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

CASE NO. 20-md-02924-ROSENBERG

**IN RE: ZANTAC (RANITIDINE)** .  
**PRODUCTS LIABILITY** . West Palm Beach, FL  
**LITIGATION.** . May 20, 2022

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TELEPHONIC DISCOVERY HEARING  
BEFORE THE HONORABLE BRUCE REINHART  
UNITED STATES MAGISTRATE JUDGE

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10:36:52 1           *THE COURT:* This is case number 20-02924, In Re:  
10:36:57 2 Zantac (Ranitidine) Product Liability Litigation. We are here  
10:37:01 3 today for a discovery hearing.

10:37:02 4           Who is appearing and who is going to speak on behalf  
10:37:03 5 of the Plaintiffs, please?

10:37:07 6           *MR HEINZ:* Noah Heinz for the Plaintiff.

10:37:09 7           *MS. FINKEN:* Tracy Finken on behalf of Plaintiffs.

10:37:14 8 Good afternoon, your Honor.

10:37:15 9           *THE COURT:* Good afternoon. Who is going to be  
10:37:18 10 appearing on behalf of all the Defendants or just the BI  
10:37:21 11 Defendants? Who is appearing on behalf of the Defendants  
10:37:22 12 today?

10:37:24 13           *MS. CANAAN:* Good afternoon, your Honor, Eva Canaan  
10:37:26 14 for Boehringer Ingelheim and Defendants.

10:37:31 15           *THE COURT:* Good afternoon, Ms. Canaan.

10:37:32 16           This matter is before the Court on the Defendants'  
10:37:33 17 expedited motion for additional time to depose Dr. McTiernan.  
10:37:36 18 I had a chance to review that motion, which is now unsealed,  
10:37:40 19 the Plaintiffs' opposition as well, and I did not read all 800  
10:37:46 20 pages of her deposition line for line, I will confess to that.  
10:37:52 21 I did have a chance to review the deposition and get a feel for  
10:37:55 22 the deposition.

10:37:56 23           With that, I guess, Ms. Canaan, it is your motion. I  
10:38:00 24 did read your motion.

10:38:07 25           I will tell you what resonated with me and what didn't

10:38:10 1 resonate with me. The argument that the Plaintiffs' lawyer was  
10:38:14 2 being obstructionist didn't resonate with me. The fact that  
10:38:19 3 Dr. McTiernan -- I didn't find Dr. McTiernan's answers, at  
10:38:26 4 least the ones I observed, to be unprepared or nonpersuasive,  
10:38:33 5 but I am interested primarily in talking to you about the one  
10:38:38 6 study which she admitted she wanted to go back and take a  
10:38:42 7 second look at because apparently the authors had amended it.

10:38:47 8 Those are just some preliminary thoughts, Ms. Canaan.  
10:38:47 9 I will be happy to hear whatever topic you want to talk about.

10:38:54 10 MS. CANAAN: Thank you, your Honor. Your Honor,  
10:38:56 11 approximately two months ago we asked you for an additional  
10:38:59 12 five hours to depose Dr. McTiernan because she is a critical  
10:39:05 13 expert in this litigation and she had submitted two expert  
10:39:09 14 reports totaling approximately 430 pages. Your Honor allowed  
10:39:11 15 us this additional time given the importance of this testimony.

10:39:15 16 As we stated in the motion, the purpose of getting  
10:39:18 17 more time was really frustrated Dr. McTiernan's  
10:39:22 18 nonresponsiveness.

10:39:24 19 First of all, as you have probably seen, your Honor,  
10:39:27 20 Dr. McTiernan would not answer any general questions about her  
10:39:32 21 methodology and her response to every general question was, it  
10:39:32 22 really depends on the facts of a particular study, but when I  
10:39:35 23 did show her particular studies, and I asked about her  
10:39:39 24 methodology and interpretation of the results, her response was  
10:39:45 25 always, it is whatever I said in my reports.

10:39:48 1 Your Honor, these were basic methodological questions  
10:39:52 2 like, are you extrapolating from a specific data in a specific  
10:39:55 3 study that lumps, say, gastric and esophageal cancers to reach  
10:40:01 4 conclusions about esophageal cancers specifically? This is a  
10:40:03 5 methodology question that every epidemiologist should be able  
10:40:07 6 to answer without reading their entire report.

10:40:10 7 Similarly, she would not even answer my questions  
10:40:14 8 about whether she was relying on specific data for her opinion.  
10:40:17 9 Her response was, I am not sure what if I am relying on this, I  
10:40:22 10 need to see what I wrote in my report.

10:40:25 11 The Plaintiffs claim in opposition is, the Defendants  
10:40:27 12 should have asked questions about the report instead of her  
10:40:30 13 methodology. That really doesn't make sense, your Honor,  
10:40:33 14 because the purpose of a deposition is not for the expert to  
10:40:37 15 sit there and find portions of her report and read them word by  
10:40:42 16 word into the record. If that is the purpose of the expert  
10:40:46 17 deposition, then I submit, your Honor, no one would go through  
10:40:48 18 the trouble of taking one.

10:40:51 19 Moreover, and what is really important here, is that  
10:40:52 20 each Ranitidine study was discussed in 20 to 40 pages and  
10:40:58 21 crossed numerous different parts of two different reports  
10:41:01 22 totaling 430 pages. It would not even be feasible for Dr.  
10:41:06 23 McTiernan to review what she wrote about her study just so she  
10:41:11 24 could answer elementary questions like whether she was relying  
10:41:15 25 on particular findings or what her methodology was.

10:41:19 1           Secondly, Dr. McTiernan could not answer any questions  
10:41:24 2           about specific studies without literally reviewing the studies,  
10:41:27 3           the entire studies.

10:41:28 4           Now, it is certainly not unreasonable, your Honor, for  
10:41:31 5           a witness to take a few minutes to review something before  
10:41:34 6           answering the question, and frankly, I questioned Plaintiffs'  
10:41:37 7           other epidemiologist, Dr. Moorman, earlier this week and asked  
10:41:42 8           her some of the exact same questions that I asked Dr.  
10:41:44 9           McTiernan, and she was able to answer them without any problem  
10:41:47 10          after taking only a few minutes to review the relevant study.

10:41:51 11          For example, the same questions about whether  
10:41:54 12          Ranitidine increases the risk of cancer compared to other H2  
10:41:57 13          blockers were asked of Dr. Moorman, and she was able to answer  
10:42:04 14          those questions without rereading every single study like Dr.  
10:42:07 15          McTiernan testified.

10:42:10 16          By contrast, Dr. McTiernan would not even tell me if  
10:42:15 17          the study was statistically significant or not without  
10:42:17 18          reviewing the study methods and what the authors may or may not  
10:42:19 19          have said about each specific study. No other Plaintiffs'  
10:42:23 20          expert has done this, and there were at least five Plaintiffs'  
10:42:27 21          experts that have been deposed already in this litigation, not  
10:42:30 22          even Plaintiffs' other epidemiologist, Dr. Moorman. So, I will  
10:42:34 23          submit this was obviously very intentional stonewalling.

10:42:40 24          Third, your Honor asked about the Adami study. Dr.  
10:42:44 25          McTiernan could not answer a question about the Adami study,

10:42:50 1 which is a critical study discussed in 44 pages of her report.  
10:42:55 2 After being given a 37-minute break to review the study, she  
10:42:58 3 came back and said that she needed to review the study after  
10:43:01 4 her deposition to form any opinions about the study.

10:43:06 5 She also testified that because she had not yet  
10:43:08 6 considered the Adami study, she could not answer any questions  
10:43:13 7 about her overall causation analysis for the four cancers, the  
10:43:18 8 liver cancer, pancreatic, stomach, and esophageal, that were  
10:43:25 9 addressed in the Adami study.

10:43:27 10 In other words, if I asked her any question about how  
10:43:30 11 she reached her overall causation opinion for any of those four  
10:43:34 12 cancers, the answer was, I can't tell you because the Adami  
10:43:38 13 study is off the table. She could not tell me how she weighed  
10:43:42 14 the overall evidence for any of the four cancers given that she  
10:43:45 15 has not considered the Adami study.

10:43:49 16 Now, Plaintiffs' opposition makes a number of very  
10:43:52 17 inaccurate and disingenuous claims with respect to the Adami  
10:43:58 18 study, your Honor. First, they claim that it was totally  
10:44:02 19 understandable that Dr. McTiernan was not aware of the  
10:44:06 20 correction to the Adami paper.

10:44:07 21 On page 11 of their opposition Plaintiffs state that  
10:44:07 22 the Defense experts also had not addressed the Adami  
10:44:13 23 correction. Now, this is simply false. Literally every single  
10:44:15 24 Defense expert addresses this correction and cites the correct  
10:44:19 25 data from the study.

10:44:21 1           Moreover, Plaintiffs' other epidemiologist, Dr.  
10:44:25 2 Moorman, explicitly said in her report this was an obvious  
10:44:28 3 error, and she cited the correct data from the Adami study.  
10:44:32 4 So, Dr. McTiernan is literally the only epidemiologist who  
10:44:36 5 relied on the wrong Adami data and she testified at her  
10:44:38 6 deposition that she purportedly read the reports of Dr. Moorman  
10:44:42 7 and other Defense experts.

10:44:45 8           I mention this only because I want to make clear that  
10:44:48 9 we had every expectation coming into this deposition that she  
10:44:52 10 would be able to answer these questions about the Adami study.

10:44:57 11           Secondly, Plaintiffs say, oh, the Adami paper is  
10:45:00 12 totally uninformative anyway. That claim is just completely  
10:45:05 13 contrary to Dr. McTiernan's testimony. If she thought that the  
10:45:09 14 Adami study was uninformative, she would have said that, right.  
10:45:15 15 She would have said that instead of saying that she needed to  
10:45:19 16 review it carefully after the deposition and that she could not  
10:45:22 17 answer any questions about her overall causation analysis about  
10:45:26 18 four out of five cancers without having considered the Adami  
10:45:30 19 study.

10:45:31 20           Even if her opinion today, after having considered the  
10:45:35 21 Adami study, is that the Adami study was, quote unquote,  
10:45:39 22 uninformative, as Plaintiffs represent, we certainly have a  
10:45:41 23 right to inquire as to the basis for that opinion and finally  
10:45:43 24 get some answers about her overall causation analysis that she  
10:45:47 25 never gave at her deposition.

10:45:50 1 And finally, Plaintiffs claim that Defendants should  
10:45:52 2 have reserved hours to question Dr. McTiernan after her  
10:45:57 3 deposition about the Adami study and her overall causation  
10:46:02 4 analysis for four out of five cancers, but that makes no sense  
10:46:05 5 because it would effectively penalize Defendants for Dr.  
10:46:07 6 McTiernan's lack of preparation with respect to the study and  
10:46:13 7 her overall causation and analysis.

10:46:16 8 Now, the bottom line, your Honor, is this: As the  
10:46:19 9 record stands, Dr. McTiernan could not proffer any opinions  
10:46:23 10 about the Adami study, and more importantly, about how she  
10:46:27 11 reached her overall causation analysis -- her overall causation  
10:46:32 12 opinion, how she synthesized the totality of the data for four  
10:46:38 13 out of five cancers at issue. She was nonresponsive and she  
10:46:42 14 frustrated efforts to elicit basic information about her  
10:46:44 15 methodology and conclusions.

10:46:46 16 Now, Plaintiffs have said that they intend to do a two  
10:46:50 17 hour redirect of Dr. McTiernan. Frankly, we anticipate that  
10:46:55 18 during this redirect Dr. McTiernan will not ask Plaintiffs'  
10:47:01 19 counsel after each question to review every study in her  
10:47:03 20 430-page expert report. We anticipate that she will be  
10:47:08 21 responsive and provide new opinions, and we, as a matter of  
10:47:12 22 fairness, should be allowed to followup on that new testimony.

10:47:17 23 And finally, Plaintiffs have stated on the record that  
10:47:19 24 this deposition would be reconvened at a mutually convenient  
10:47:24 25 time, mutually convenient. Instead, they have unilaterally

10:47:29 1 noticed it on the afternoon of the very last day of expert  
10:47:33 2 discovery.

10:47:34 3 Your Honor, we respectfully request that the  
10:47:38 4 deposition take place earlier so we have an opportunity to tee  
10:47:41 5 up any disputes to the Court, or to the extent that it does  
10:47:45 6 take place on the 31st, that there be judicial oversight of the  
10:47:49 7 deposition.

10:47:50 8 That is all I have, your Honor, but I'd be happy to  
10:47:51 9 answer any specific questions you might have.

10:47:53 10 *THE COURT:* I may have some in a second after I hear  
10:47:56 11 from the other side. Your request for additional team, do you  
10:48:00 12 want to question Dr. McTiernan before or after the Plaintiffs  
10:48:03 13 do their redirect?

10:48:08 14 *MS. CANAAN:* So, I think what I would do, I would ask  
10:48:11 15 for -- we are asking for four hours, and I would probably ask  
10:48:14 16 some questions before and some questions after, but it really  
10:48:18 17 doesn't matter for me. I am happy to only ask my questions  
10:48:24 18 after.

10:48:25 19 I would, frankly, defer to your Honor on when I ask  
10:48:28 20 the questions. It really would not matter to me, although I  
10:48:32 21 think I would like to ask at least some questions after the  
10:48:35 22 redirect because that is when I will find out what her opinions  
10:48:39 23 are.

10:48:41 24 *THE COURT:* Okay.

10:48:43 25 *MS. CANAAN:* I am thinking aloud here. In that sense,

10:48:45 1 it probably makes more sense for me to ask my questions after  
10:48:49 2 their redirect.

10:48:51 3 *THE COURT:* Okay. Are you personally -- obviously you  
10:48:52 4 are the one taking the deposition. Are you available on May  
10:48:55 5 31st to take the deposition?

10:48:58 6 *MS. CANAAN:* Yes, I can --

10:48:59 7 *THE COURT:* Is your objection to the unilateral set  
10:49:03 8 that simply the clock may run out, you will run up against the  
10:49:06 9 discovery deadline, and if you need some judicial relief  
10:49:11 10 afterwards that your time will be up? Is that really more the  
10:49:14 11 concern?

10:49:15 12 *MS. CANAAN:* Yes, that is more of a concern, your  
10:49:17 13 Honor, and for that reason, if that is the last day, we are  
10:49:20 14 taking the deposition on the very last day, I would really  
10:49:23 15 appreciate if there would be some judicial presence at this  
10:49:27 16 deposition.

10:49:28 17 I think that would make the deposition run smoother.  
10:49:30 18 I think we would probably -- we potentially could be done in  
10:49:38 19 less time if there was judicial oversight, and I think it would  
10:49:41 20 be the most efficient way to conclude this deposition, to  
10:49:45 21 really have someone present who could see to what extent Dr.  
10:49:48 22 McTiernan answers questions from the Plaintiffs' attorneys in  
10:49:55 23 the same responsive manner in which she is going to answer  
10:49:58 24 questions from the Defense attorney.

10:50:00 25 *THE COURT:* Thank you. I understand your position. I

10:50:02 1 appreciate that very much.

10:50:03 2 Mr. Heinz or Ms. Finken, from the Plaintiffs, I will  
10:50:06 3 hear from you at this team.

10:50:08 4 *MR HEINZ:* This is Mr. Heinz. I will speak for  
10:50:10 5 awhile, and I think Ms. Finken might have some additions to  
10:50:14 6 make.

10:50:15 7 I want to start with the scheduling demand, and  
10:50:18 8 opposing counsel just confirmed she is available on May 31st,  
10:50:23 9 and that is actually more convenient for them than it is for us  
10:50:26 10 since Mr. Ronca is double booked on that day. It wasn't our  
10:50:30 11 preference to have it on May 31st, but Dr. McTiernan is simply  
10:50:34 12 not available other times.

10:50:36 13 We didn't anticipate that there would need to be a  
10:50:40 14 third day. That happened based on things that arose at the  
10:50:42 15 time, and because we were going so late on Friday night, and so  
10:50:47 16 we asked, and that is the only day that she has available based  
10:50:52 17 on other demands on her time, and there is no reason to require  
10:50:56 18 a rescheduling on a day she doesn't have available. That is  
10:51:01 19 not what happened with any other witness.

10:51:04 20 As far as the responsiveness point, it is sort of a  
10:51:07 21 muddled concession that the motion did not sufficiently carry  
10:51:13 22 this point because the only argument you heard just now is  
10:51:16 23 that, compared to other witness transcripts, this is different,  
10:51:19 24 none of which was included in the motion at all.

10:51:22 25 If we are going to talk about other witnesses, we

10:51:25 1 would have the opportunity to refer to Dr. Whitty's (phon)  
10:51:27 2 deposition or Dr. Trodoker's (phon) deposition in which they  
10:51:34 3 routinely consulted their report before answering over and  
10:51:37 4 over, and refused to answer questions about specific studies  
10:51:42 5 without reviewing the studies. What Dr. McTiernan did was in  
10:51:47 6 no way unusual for an expert deposition, and if that point were  
10:51:51 7 actually raised, we would be able to demonstrate that point.

10:51:55 8 And if your Honor already tentatively agreed with us  
10:51:58 9 on that, there is really not much more to say.

10:52:01 10 As far as the Adami study, I will say some things, and  
10:52:08 11 then Ms. Finken has more to say about it.

10:52:11 12 You know, the questions were very aggressive and very  
10:52:15 13 much indicated that there were substantial differences in the  
10:52:20 14 correction that would, you know, affect her conclusions in a  
10:52:25 15 large way, and that, understandably, made Dr. McTiernan a  
10:52:30 16 little bit nervous about answering on the fly right there.

10:52:33 17 If, for example, the questions had said something  
10:52:36 18 like, based on the version you saw, and then ask questions,  
10:52:39 19 they probably could have continued in that way, but, you know,  
10:52:44 20 there wasn't any attempt to be accommodating or to actually  
10:52:49 21 press on the analysis as it was in the report.

10:52:53 22 The demand was that Dr. McTiernan, during a break,  
10:52:55 23 familiarize herself with the correction, and that is fairly  
10:53:00 24 unreasonable and not the type of thing that this witness could  
10:53:04 25 actually do.

10:53:05 1 The other thing is, we did quote a section in the  
10:53:07 2 opposition in which Dr. McTiernan said that the study was  
10:53:11 3 uninformative for various reasons, and that has been her  
10:53:16 4 consistent position in the report as well.

10:53:18 5 The correction itself is -- well, I suppose for the  
10:53:24 6 correction itself I will turn it over to Ms. Finken for some  
10:53:28 7 additional details on that.

10:53:31 8 *THE COURT:* Okay. Ms. Finken.

10:53:33 9 *MS. FINKEN:* Tracy Finken on behalf of Plaintiffs.

10:53:36 10 Your Honor, I just want to point out one point.  
10:53:39 11 Ms. Canaan suggested that the Defense experts had all dealt  
10:53:45 12 with the Adami correction, and that is just a false statement.  
10:53:49 13 The Adami correction was not made until March 21, 2022 online,  
10:53:56 14 and that is well after the Defense expert reports were served  
10:54:00 15 in this case.

10:54:02 16 It is no surprise that Dr. McTiernan did not pick up  
10:54:06 17 on the fact that there was a change to the Adami study well  
10:54:10 18 after her report and, you know, directly before the rebuttal  
10:54:15 19 reports were due. Frankly, it is not picked up on until the  
10:54:20 20 ends of April, and to the extent that Ms. Canaan said that the  
10:54:24 21 Defense experts all addressed it in their reports, it is just  
10:54:29 22 false. Their reports were served prior to the correction on  
10:54:33 23 March 21st.

10:54:34 24 So, I just needed to point that out, your Honor.  
10:54:37 25 Obviously, you can take it, you know, however you want based

10:54:44 1 upon the transcript that you read, and we provided the full  
10:54:48 2 transcript so you could put everything into context. As I  
10:54:52 3 understand, the transcripts were not provided with the Defense  
10:54:56 4 briefing.

10:54:57 5 And you can see exactly how Dr. McTiernan answered  
10:55:00 6 questions. She sat for two full days, almost an entire 12  
10:55:05 7 hours on the record, which equated to about 18 hours in person,  
10:55:08 8 and she is willing to finish her deposition on the last day of  
10:55:12 9 the discovery. She has grant writing responsibilities that  
10:55:17 10 take precedent before that for her day job, and is unavailable  
10:55:22 11 before the May 31st date.

10:55:24 12 So, that is all, your Honor, that I wanted to point  
10:55:28 13 out about the Adami study and Ms. Canaan's representations  
10:55:33 14 about it. Thank you.

10:55:33 15 *THE COURT:* Thank you.

10:55:35 16 *MS. CANAAN:* Your Honor, if I --

10:55:36 17 *THE COURT:* Hold on, hold on, hold on. I will give  
10:55:39 18 you a chance to respond, Ms. Canaan.

10:55:41 19 Ms. Finken, back to you or Mr. Heinz. I don't know  
10:55:45 20 who is the right person to answer this.

10:55:47 21 If I understand the framework here, I haven't read any  
10:55:51 22 of these studies, but this is an epidemiology study that  
10:55:56 23 apparently Dr. McTiernan reviewed in preparing her report.  
10:56:00 24 After the written reports were submitted, the authors of that  
10:56:05 25 study modified the study or changed the conclusions, or

10:56:08 1 something changed about it.

10:56:10 2 The question on the table, maybe this is the question  
10:56:13 3 Ms. Canaan was asking at the deposition and Dr. McTiernan  
10:56:16 4 wasn't comfortable answering was, does that change anything?  
10:56:19 5 Do your opinions change based upon the fact that this  
10:56:22 6 underlying study has changed?

10:56:24 7 Ms. Finken or Mr. Heinz, am I correct that that is the  
10:56:29 8 framework that Dr. McTiernan is working under as we go forward?

10:56:36 9 *MS. FINKEN:* Noah, did you want to respond or would  
10:56:40 10 you like me to?

10:56:42 11 *MR HEINZ:* I can respond.

10:56:43 12 *THE COURT:* Let me expand on that further. It would  
10:56:46 13 seem to me, if I am taking the deposition maybe the first  
10:56:49 14 question I ask Dr. McTiernan is, having now reviewed the Adami  
10:56:53 15 study, do you want to change or modify any of the conclusions  
10:56:59 16 in your report? Has Dr. McTiernan come to a conclusion about  
10:57:03 17 how she is going to answer that question?

10:57:04 18 If the answer to that question is no, then maybe Ms.  
10:57:06 19 Canaan doesn't have a whole lot else to do, or maybe now Dr.  
10:57:11 20 McTiernan is much more comfortable answering some of the  
10:57:14 21 questions that she wasn't comfortable answering. If the answer  
10:57:19 22 to that question is yes, then we may have to go in a different  
10:57:23 23 direction.

10:57:24 24 I am just curious if I am even looking at the question  
10:57:24 25 the right way.

10:57:24 1           *MS. FINKEN:* Your Honor, I can respond to that. The  
10:57:25 2 bottom line is that the Adami corrections will not change Dr.  
10:57:30 3 McTiernan's conclusions in her report.

10:57:35 4           However, to the extent that Ms. Canaan has very  
10:57:38 5 specific questions about the data -- because what happened when  
10:57:41 6 they corrected the Adami study is, they changed the tables with  
10:57:46 7 the relative risks and the consonant intervals and all of that  
10:57:46 8 were changed, and it deals with -- you know, there are multiple  
10:57:52 9 analyses and sub analyses that that deals with.

10:57:55 10           So, Dr. McTiernan was not comfortable answering  
10:57:59 11 specific questions on the fly about the data that was changed  
10:58:03 12 in the tables.

10:58:04 13           However, ultimately -- and she did, I believe, state  
10:58:07 14 this on the record and I don't have a reference for you, and I  
10:58:11 15 apologize, your Honor. We could supplement it if we need to.  
10:58:13 16 The Adami study was so flawed and had so many limitations with  
10:58:18 17 the way that it was conducted that Dr. McTiernan gave it very  
10:58:23 18 little weight in her analysis regardless.

10:58:26 19           The changing of the data tables does not change the  
10:58:30 20 limitations of the flaws in that study. She will stand by the  
10:58:34 21 limitations and the flaws in that study and her conclusions are  
10:58:37 22 not going to change.

10:58:38 23           To the extent that she needs to answer very specific  
10:58:42 24 questions about specific data points in that study, that is  
10:58:46 25 something that, in all fairness, she should have been given the

10:58:48 1 opportunity to thoroughly review and evaluate and factor that  
10:58:52 2 into her analysis, but it is not going to change her ultimate  
10:58:55 3 conclusions because the limitations of the study have not  
10:58:59 4 changed, and that he is something that is well thought out and  
10:59:01 5 articulated in her report.

10:59:04 6 She has testified to that extent on the record  
10:59:06 7 regarding the limitations of all of these -- some of these  
10:59:09 8 studies that she gave very little weight to, Adami being one of  
10:59:15 9 them.

10:59:16 10 And if your Honor is going to indulge Ms. Canaan and  
10:59:19 11 grant her additional time besides the 11 minutes that they  
10:59:23 12 reserved to question Dr. McTiernan about it, I do not  
10:59:29 13 anticipate that it should be extensive questioning at all  
10:59:32 14 because, as your Honor has aptly pointed out, it will not  
10:59:34 15 change her conclusions in this matter.

10:59:37 16 *THE COURT:* Thank you, Ms. Finken.

10:59:39 17 Mr. Heinz, was there anything else you wanted to add  
10:59:42 18 before I go back to Ms. Canaan?

10:59:45 19 *MR HEINZ:* Just one final point, which is that a big  
10:59:49 20 part of having a long deposition in which a number of questions  
10:59:53 21 can be asked is to get out things that can be used to impeach  
10:59:56 22 the witness or to question credibility, and to the extent they  
11:00:01 23 want to make that point about the Adami study, they have  
11:00:04 24 already asked the questions and they can add more later, but  
11:00:07 25 they had an opportunity to ask questions about it, and the fact

11:00:10 1 that they didn't like the answer shouldn't allow them to demand  
11:00:15 2 her read it and then ask four more hours of questions on the  
11:00:19 3 same topic.

11:00:21 4 *THE COURT:* Thank you. From the Plaintiffs' side, you  
11:00:23 5 anticipate about two hours of your questioning? I am not going  
11:00:27 6 to hold you to a specific number, but you are anticipating  
11:00:28 7 about two hours?

11:00:30 8 *MS. FINKEN:* Your Honor, Tracy Finken again on behalf  
11:00:33 9 of Plaintiffs.

11:00:34 10 That is what we estimate the max it would be, would be  
11:00:39 11 two hours. I think on the record at the tail end of the  
11:00:43 12 deposition we had anticipated it would be about an hour and a  
11:00:46 13 half of questioning on our behalf, and at that point in time  
11:00:51 14 they had reserved 11 minutes of their 12 hours.

11:00:56 15 We don't -- just in an abundance of caution, we have  
11:01:00 16 set aside two hours for us to question, and that is why, you  
11:01:04 17 know, we anticipated this not being too much of an issue on May  
11:01:09 18 31st, despite Mr. Ronca being double booked. We are trying to  
11:01:15 19 make arrangements to have him still be able take Dr.  
11:01:18 20 McTiernan's testimony and subbing somebody else in for the  
11:01:24 21 other deposition that he was slated to take that day.

11:01:27 22 So, we are working around it, but we think  
11:01:30 23 approximately two hours max.

11:01:32 24 *THE COURT:* Thank you. Let me hear from Ms. Canaan.  
11:01:32 25 Ms. Canaan.

11:01:36 1 MS. CANAAN: Thank you, your Honor, a few things.

11:01:37 2 First of all, Ms. Finken mentioned that the official  
11:01:40 3 correction to the Adami paper was issued in mid March. That is  
11:01:43 4 correct, however, there was a preprint with the correct data.  
11:01:46 5 That corrected data appears in all Defense expert reports, and  
11:01:54 6 in Dr. Moorman's report.

11:01:56 7 I showed Dr. McTiernan Dr. Moorman's report at her  
11:02:01 8 deposition where Dr. Moorman specifically said there was an  
11:02:04 9 obvious error in the Adami paper, this was the error, and then  
11:02:08 10 she cites the exactly correct risk estimates, so I wanted to  
11:02:13 11 clarify that.

11:02:14 12 Mr. Heinz said that somehow Dr. McTiernan testified  
11:02:19 13 that the Adami study was uninformative. That is just not true.  
11:02:25 14 I don't think she ever testified that the study was  
11:02:26 15 uninformative. She literally said she can't answer any  
11:02:28 16 questions about it. If she thought the study was  
11:02:31 17 uninformative, she would have said it doesn't change anything  
11:02:36 18 for me, and then she would have answered my questions about how  
11:02:38 19 did you consider the overall data on esophageal cancer, how did  
11:02:43 20 you consider the overall data on liver cancer.

11:02:45 21 She would not answer any of those questions. She  
11:02:45 22 said, I can't answer any question that asks me about overall  
11:02:50 23 data for specific cancers because the Adami study is off the  
11:02:55 24 table.

11:02:56 25 So, in addition, this is the critical piece, because

11:02:59 1 she couldn't formulate an opinion about the Adami study, she  
11:03:04 2 couldn't answer any questions about how she weighed the data  
11:03:07 3 and how she reached her overall causation conclusion about four  
11:03:11 4 out of five cancers at issue in this litigation because those  
11:03:15 5 four cancers are addressed in the Adami study.

11:03:19 6 Then your Honor raised the question, well, what if her  
11:03:22 7 opinion now is, nothing in the Adami paper changes my  
11:03:29 8 conclusion? We need time to explore that. Literally, if  
11:03:31 9 increased risks in the version that she reviewed are now  
11:03:36 10 decreased risks or no risk, shouldn't we have an opportunity to  
11:03:40 11 ask the expert why? When increased risk becomes decreased risk  
11:03:46 12 or no risk, why does your opinion not change? Right?

11:03:53 13 Again, not only are we talking about the Adami study,  
11:03:55 14 but why does it not change in the overall causation analysis  
11:03:59 15 that you are doing under Bradford Hill where one of the  
11:04:03 16 critical criteria in her causation analysis is consistency?

11:04:09 17 Well, if the data is not consistent, how are you  
11:04:14 18 reaching your opinion, and how are you weighing the evidence  
11:04:16 19 now that you have had a chance to review the Adami study and  
11:04:19 20 form opinions about it?

11:04:21 21 So, again, I really want to emphasize that this is not  
11:04:24 22 just about the Adami study, it is also, and really more  
11:04:28 23 importantly, about her overall causation opinions about four  
11:04:34 24 out of five cancers.

11:04:36 25 When I asked her questions at the deposition like

11:04:38 1 let's look at the overall evidence for esophageal cancer, she  
11:04:43 2 cut those questions short and said, I can't answer because I  
11:04:46 3 haven't considered the Adami study.

11:04:48 4 Now for her to come in and say the Adami report does  
11:04:52 5 not change anything, you don't have to ask me any questions  
11:04:55 6 about anything, including my causation analyses, that would be  
11:04:58 7 really significantly prejudicing the Defendants' ability to  
11:05:00 8 find out what her opinions are before trial.

11:05:04 9 Finally, Plaintiffs said it is going to be two hours,  
11:05:07 10 or one and a half hours, or whatever it is going to be for the  
11:05:11 11 redirect of Dr. McTiernan. Again, the critical point here is  
11:05:15 12 that the two hours that they are going to get with Dr.  
11:05:18 13 McTiernan, I expected she will be responsive, she will not  
11:05:23 14 filibuster, she will not say, I have to spend hours reading my  
11:05:27 15 reports. She is going to be responsive to their questions, she  
11:05:31 16 is not going to say, I don't recall.

11:05:34 17 So, it is not an equivalent amount of time that the  
11:05:38 18 Defense would need to elicit her opinion. That is the only  
11:05:42 19 point I was trying to make, and again, for that reason, I think  
11:05:44 20 judicial oversight of the deposition would really help move  
11:05:49 21 things along and speed things along in this deposition.

11:05:52 22 Thank you, your Honor.

11:05:54 23 *THE COURT:* Thank you very much.

11:05:55 24 Okay, let me take these in no particular order.

11:05:59 25 First of all, I am not going to preside over the

11:06:02 1 deposition. I think judicial oversight should be reserved for  
11:06:07 2 the rarest of circumstances when -- and this is not one of  
11:06:11 3 them, so I am not going to preside over the deposition. That  
11:06:16 4 is first of all.

11:06:17 5 Second of all, look, to the extent Dr. McTiernan is  
11:06:21 6 unable to explain her methodology, or is taking inconsistent  
11:06:26 7 positions, or is unwilling to commit to certain things change,  
11:06:30 8 those are wonderful arguments that the Defense can make to  
11:06:35 9 Judge Rosenberg at the Daubert hearing as to why Dr. McTiernan  
11:06:42 10 should not be given any credibility, if that is they argument  
11:06:46 11 they want to make, but I don't know that you are entitled to  
11:06:48 12 ask her all those questions when you have already had 12 hours,  
11:06:48 13 and you didn't reserve any time for that.

11:06:51 14 So, I am going to give Defense a little bit of extra  
11:06:55 15 time because I do believe, to the extent Dr. McTiernan was  
11:06:58 16 asked unobjectionable questions about particular conclusions or  
11:07:01 17 particular methodologies and she declined to answer them  
11:07:05 18 because she felt she needed to review some data, I don't  
11:07:11 19 criticize her for that. I wouldn't want to answer any question  
11:07:14 20 if I wasn't a hundred percent sure.

11:07:17 21 But to the extent those questions were asked, there  
11:07:20 22 should be some leeway to allow the Defense to come back and  
11:07:24 23 say, now that you have reviewed the Adami study, and now that  
11:07:28 24 you are more familiar with the data, let's talk about your  
11:07:31 25 conclusions on four of the five cancers, etc. etc.

11:07:36 1 I think there should be some leeway there.

11:07:39 2 Here is what I am going to do. I am going to order --  
11:07:40 3 I am going to give the Defense one extra hour which they can  
11:07:44 4 use after the Plaintiffs have done their redirect. That way,  
11:07:46 5 if you start at 3:00 o'clock on the 31st, you will be done by  
11:07:50 6 6:00 o'clock.

11:07:51 7 If for some reason -- I don't anticipate this, if  
11:07:54 8 there is some reason thereafter for a party to come to the  
11:07:59 9 Court and say, hey, we need to reopen the deposition, or we  
11:08:03 10 need more time, even though the discovery deadline has run out,  
11:08:07 11 this one very unique setting requires further review, I don't  
11:08:12 12 think in the two plus years we have had this case that Judge  
11:08:15 13 Rosenberg or I have ever refused to at least consider a request  
11:08:18 14 like that. If it is well founded, we will consider it.

11:08:22 15 That will be the order of the Court today. I am going  
11:08:24 16 to grant the motion in part and deny the motion in part. I  
11:08:27 17 will grant the Defendants one extra hour to depose Dr.  
11:08:30 18 McTiernan, and that additional time can be taken after the  
11:08:35 19 Plaintiffs have completed their redirect examination.

11:08:40 20 The deposition will occur on the 31st of May at  
11:08:42 21 3:00 p.m., and the Court declines the invitation to preside  
11:08:47 22 over the deposition in real time.

11:08:50 23 With that, let me turn to Defense. Not waiving any  
11:08:50 24 objections you may have to the rulings I just made, is there  
11:08:50 25 any clarifications you need or any other issues that you

11:08:54 1 thought you would raise that I need to rule on?

11:09:00 2 *MS. CANAAN:* No, your Honor. We just wanted to  
11:09:00 3 clarify that we have an additional one hour; is that right?

11:09:04 4 *THE COURT:* Right. Not one hour and eleven minutes,  
11:09:04 5 it's and additional 49 minutes I am giving you.

11:09:08 6 *MS. CANAAN:* Okay. Thank you, your Honor.

11:09:10 7 *THE COURT:* Ms. Finken or Mr. Heinz, not waiving any  
11:09:13 8 objections yo may have to my rulings, any other issues or any  
11:09:17 9 clarifications you are seeking?

11:09:19 10 *MS. FINKEN:* Your Honor --

11:09:20 11 *MR HEINZ:* One --

11:09:20 12 *MS. FINKEN:* Sorry, go ahead, Noah. I have a question  
11:09:22 13 as well.

11:09:24 14 *MR HEINZ:* One clarification. The rationale, as I  
11:09:25 15 understood it, was to allow questions related to the Adami  
11:09:32 16 study and the answers she was not able to give based on the  
11:09:36 17 Adami study. Is the additional hour of questions limited in  
11:09:41 18 scope to that subject area?

11:09:43 19 *THE COURT:* No, I am not going to be that granular.

11:09:46 20 Ms. Canaan seems very adamant that she needs to ask  
11:09:50 21 those questions. If she then chooses not to ask those  
11:09:53 22 questions, then that is her choice, bit I am not going to  
11:09:55 23 micromanage the questions that can be asked.

11:10:01 24 *MR HEINZ:* Thank you.

11:10:02 25 *THE COURT:* Ms. Finken, you have something else you

11:10:04 1 wanted to clarify?

11:10:05 2 *MS. FINKEN:* Mr. Heinz was anticipating my question.  
11:10:08 3 I had the same question, if the 49 minutes of additional time  
11:10:12 4 was limited in scope to questions about Adami that she was  
11:10:17 5 unable to answer at the last deposition, or if she could ask  
11:10:21 6 whatever she wants during those 49 extra minutes. That was the  
11:10:25 7 crux of my question.

11:10:26 8 *THE COURT:* To make it clear, she can ask whatever she  
11:10:30 9 wants to ask during that additional period.

11:10:33 10 All right, everybody, thank you very much. We will do  
11:10:35 11 an order memorializing the rulings I just made. I will thank  
11:10:40 12 the parties, wish everyone a good weekend, and I will excuse  
11:10:44 13 you.

11:10:45 14 (Thereupon, the hearing concluded.)

11:10:47 15 \* \* \*

11:10:47 16 I certify that the foregoing is a correct transcript  
11:10:47 17 from the record of proceedings in the above matter.

11:10:47 18  
11:10:47 19 Date: May 25, 2022

11:10:47 20 /s/ Pauline A. Stipes, Official Federal Reporter

11:10:47 21 Signature of Court Reporter  
22  
23  
24  
25

<b>MR HEINZ:</b> [7] 2/5 11/3 15/10 17/18 24/10 24/13 24/23	<b>561-803-3434</b> [1] 1/22	<b>analysis</b> [11] 6/7 7/17 7/24 8/4 8/7 8/11 12/21 16/18 17/2 20/14 20/16
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