
9 Mr. Cotton objects to the scope of the deposition, the witness
10 was coached to say, I am not prepared to discuss that, I am
11 sorry, I am not prepared to discuss that.

12 And that was continuous throughout the entirety of the
13 deposition to the point where there were several times where I
14 pressed and said, I understand that Mr. Cotton is coaching you
15 to say that, but I would like to know, if you know the answer
16 to my question, I would like a response, and she did at times
17 then expound and give me some answers to those questions.

18 But it was clear that she was being improperly coached
19 throughout the course of the deposition that things were beyond
20 the scope, and then her automatic response would be, I am
21 sorry, I am not prepared to discuss that. I wasn't prepared to
22 discuss that.

23 *THE COURT:* Would you prefer that he followed my
24 approved procedure and simply instructed her not to answer
25 because it was beyond the scope? You would have ended up in

1 the same place.

2 MS. FINKEN: I think, your Honor, that the witness had
3 the information at her disposal. At times she was in the
4 middle of answering the question when the objection would be
5 asserted, and then she would backtrack and say that she didn't
6 know or wasn't prepared to answer those questions.

7 Some of these were very simple, they were questions
8 like, how long was MedTrack in use at GSK? She could not tell
9 me how long MedTrack had been in use tracking clinical studies.
10 She could not tell me where any of the clinical study documents
11 were housed before or after MedTrack, and really her limitation
12 was anything before 2001, she was unable to answer those
13 questions.

14 Your Honor, I am sure that Mr. Cotton and Mr. Sachse
15 would agree that the bulk of the clinical trial studies that
16 were done by GSK were done before 2001, because that is when
17 the product was being developed in its entirety. She was
18 unprepared to answer any questions about the clinical study
19 documents, how they were housed, where they were kept, what the
20 policies were prior to that 2001 timeframe, which would rule
21 out the large majority of studies and information pertaining to
22 those.

23 We have also since requested, because Ms. Mitchell did
24 cite to a retention policy for the PIER database during the
25 course of her deposition, and we have asked for those SOPs that

1 would pertain to that, because my understanding is that with
2 the PIER database, if items were destroyed in accordance with a
3 retention policy -- and this is not from Ms. Mitchell's
4 testimony, this is just from some other documents that were
5 found in the database -- it would be noted within the field of
6 the PIER spreadsheet.

7 We requested those retention policies, we have yet to
8 receive them, those SOPs that would pertain to it, things of
9 that nature. If those items were actually destroyed and there
10 was a retention policy in place would help us put to bed a lot
11 of these questions, but we have not received much cooperation
12 in trying to get to the bottom of these answers from her.

13 *THE COURT:* I understand, but my recollection from the
14 transcript is, you did ask those questions, and her answer was,
15 "I don't know." I don't recall that Mr. Cotton interposed a
16 scope objection to those questions. If you can point me to the
17 page, we can double check that, but to the extent my
18 recollection is correct, I have already ordered them to answer
19 those questions for you, so you are going to get that
20 information.

21 *MS. FINKEN:* Fantastic. Thank you, your Honor.

22 *THE COURT:* Again, the distinction I am making, I want
23 to be clear -- and look, sometimes in these, especially a
24 30(b)(6) deposition like this, there is a lot to cover, there
25 is a lot to prep for, and the witness sometimes just doesn't

1 have the answer. It just happens that way.

2 I was satisfied both Ms. Fell and Mr. Mitchell --
3 Ms. Mitchell were clear about making a distinction between I am
4 not prepared to answer that, I don't know it, versus I am not
5 going to answer that because I have been told not to answer
6 that, or something similar to that.

7 To the extent it is the former, and I will say it
8 again, to the extent there was no objection, so you asked the
9 question, Mr. Cotton did not object, and the witness says, I
10 don't know, I have now ordered them to answer that. So maybe
11 you all want to go back and look.

12 The number of scope objections then is pretty limited
13 and I think you are going to end up getting pretty much
14 everything you want, Ms. Finken. If you want, I can go through
15 and I can rule on the scope objections, or if you all want to
16 go back and revisit those, maybe it solves part of your
17 problem.

18 *MS. FINKEN:* Your Honor, respectfully, I think it
19 would probably make sense for us to go back and look at it now
20 given your ruling, and that may solve the problem for us so
21 that we get the answers that we need. I am not sure off the
22 top of my head today which objections were just to form versus
23 scope as we sit here, but that ruling certainly will be helpful
24 in getting us the information that --

25 *THE COURT:* I knew I was going to raise the issue, so

1 I actually have a list, I have it for you.

2 MS. FINKEN: I appreciate that. Thank you.

3 THE COURT: Let me also do this. I am going to
4 sustain the privilege objections that were asserted and to the
5 extent perhaps -- as I read the questions -- and again, in real
6 time maybe we are at the margin here, but as I read the
7 question -- any question that had to do with what searches did
8 GSK do, what searches did GSK affirmatively choose not to do,
9 if that thought process was informed by counsel and counsel's
10 input, I believe that is privileged. Any objection that goes
11 to that, whether it was a scope objection or a privilege
12 objection, I would sustain.

13 Some of the other ones, when I read some of her
14 answers it wasn't clear to me if she was saying I don't know
15 that, I have never known that, or I used to know that, I don't
16 remember that, or I wasn't there when that happened.

17 I think a lot of it had to do with historical -- I
18 know there was a whole line of questioning, Ms. Luhana was
19 asking one of the two witnesses about the Legacy chromatograph
20 databases, and at some point if they say, look, everything
21 basically got migrated forward such that what we have today is
22 what we have always had, at the margin, I am not sure how
23 proportional it is to go back and explore the whole history of
24 those systems, but it is your case. I don't want to
25 micromanage that aspect of your case.

1 MR. SACHSE: Your Honor, if I may be heard on that
2 point. Will Sachse again.

3 THE COURT: Yes.

4 MR. SACHSE: I think that is exactly right, and
5 obviously we are happy to have the conversation with Ms. Finken
6 and Ms. Luhana about all those I don't know, but I do think we
7 should also not lose sight of the mission here.

8 The mission that we set out in June was sort of
9 two-fold; one was understanding the batch records, the data
10 systems that relate to batch records, and since that time we
11 have produced countless, dozens and dozens of exemplar batch
12 records. Maybe -- I agree Mr. Fell didn't know all of the in's
13 and out's of every Legacy database, or Legacy system. I also
14 think a lot of questions focused on how a user would use it,
15 which is not a data storage question, that is more of a
16 substantive question. We will be happy to go back and work on
17 the extent to which they really need the answers to all those
18 questions.

19 And then turning to the studies, I also wanted -- this
20 started, as we all know, with the notorious MedTrack sheet, and
21 I do think that when you take the testimony that Ms. Mitchell
22 gave about MedTrack and marching through all of the fields, all
23 of the various information collected there confirms what we
24 have been saying for months in both sworn responses and here in
25 these hearings, that this MedTrack is not a database, it's not

1 a collection of studies. It doesn't even tell you where any
2 studies, if they are studies, would exist.

3 And when you take the testimony and you compare it to
4 the MedTrack sheet and compare it to what we have already
5 produced, which is hundreds of entries from this MedTrack, by
6 my math, I think we are now down to about 17 entries that may
7 be studies potentially, and we are happy to kind of walk
8 through that with Ms. Finken and Ms. Luhana.

9 Of those 17, most of them I think actually relate to
10 the Tritec product, which I don't think any Plaintiff took, it
11 is a combination product, but we will work through those
12 issues. I think we are really coming to the end here on the
13 studies.

14 *THE COURT:* I hope so. Before I forget, let me also
15 address -- I do want to make a specific ruling on this
16 question, which is on page 167. I will read it to you so you
17 don't have to pull it up.

18 Ms. Finken asks Ms. Mitchell: Are you aware of any
19 GSK policy or SOP that indicates that clinical trial data
20 should be maintained for the life cycle of the product? Mr.
21 Cotton objects for beyond the scope, and her answer is, "I
22 don't know."

23 I will order GSK to answer that question. I think
24 that is information that the Plaintiffs are entitled to know
25 and I am hoping will guide Ms. Finken and Ms. Luhana, because

1 if the truth of the matter is we have a policy that we keep all
2 Zantac stuff for as long as we ever sell Zantac, that is very
3 different from, I think she has testified we destroy it after
4 30 years.

5 Okay. Either you have such a policy or you don't, and
6 I think the Plaintiffs should know the answer to that question.

7 If you look, Ms. Finken, if you go back, that is right
8 after you have asked a whole line of questions about the
9 retention policy and the destruction policy, to which there is
10 no substantive objection. She doesn't know the answer to some
11 of the questions, but there is no substantive objection to the
12 question. So, that will be my ruling as to that one specific
13 question.

14 Is there anything left, then, that the Plaintiffs need
15 me to deal with as it relates to these issues right now?

16 *MS. FINKEN:* Your Honor, Tracy Finken on behalf of
17 Plaintiffs.

18 If you could -- I don't believe that you provided a
19 date on which we should have these answers, and we are
20 scheduled to take a 30(b)(6) deposition of their clinical trial
21 witness, I believe it is last week of September. To the extent
22 we can get this information in advance of that deposition, that
23 would be very helpful, your Honor.

24 *THE COURT:* The last week of September has five days
25 in it. Do you know what the date of the deposition is?

1 Mr. Watts is trying to speak up. Mr. Watts, what is
2 the date?

3 MR. WATTS: September 29.

4 THE COURT: Okay. I will take that under -- we will
5 set a date before you go.

6 Mr. Sachse, Mr. Cotton, did you want to be heard?

7 MR. SACHSE: Yes. Let me respond to that quickly.
8 First of all, obviously we will have a followup conversation
9 with Ms. Luhana and Ms. Finken and now Mr. Watts to figure out
10 exactly what really matters, timing of all of that.

11 I think that all of the Fell questions are not really
12 related to the depositions that are happening in the U.K. at
13 the end of this month, so maybe we can do this in a staged
14 manner so that they get the answers to the clinical trial
15 questions in advance of those depositions, which I think is
16 fair, and then we can kind of work on the batch testing
17 questions or batch system questions sort of after we finish the
18 Ms. Mitchell questions. That is what I would recommend.

19 THE COURT: Ms. Finken, does that make sense to you?

20 MS. FINKEN: Your Honor, I believe we are scheduled to
21 take another deposition that week as well of a gentleman by the
22 name of Giuseppe I deposition, who the chromatogram issue may
23 have some bearing on that deposition. So, I would appreciate
24 if we could get all the information in a timely manner.

25 THE COURT: I'm sorry, one more time, Mr. Watts, the

1 deposition is on the 29th?

2 MR. WATTS: The 30(b)(6) is on the 29th, Mr. Giuseppe
3 is on the 28th.

4 THE COURT: Okay. Here is what I would like to do. I
5 want to make sure the Plaintiffs have the answers to the
6 questions that they need for those two depositions.

7 I am guessing, as Mr. Sachse kind of points out, maybe
8 you don't need the answer to every single question by those
9 dates, so I would ask you to work together to stage that out
10 and sequence it properly. My expectation is that by a week
11 from this Friday, which would be the 24th, that the Plaintiffs
12 will have whatever questions in these two depositions that I
13 have ordered better answers to will be answered in writing such
14 that they can prepare any witness for the deposition.

15 That will ruin Mr. Watts' associate's weekend and let
16 him be prepared for the depositions the following week.

17 MR. COTTON: Your Honor.

18 THE COURT: Yes, Mr. Cotton.

19 MR. COTTON: I am not sure how many questions we are
20 talking about, but we certainly will take your guidance and go
21 from there.

22 Just a couple of observations. I know there are at
23 least some instances, and I don't know if it is many, but some
24 instances where it wasn't entirely clear the relevance of the
25 question. For example, I think Ms. Finken asked about some

1 systems that we didn't have reason to believe (inaudible) at
2 least nothing related to clinical trials. I know there was a
3 question to --

4 *THE COURT REPORTER:* I am having a problem.

5 *MR. COTTON:* Sorry. I will just repeat, Judge, I am
6 not sure what all you heard.

7 In short, there are some questions, and I don't know
8 that it is very many, but there are some where I think it is
9 worth a conversation about where we are going with them. So, I
10 would just ask for some latitude for a conversation around some
11 of those questions.

12 So, for example, I know there was a system that came
13 up in Ms. Mitchell's deposition for which we have no reason to
14 think Zantac information was included with it. I know there
15 was a question of Mr. Fell about the instruments used for
16 chromatography, which is really not what Mr. Fell was there to
17 address.

18 I am not saying that each and every one of these
19 questions is going to be problematic. My request would be just
20 a recognition that there is room for discussion, perhaps with
21 guidance from the special master if necessary, to resolve any
22 disputes, the understanding being that it will be resolved well
23 before next Friday.

24 *THE COURT:* Again, to the extent the objection was to
25 the scope, that this was not -- chromatography instruments were

1 simply not a proper topic and you raised that objection, I have
2 not ruled on that. I think Ms. Finken said she wants to go
3 back and look at what is left being objected to given my
4 rulings.

5 So, look, I will let the parties work through that,
6 and if you need to see me again before a week from Friday, you
7 can see me again before a week from Friday, and I will rule on
8 anything you need me to rule on.

9 There is some limit on the amount of questions Mr.
10 Watts is going to ask at this deposition. He may choose not to
11 spend a lot of time asking questions about chromatography
12 instruments and he will be up front about that, and he is not
13 going to waste your time and you are not going to waste his
14 time.

15 I trust the parties to work through it themselves and
16 with the special master, but if you need me to get back
17 involved to rule on discrete issues like that before the
18 depositions I will make myself available.

19 MS. LUHANA: Judge, can I raise one thing about Mr.
20 Fell's deposition?

21 THE COURT: Yes.

22 MS. LUHANA: As to those objections where Mr. Cotton
23 objected to things being outside the scope --

24 THE COURT: Yes.

25 MS. LUHANA: -- unfortunately what happened with Mr.

1 Fell's deposition is, there were notes produced the night
2 before the deposition, similar to Ms. Mitchell, and Mr. Fell,
3 who was designated to testify about Lift and Empower, setting
4 aside the predecessor systems, he said he could not provide any
5 further testimony but for what was in his notes.

6 He was essentially an IT administrator that just
7 installed software and he created user I.D.'s and formatted
8 reports, but he couldn't talk about where data was stored. He
9 couldn't speak about how searches were conducted. He couldn't
10 speak about the interplay between the systems.

11 I could cite to the specific language if you would
12 like. If you take a look at 22, 36, he says --

13 *THE COURT:* Hold on. Page what?

14 *MS. LUHANA:* 22, line 3.

15 *THE COURT:* Hold on. 22.

16 *MS. LUHANA:* Line 3.

17 *THE COURT:* Okay.

18 *MS. LUHANA:* He says: I can only talk to Empower 3,
19 but only to the information I prepared in my notes. That is
20 all he could answer questions about.

21 Previously, when we appeared before your Honor on
22 June 30th, you had advised that they could not sit there and
23 just read the interrogatory responses. That is not the point
24 of the deposition. It was supposed to be a baseline initially
25 to ask questions.

1 Similarly, if you take a look at page 124, line 15 to
2 20, I ask him: What about any other information aside from
3 what is in your notes about Lift? He says, no, I don't have
4 any further knowledge on Lift other than what is in my notes.

5 So, repeatedly throughout the deposition there
6 continued to be objections as to scope when they were clearly
7 within the scope of the deposition, as to data and --

8 *THE COURT:* There is no scope objection there.

9 *MS. LUHANA:* No, no, it is to form there, but my point
10 is there was numerous times -- the first point I am raising is
11 that Mr. Fell was only able to testify as to what was in his
12 notes and that is it.

13 In addition to that, when I asked questions about data
14 that was stored in the systems, when I asked about the
15 interplay of these systems, when I asked about how searches
16 could be conducted, Mr. Cotton repeatedly objected to being
17 outside the scope. Even looking at GSK's objections, they
18 didn't object to those areas of inquiry.

19 *THE COURT:* First of all, Ms. Luhana, all I read were
20 the things that you highlighted in yellow for me. That was, to
21 my mind, the only things that were at issue here.

22 In looking at that, the only scope objections I saw in
23 Mr. Fell's testimony were on pages 50 and 51, 56 to 65, that is
24 it. You say he kept repeatedly making scope objections. At
25 least in what you pointed me to in this deposition that is not

1 true. He made a bunch of scope objections as to your questions
2 about the predecessor chromatogram systems. That is at pages
3 56 to 65, and there was an objection on page 50 to the
4 Statistica (phon) and I think some predecessor systems like
5 that. Beyond that, if there were multiple objections based on
6 scope, you all certainly didn't point me to them.

7 MS. LUHANA: It was a combination of objections. Some
8 responses were, I don't know, objections to form, and then
9 there were others that were objections to scope.

10 So, what I am raising is, they didn't prepare a
11 deponent who was appropriate and should have been testifying
12 about these topics, because he knew nothing about Lift and
13 Empower outside of what was provided in the notes
14 unfortunately.

15 THE COURT: What do you want me to do about that
16 today? I gave you an opportunity to have a hearing. You set a
17 hearing, you noticed for me, and I instructed the special
18 master to tell you to highlight for me the questions and
19 answers that you want me to rule on. That is what I read, that
20 is what I am ruling on. Okay.

21 The remedy you have asked me for is, compel GSK to
22 produce an adequately prepared 30(b)(6) witness. I have
23 ordered them to answer the questions that you pointed out to me
24 were objectionable to which they did not assert a scope
25 objection. I am reserving as to their scope objections, and

1 I've ruled on their privilege objections.

2 So, as I have said to the parties for a year and a
3 half, what is it you are asking me to do?

4 It is nice that you don't think he was prepared. I am
5 sorry to hear that. What do you want me to do about it today
6 as I sit here?

7 MS. LUHANA: We were requesting that adequately
8 prepared deponents be produced for these depositions.

9 THE COURT: As to which topics and which questions am
10 I supposed to order them to adequately prepare somebody? The
11 adequate preparation I am ordering is to answer the questions
12 that you asked to which they did not give a satisfactory
13 answer.

14 Now, if there are other questions to which you don't
15 think you got a satisfactory answer, you didn't point me to
16 those, or to the extent you didn't ask questions and therefore
17 didn't get adequate answers, you didn't ask the questions. I
18 can't rule on things that don't happen.

19 MS. LUHANA: Judge, I understand and I appreciate your
20 guidance and your ruling. In terms of what was happening in
21 the deposition, some of the questions we were asking were
22 baseline questions, and then we couldn't get to the other
23 questions that we wanted to ask because these folks were not
24 knowledgeable.

25 We will meet and confer with GSK per your ruling and

1 come before the Court if there are any other issues.

2 *THE COURT:* Thank you.

3 The Plaintiffs have also raised the issue that they
4 wanted sanctions, including, but not limited to, a negative
5 inference.

6 I guess the first question is, what other sanctions?
7 Because including, but not limited to doesn't really limit it.

8 *MS. FINKEN:* Your Honor, I think we were referring to
9 the costs associated with the deposition that we took and
10 prepared for that we were unable to actually get adequate
11 answers to the questions that were posed that were well within
12 the scope of the notice.

13 *THE COURT:* Okay. I will allow you to file a written
14 motion for sanctions and I will let GSK respond in writing
15 within the time set by the local rules as to that.

16 *MS. FINKEN:* And -- sorry, your Honor.

17 *THE COURT:* No, go ahead.

18 *MS. FINKEN:* I was just going to clarify, in terms of
19 the negative inference, that is something that we wanted to put
20 on your Honor's radar. I don't know that it is something that
21 is ripe at this point in time, as we still have depositions to
22 take with the 30(b)(6) clinical trial witness, and some
23 questions now that have arisen based upon this hearing.

24 Mr. Sachse just represented that there were only 17
25 studies that have not been produced. That is news to me, so I

1 would request an updated MedTrack spreadsheet with the Bates
2 numbers of the studies and where they were produced in the
3 record, because the last time I checked it was 380 or so that
4 had not been produced, and we were not limited to 17.

5 So that would be just another request, your Honor, and
6 then --

7 *THE COURT:* I am done micromanaging that list. If GSK
8 says they produced what they have produced and they are not
9 producing no more, and the Plaintiffs don't like that answer,
10 you can file the appropriate motion and seek the appropriate
11 relief. I am not going to not micromanage yours and Mr.
12 Sachse's list anymore.

13 *MS. FINKEN:* Okay. Thank you, your Honor.

14 Then the last issue I would just raise is if we would
15 have an order to compel production of the SOPs that relate to
16 the document retention policies for the clinical trials that
17 were referenced in the transcript, please.

18 *THE COURT:* I think I did order that, because I
19 ordered them to answer the questions. Yes, to the extent the
20 questions related to the production of SOPs, Mr. Sachse, Mr.
21 Cotton, what is your position on that?

22 *MR. SACHSE:* Your Honor, I think maybe we should take
23 this step wise. I agree that you have ordered us to answer the
24 question about the GSK policies and the SOPs, and we will do
25 that. Then maybe sort of the next step is, if there is a

1 request for the actual underlying documents, we can see if we
2 can reach some sort of agreement on that; and if not, we can
3 brief that for the Court as well.

4 And the reason I am just sort of thinking it makes
5 sense to do this in a step wise fashion is that we are talking
6 about 40 years, and we are talking about -- I don't think it is
7 really easy to paint with a broad brush and say we want the
8 "GSK policies and the SOPs relating to retention." It is a
9 thorny, much more complicated issue, and so I think it is going
10 to take some time for the parties to work through. We will get
11 the narrative responses sworn on those issues, and then we can
12 kind of follow up and obviously identify, to the extent we can,
13 the source of that and then we can follow up on what makes
14 sense in terms of documents.

15 *THE COURT:* For the time being, I will stand by my
16 prior order, which is, answer the questions that were asked.
17 To the extent there is a request for the production of the
18 documents and there is an objection, we will deal with that
19 separately.

20 *MR. SACHSE:* Okay.

21 *THE COURT:* All right. Anything further on the
22 30(b)(6) deposition issue from the Plaintiffs?

23 *MS. LUHANA:* Nothing from me, your Honor, thank you.

24 *MS. FINKEN:* No, your Honor, thank you.

25 *THE COURT:* From GSK?

1 MR. SACHSE: Nothing, your Honor, thank you.

2 THE COURT: Thank you all very much. We will put this
3 issue to the side. Let me turn to the last issue on my agenda,
4 which was the original reason I had set the hearing for today,
5 which was to check in with you all and get all the good news of
6 all the wonderful things you have been doing and why there are
7 no other issues for me to deal with in this case.

8 Ms. Finken, what else is there out there that you are
9 waiting for or that I have ordered you to get that you haven't
10 gotten yet that you need me to get involved at this point?

11 MS. FINKEN: Well, your Honor, there are a couple of
12 outstanding issues that are kind of brewing on the peripheral
13 that we did not prep for today's hearing, but may be on your
14 agenda coming up.

15 One of them -- and Mr. Watts, I am glad that he is on
16 this call because he may want to weigh in on this. We had been
17 discussing a deposition of a former GSK employee who is
18 overseas. We had an agreement that the deposition would move
19 forward on October 5th with Mr. Sachse, and we were advised a
20 couple of weeks ago that we now needed to go through the Hague
21 in order to notice up that deposition, which, of course, we are
22 going to do, but that process takes approximately four months.

23 We had asked Mr. Sachse if he would be willing, for
24 the purposes of that witness, to take that deposition after the
25 December 20th discovery deadline because we don't anticipate

1 being able to get the Hague production before December 20th.
2 He has refused to honor that request, so that is something that
3 we probably are going to need your Honor's assistance with in
4 the future.

5 *THE COURT:* Okay. When it is ripe, if it becomes
6 ripe, you all can bring it to my attention. I am not going to
7 get involved at this point.

8 Mr. Sachse, if you have anything you feel compelled to
9 say, I will be happy to hear you, but I am not going to get
10 involved at this point.

11 *MR. SACHSE:* Let's see how this whole process plays
12 out. Maybe they can get the Hague paperwork done in advance.

13 The only thing I do want to raise is, I did have a
14 conversation -- or an email conversation with Ms. Finken over
15 the weekend about this, and as I understand Swiss law, and I am
16 not a Swiss law expert, nor do I ever want to be because it is
17 complicated, I believe that the witness would still retain the
18 right to object, and essentially not show up for the deposition
19 under Swiss law.

20 We are not putting our thumb on the scale at all on
21 this one. I told Ms. Finken if -- and the witness, I think, as
22 of now is sort of agnostic about it, but if the Plaintiffs,
23 maybe to short circuit this whole thing, if they want us to get
24 a firm yes or no, thumbs up, thumbs down, we can go and do
25 that.

1 *THE COURT:* If I understand what Ms. Finken is saying,
2 this is not a current employee, this is a former employee.

3 *MR. SACHSE:* Retired.

4 *THE COURT:* I see. Because they are not a current
5 employee, you are taking the position they are not within your
6 control and you can't voluntarily produce them, they have to be
7 served through other means?

8 *MR. SACHSE:* Actually the Swiss law is that -- there
9 are actually two issues. Let me back up. Maybe we should talk
10 about it.

11 The two issues were, we will be in Europe, in the
12 U.K., I guess not in Europe anymore, in the U.K. in a couple of
13 weeks for these other depositions that we have been talking
14 about. At the time, to try to be efficient, we were talking
15 about trying to do this witness, the Swiss witness, remotely.

16 At that time I said, well, look, I don't know whether
17 we can even do a remote deposition in Switzerland, I don't know
18 what the laws are about what a witness -- how you go about
19 doing a deposition in Switzerland, but go ahead and notice it,
20 and we can deal with that later.

21 What I learned subsequently is, good news, we can do
22 remote depositions now under Swiss law; bad news, you do have
23 to comply with the Hague, and it is not a waiveable thing.
24 It's not like we can lean on this guy, or the witness could
25 say, oh, sure, come over to my house and do my deposition. The

1 Swiss interest in sovereignty still requires us to go through
2 this formal process, so that is kind of where we find ourselves
3 on this one.

4 *THE COURT:* Mr. Watts, yes.

5 *MR. WATTS:* Just a little bit more background, and
6 again, I do want to commend Mr. Sachse. We have gotten a lot
7 of stuff done, so this is a glass is half full moment.

8 What happened is, there is a document that is a
9 nitrosation document that went to some of the highest members
10 of Glaxo, and originally I asked for the deposition of a
11 gentleman named Paul Girolami, who is now Sir Paul Girolami. I
12 received an email that said I shouldn't depose him because he
13 is a Sir, and I sent back a smart aleck email about the right
14 to every man's evidence, but he is 95 years old. Then we kind
15 of drift back to another recipient of the same email, which was
16 Richard McKissick (phon), and then we stumbled into this Swiss
17 law.

18 Just to be clear, the only reason we are bringing it
19 up, we are not asking for a ruling or anything like that, but
20 yes, Mr. Sachse, I would like to know whether the gentleman
21 will agree to be deposed because then my reversion is to depose
22 the 95 year old man in England where I can get him subpoenaed.

23 I have already met with Mr. Sachse on another
24 gentleman in California who is 87, agreed to limit it to a half
25 a day. If we have to do that with Girolami, that is fine. I

1 have a document I need to get into evidence, and we will get
2 back to the Court, but we wanted to tell you that issue is out
3 there, and then there is another issue that is really across
4 all of the Defendants, and that is, I take depositions, and
5 then within so many days there is confidentiality designations.

6 I can tell you from my view, let's just put it
7 politely, these designations have been over used, if you will.
8 So, there will come a time, and frankly, I just don't have time
9 to do it until we get most of these depositions done, but we
10 are going to come before the Court, and I am warning you, it is
11 not occasional, it is pervasive in a way that I don't think
12 complies with Federal law or Florida Sunshine law. It is
13 across all four of the brands.

14 So, I just mark that as something that is still out
15 there, just so you could say, hey, I asked you what was up, and
16 this is up.

17 *THE COURT:* I appreciate that. This would not be the
18 first and only case where I have had to deal with that issue.
19 Usually it hits right about the time summary judgment pleadings
20 are due or class cert or something else where you need to use
21 the document. Then we have to figure out how to deal with
22 them. We'll cross that bridge when we get there.

23 *MR. WATTS:* Mr. Sachse has me pretty busy taking the
24 rest of these depos through the end of October, but I am
25 guessing sometime in early November.

1 *THE COURT:* When you are ready for me, I am here.

2 *MR. SACHSE:* Mr. Watts, you assume that I am going to
3 be handling the confidentiality issues.

4 *MR. WATTS:* Well, I can assure you that Mr. Sachse is
5 not the one filing these because he would not do it with a
6 straight face, but we will get there.

7 *THE COURT:* Anything else that the Plaintiffs wanted
8 to put on the table today? I am glad to hear you are not
9 sitting here telling me, no, there is all this stuff we haven't
10 gotten, and you need to punish them for it, so that's good.

11 *MR. WATTS:* Judge, one other thing. I had sent out
12 notices of depositions for 30(b)(6) with respect to knowledge
13 of NDMA, and we achieved a stipulation with Pfizer. I believe
14 we have agreements with Sanofi, BI, and now Mr. Sachse at GSK
15 to do short half-day notice of 30(b)(6)s tagged along with
16 witnesses we have already taken. They are not going to count
17 on the limit, but I agreed to keep it to half an hour -- half a
18 day, rather, and we will get all of those done, but that is now
19 resolved as far as I am concerned.

20 *THE COURT:* Very good. Great.

21 *MR. SACHSE:* I am glad Mr. Watts just raised the
22 knowledge of NDMA deposition because maybe, Mr. Watts, that is
23 a way that you can get into that nitrosation document, you
24 don't even have to bother this poor retired doctor in
25 Switzerland.

1 MR. WATTS: Maybe so. Okay, we will talk about it.

2 THE COURT: I would expect, knowing all the lawyers in
3 this case, that if it is really a matter of just laying an
4 evidentiary foundation for some documents, that the parties --
5 I don't know that I have ever seen a case lost on the inability
6 to authenticate a document. Mr. Watts and his team will figure
7 out a way to get it into evidence. The jury may not give it
8 the weight that Mr. Watts wants them to give it, but he will
9 get it in. The parties tend to work those things out.

10 All right. Thank you very much. Mr. Sachse, anything
11 else from GSK?

12 MR. SACHSE: Nothing for today, your Honor.

13 THE COURT: Thank you. Mr. Shortnacy, I have you on
14 my agenda, so I don't know whether, on behalf of BI, you had
15 anything you wanted to report, ask, raise, anything like that.

16 MR. SHORTNACY: Nothing, your Honor. Thank you for
17 checking in.

18 THE COURT: Mr. Beroukhim, because you made the
19 mistake of appearing earlier for Sanofi, let me call on you.
20 Anything from Sanofi that you wanted to raise?

21 MR. BEROUKHIM: No, your Honor.

22 THE COURT: Thank you. Pfizer has strategically
23 managed to not even show up here on the screen, but let me ask.
24 Speak now or forever hold your peace. If there is anyone on
25 behalf of Pfizer who wanted to raise an issue, please introduce

1 yourself and speak now.

2 MS. SHOWALTER: Your Honor, this is Annie Showalter
3 with Williams & Connolly for Pfizer, and I have no issues to
4 raise.

5 THE COURT: Thank you very much, Ms. Showalter.

6 All right, everybody, thank you all for your time. Is
7 there any issue that anybody wanted to raise today that I have
8 not ruled on, not waiving any objections anybody may have to a
9 ruling I may have made?

10 All right. Hearing none, I will thank the parties and
11 excuse you. Thank you very much.

12 MS. FINKEN: Thank you, your Honor.

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

14 * * *

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

17
18 Date: September 14, 2021

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

20 Signature of Court Reporter
21
22
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25

MR. BEROUKHIM: [9] 4/4 5/15 7/9 11/6 11/17 21/20 22/1 31/14 65/20 MR. COTTON: [6] 32/4 34/13 38/12 49/16 49/18 50/4 MR. NIGH: [5] 4/1 9/14 9/17 18/4 18/17 MR. SACHSE: [23] 4/10 22/8 25/21 27/11 28/4 28/6 29/3 29/18 30/22 31/1 32/1 44/25 45/3 48/6 57/21 58/19 58/25 60/10 61/2 61/7 64/1 64/20 65/11 MR. SENTENAC: [15] 4/7 12/1 13/18 14/2 14/19 15/5 15/8 15/13 15/21 19/7 20/3 20/10 20/16 20/25 31/10 MR. SHORTNACY: [3] 26/10 26/13 65/15 MR. WATTS: [7] 48/2 49/1 62/4 63/22 64/3 64/10 64/25 MS. FINKEN: [24] 3/18 3/22 31/21 32/13 36/6 36/13 36/16 37/12 38/23 39/1 39/20 41/1 42/20 43/17 44/1 47/15 48/19 56/7 56/15 56/17 57/12 58/23 59/10 66/11 MS. JUNG: [13] 3/16 8/3 9/10 10/5 16/9 17/25 18/10 18/14 21/15 26/2 27/16 29/23 30/2 MS. LUHANA: [12] 31/23 51/18 51/21 51/24 52/13 52/15 52/17 53/8 54/6 55/6 55/18 58/22 MS. SHOWALTER: [1] 66/1 THE COURT REPORTER: [1] 50/3 THE COURT: [112]	16 [1] 39/3 160 [1] 39/22 1600 [3] 1/16 2/10 2/16 167 [1] 46/16 17 [4] 46/6 46/9 56/24 57/4 1824 [1] 1/20 18th [1] 1/16 19 [1] 39/3 19103 [1] 1/17 19104 [1] 2/7 2 20 [1] 53/2 20-02924 [1] 3/2 20-md-02924-ROSENBERG [1] 1/3 200 [1] 39/15 2001 [3] 41/12 41/16 41/20 20032 [1] 1/20 202-918-1824 [1] 1/20 2021 [2] 1/5 66/18 20th [3] 7/8 59/25 60/1 210-447-0500 [1] 2/3 213-243-4059 [1] 2/14 215-735-1130 [1] 1/17 215-994-4000 [1] 2/8 22 [3] 52/12 52/14 52/15 245 [4] 23/8 24/17 24/22 25/1 24th [2] 7/9 49/11 2555 [1] 2/19 25th [1] 5/15 26th [11] 4/24 5/15 10/7 11/25 12/10 13/18 13/24 15/5 15/11 15/15 15/20 27th [1] 10/16 28th [1] 49/3 29 [2] 32/11 48/3 2929 [1] 2/7 29th [2] 49/1 49/2 3 3,000 [2] 6/12 6/16 30 [13] 33/17 33/24 33/25 34/2 42/24 47/4 47/20 49/2 54/22 56/22 58/22 64/12 64/15 30309 [2] 2/10 2/16 30th [1] 52/22 316 [1] 1/13 32 [4] 3/8 3/10 15/3 27/24 3200 [1] 1/19 32502 [1] 1/13 3434 [1] 2/22 36 [1] 52/12 380 [1] 57/3 3:00 o'clock [1] 26/8 4 40 [3] 17/12 33/3 58/6 4000 [1] 2/8 404-572-4600 [2] 2/11 2/17 4059 [1] 2/14 41 [1] 7/3 4600 [2] 2/11 2/17 5 50 [2] 53/23 54/3	500 [1] 7/3 51 [1] 53/23 54 [2] 39/19 39/19 56 [2] 53/23 54/3 561-803-3434 [1] 2/22 5th [1] 59/19 6 600 [1] 1/22 64108 [1] 2/19 65 [2] 53/23 54/3 6550 [1] 2/20 67 [3] 36/15 36/15 39/2 68 [2] 36/15 36/15 7 7013 [1] 1/14 777 [1] 2/13 78257 [1] 2/3 8 816-474-6550 [1] 2/20 850-435-7013 [1] 1/14 87 [1] 62/24 888-480-1113 [1] 1/23 8th [1] 6/7 9 90017 [1] 2/13 95 [2] 62/14 62/22 A a satisfactory [1] 55/12 abide [1] 31/5 ability [1] 37/21 able [10] 7/5 7/5 23/13 23/15 24/13 28/15 34/3 38/22 53/11 60/1 about [70] above [1] 66/16 Absolutely [1] 20/17 accepted [1] 24/7 accompany [1] 23/23 accordance [1] 42/2 account [1] 16/14 accurate [1] 25/5 achieved [1] 64/13 across [3] 21/5 63/3 63/13 acting [1] 11/12 actual [1] 58/1 actually [14] 10/9 20/15 24/17 25/25 29/7 29/8 37/21 39/10 42/9 44/1 46/9 56/10 61/8 61/9 add [3] 10/19 18/16 18/18 addition [1] 53/13 additional [1] 8/2 address [10] 4/22 5/4 5/5 5/6 25/23 35/2 35/16 36/4 46/15 50/17 address that [1] 25/23 addressed [3] 30/25 31/10 31/14 adequate [3] 55/11 55/17 56/10 adequately [5] 33/23 34/5 54/22 55/7 55/10 administrator [1] 52/6
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