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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. . September 15, 2021
.

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

FOR THE PLAINTIFFS: **ADAM PULASKI, ESQ.**
Pulaski Kherkher PLLC
2925 Richmond Avenue Suite 1725
Houston, TX 77098
713-664-4555

MICHAEL L. McGLAMRY, ESQ.
CAROLINE McGLAMRY, ESQ.
Pope McGlamry P.C.
3391 Peachtree Road NE
Suite 300
Atlanta, GA 30326
404-523-7706

MIKAL WATTS, ESQ.
Watts Guerra LLP
4 Dominion Drive
Suite 100
San Antonio, TX 78257
210-447-0500

ADAM W. KRAUSE, ESQ.
Krause & Kinsman LLC
4717 Grand Avenue
Suite 250
Kansas City, MO 64112
816-760-2700

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FOR THE DEFENDANTS: **JOSEPH G. PETROSINELLI, ESQ.**
HOPE DAILY, ESQ.

Williams & Connolly
725 12th Street NW
Washington, D.C. 20005
202-434-5567

ANAND AGNESHWAR, ESQ.
TOMMY HUYNH, ESQ.

Arnold & Porter Kaye Scholer LLP
250 West 55th Street
New York, NY 10019
212-836-8011

ANDREW T. BAYMAN, ESQ.

King & Spalding LLP
1180 Peachtree Street Suite 1600
Atlanta, GA 30309
404-572-4600

PAIGE N. BOLDT, ESQ.

Watts Guerra LLP
5726 W. Hausman Road
Suite 119
San Antonio, TX 78249
210-448-0500

JULIA ZOUSER, ESQ.

King & Spalding LLP
353 N. Clark Street 12th Floor
Chicago, IL 60654
312-995-6333

Official Court Reporter: Pauline A. Stipes
HON. ROBIN L. ROSENBERG
West Palm Beach/Ft. Pierce, Fl
561-803-3434

1 *THE COURT:* All right. Good morning, everyone,
2 welcome to our case management conference in the Zantac MDL.
3 Our last conference, as you all may remember, was July 28th, so
4 it has been a little while. We had hoped that we would have
5 you here in person today, that was the plan, but in light of
6 the Delta variant and developments with the pandemic, the Court
7 deemed it most prudent to continue, at least for purposes of
8 this case management conference, to hold it remotely.

9 It is the Court's intention to get you here in person,
10 and I think I may have an idea about when we can do that. The
11 reason that we didn't go forward in person is because of the
12 Court's concern relating to developments since we last were
13 together with the Delta variant and didn't want to take any
14 risk given that we have all been so careful up until now.

15 I'm sorry you are not here in this big courtroom, it
16 is just me and Pauline, but I know you are all out there and I
17 am glad to be with you even though it is remote.

18 I look forward to today's case management conference.
19 I know we are going to have a number of interesting and
20 relevant topics, as we always do. We are going to be
21 discussing the registry, which is always helpful to get the
22 update on how that is going. It is such an integral part of
23 this MDL, and I look forward to getting an update on that.

24 We are going to hear how the bellwether selection
25 process is going. You may recall that in PTO -- let me pull

1 that up -- 65, which was the second amended order establishing
2 case management schedule, the Court had indicated that it was
3 not addressing two topics, and that was the schedule for
4 discovery relating to bellwether trials and any motions for
5 summary judgment. The Court had concluded and memorialized
6 that in the pretrial order, that the parties would work with
7 the special master to determine if an agreement could be
8 reached as to these issues and/or proposed Daubert schedule.

9 I indicated that the Court may issue a pre-trial order
10 specific to these issues at a later date. The Court also
11 indicated that it intended to issue an order at a later date
12 setting forth the bellwether trial schedule.

13 So, I look forward to getting an update pursuant to
14 that pre-trial order on that topic as well, and then we will
15 hear, as we have on most every case management conference that
16 we have had, at least the recent ones, the State/Federal
17 coordination.

18 I want to thank counsel again for the updates I have
19 been getting in the past and providing the Court with all of
20 the information relating to the other cases that are going on
21 around the country and the other judges. You gave me the
22 contact information, and I have been able to, in a second round
23 of calls -- I have had previous calls based on earlier updates
24 you have given me, but as a result of the last update, I
25 reached out again to a number of the judges, and had very

1 productive conversations with Judge Bennett in Tennessee, Judge
2 Kelly in New York, Judge Stokes, also in Tennessee, and I am
3 grateful that filed on the docket was the notice to me of the
4 reassignment of the coordination of the trial judge in
5 California.

6 I now understand that Judge Grillo is the judge who
7 has been reassigned as to the coordination of the California
8 cases, and so, I intend to reach out to Judge Grillo and speak
9 to Judge Grillo, as I have with the other judges, to simply
10 introduce myself, and they have all been very appreciative of
11 that, and to answer any questions that they may have about the
12 MDL, to learn a little bit about what is going on in the State
13 cases and really just to establish a relationship, and to
14 discuss areas that there may be for efficiencies, coordination,
15 and all with the idea that there is the proper use of resources
16 for the benefit of the lawyers, the litigants, and that the
17 Courts are all aware of what each other is doing.

18 So, it is really kind of an information sharing, and I
19 have found that the State Court judges have been very, very
20 grateful to my overtures to reach out, to introduce myself, and
21 to simply answer any questions that they may have. So that has
22 been very fruitful and really has been facilitated by your
23 updating the Court as to what is happening nationwide, so I
24 very much appreciate that and think that it has led to very
25 useful communication between the judges.

1 I note that one of the regrets of not having an
2 in-person today was that we lost the opportunity to have the
3 LDC members come in person because I know from our last case
4 management we had discussed that, in coordination with the case
5 management conference here in person, that we would try to
6 organize an event with the LDC members in person, so that is
7 something that, regrettably, we can't do in person today.

8 I look forward to simply postponing it until the date
9 when everybody is comfortable and I am comfortable having you
10 come in person.

11 I note, however, that a number of the LDC members are
12 on the agenda today. I am most grateful for that. I think the
13 lead counsel and others who have continued to mentor and
14 facilitate the instrumental role that the LDC members are
15 playing in this case -- I am aware of the role they are
16 playing, even though I don't necessarily see them always at the
17 hearings. I always do like to see them at the hearings
18 because, as I have said to lead counsel, even if it is just a
19 small part, even if it is just a little statement that you make
20 at the case management conference, a lot of little times that
21 you appear before the Court amounts to big time, and it gets
22 you more comfortable being in front of a judge in a proceeding,
23 and I think that that is just really good for your growth and
24 professional development.

25 And again, I am very pleased and grateful to the

1 leadership for facilitating the role that the LDC members have
2 always played in the case and, in fact, are playing today and
3 presenting. That is a very important part of this case as
4 well.

5 What I will memorialize in the order, but just wanted
6 to let you know, and this is based on conversations through the
7 special master with lead counsel, it looks like October 4th is
8 shaping up to be a good day for hearings on the recent Motions
9 to Dismiss that were filed as to the latest round of master
10 complaints, and so, unless I hear otherwise -- and again, you
11 don't necessarily have to pull out calendars or anything of
12 that nature during our case management conference.

13 Our special master, Jamie Dodge, will get back to me
14 to confirm, but I am looking at October 4th, at 11:00 o'clock
15 as the hearing date for the Motions to Dismiss. I will wait
16 for her to confirm that that in fact works for all of the
17 attorneys who will be arguing those Motions to Dismiss.

18 And then, there has been discussion of Science Day,
19 that is something that has been on the topic of discussions
20 that I have had with the special master about an appropriate
21 day that the Court could have a presentation on Science Day,
22 and I think, based on input that I have received -- and again,
23 I will wait to get confirmation of that -- but I am looking now
24 at December 2nd and December 3rd, and I am thinking also that
25 that would be a perfectly appropriate time, barring any

1 unforeseen circumstances from the standpoint of the pandemic,
2 that that could be in person.

3 I think that is an opportunity that the Court would
4 greatly benefit from having you in person as I know that the
5 subject matter is dense and complex, and I know I speak for
6 Pauline as well in saying that it would be a lot easier to have
7 you in person for Science Day.

8 So, I am thinking that, whether it is the 2nd or the
9 3rd, we can iron out those details, but that would be when we
10 would have a Science Day presentation, and perhaps we could
11 coordinate at the same time a case management conference. So,
12 whether it is our next case management conference, or it is
13 just another case management conference, we could consider
14 doing that as well.

15 And lastly, we could also consider having the LDC
16 members come so that we can organize an event in person with
17 respect to the LDC members.

18 That is what I am thinking. I don't think we need to
19 get into any more logistics about that for purposes of this
20 case management conference other than to say that I will follow
21 up with the special master following the case management
22 conference to confirm that those dates do work.

23 Then I will get something out in an order, so at least
24 it is memorialized on the record and will be in the court file,
25 and those are some things for us to look forward to on the

1 horizon.

2 So, without any further ado, let me ask if our first
3 presenters can turn on their screens and unmute themselves and
4 give a presentation on what looks to be the first topic of
5 registry. So, thank you so much.

6 *MR. PETROSINELLI:* Good morning, your Honor.

7 *MR. PULASKI:* Good morning, your Honor.

8 *MS. DAILY:* Good morning, your Honor.

9 *MS. McGLAMRY:* Good morning.

10 *THE COURT:* Good morning. How is the new little baby?

11 *MS. McGLAMRY:* Good, thank you.

12 *THE COURT:* Good, good, glad to hear that. Okay.

13 I look forward to your presentation, not only for my
14 benefit, but we have about 149 or so participants on the call,
15 so I am sure that they are also eagerly awaiting the update on
16 one of our favorite topics, the registry.

17 *MS. McGLAMRY:* I think I will get started with just
18 some general registry information. As your Honor knows, the
19 registry provides a number of benefits to both Plaintiffs and
20 Defense in this litigation. There are currently over 140,000
21 claimants in the registry representing individuals from all
22 over the country in every state.

23 A few of these benefits include the record retrieval
24 process for ordering proof of use and proof of injury records
25 for claimants, the production process headed by the retailers

1 providing for loyalty program records and prescription records,
2 and a tolling agreement allowing both the registrants, their
3 attorneys, and the Defendants and their attorneys to
4 efficiently move forward in this litigation without currently
5 having the need to litigate all non-diverse claims in every
6 state across the nation.

7 Further, the data that has been collected from the
8 Census Plus forms and the registry is currently being used to
9 help both sides further discussions for a streamlined
10 bellwether process and may prove to be extremely useful in
11 future settlement discussion purposes, and you will hear more
12 about bellwether, obviously, a little bit later today.

13 Today I would like to focus on the record retrieval
14 processes provided by Lexitas and the retailers, which both are
15 managed in part by LMI, which is the service provider chosen by
16 both the Plaintiffs and the Defense in this litigation to host
17 the registry data.

18 Just kind of by the numbers, Lexitas is the service
19 provider handling the production of medical records showing
20 proof of use and proof of injury, and to date there have been
21 approximately 58,146 record orders that have been placed
22 through this process, and 37,197 records produced to both
23 Plaintiffs and Defense.

24 Lexitas is continuing to receive record requests from
25 claimants' firms, and we would encourage all claimants'

1 attorneys to take advantage of this aspect of the registry and
2 to contact Lexitas if they have not already done so to set up
3 an account and start ordering records.

4 LMI is handling the coordination of the data on
5 records between the retailers and the claimants as it relates
6 to the production of loyalty program records and the
7 prescription records from various retailers across the country.
8 Some numbers on that is, as of Monday, 6,249 claimants have
9 submitted a retailer record request form; 3,538 claimants have
10 been submitted to retailers for record pulls, for a total of
11 6,068 requests submitted by LMI since most claimants are
12 requesting from more than one retailer.

13 LMI will be submitting the next round of requests to
14 retailers today. As you know, they do a monthly pull.

15 So, LMI has received records for 2,667 claimants
16 totaling 4,157 retailer files, and this does not include files
17 that were received on September 10th, which LMI has not yet
18 processed, and this does not include no record statements,
19 which we are still in the process of reviewing to determine
20 volume, and since a lot of those were produced as pdf's with
21 multiple claimants per document still need to be separated out.

22 The majority of the retailers have responded to
23 requests and are current within 30 days of receiving the
24 request, and LMI continues to receive files on a rolling basis
25 from them.

1 I would like to inform the Plaintiffs' Bar that over
2 the coming days LMI will be making retailer records available
3 to Plaintiffs' firms and will provide notice to each of your
4 firms when records for your clients are available with
5 instructions for accessing those records.

6 There has been a slight data issue, a pdf problem that
7 the parties are working out for some of those records, and that
8 is why there are certainly more requests than records that have
9 come through, so if not everyone receives their records by the
10 end of the week, you might be part of that issue, and the
11 parties are conferring this week, in the next two days, to
12 resolve that issue.

13 And Adam -- Mr. Pulaski can certainly speak more to
14 that if the Court has any questions.

15 *THE COURT:* Thank you very much, Ms. McGlamry, that
16 was very helpful, and there are a lot of numbers to keep track
17 of. That is why we are going to have a transcript, so I can go
18 back and review all of those numbers. So, thank you.

19 *MS. McGLAMRY:* You are welcome.

20 *MS. DAILY:* Good morning, your Honor, I am Hope Daily
21 from Williams and Connolly. We represent Pfizer, but I will be
22 speaking today on behalf of all the brands.

23 Like Ms. McGlamry and many others presenting today, I
24 am a proud member of the Leadership Development Committee, and
25 part of my role in this litigation has involved working on the

1 registry, so I am happy to provide the Court with an update on
2 that today.

3 The brands have really been working on two different
4 processes as it relates to the registry. The first is
5 Defendant mapping or product usage identification; and the
6 second is the delinquency and deficiency process outlined in
7 PTO 38.

8 To start with Defendant mapping, the brands have been
9 reviewing the filed Plaintiffs' Census Plus forms, and
10 requesting that they be voluntarily dismissed from cases in
11 which the Plaintiff's product usage information indicates that
12 they do not have a viable claim against them. So, to use
13 Pfizer as an example, if a Plaintiff states in their Census
14 Plus form that they began using over-the-counter brand Zantac
15 in 2015, we know that Pfizer is not a proper Defendant because
16 it stopped selling the product in 2006.

17 So, the purpose of this process is, of course, to help
18 narrow which Defendants could have potentially manufactured or
19 sold the Ranitidine products that each Plaintiff used, and
20 therefore, to give the parties and the Court a better sense of
21 the size of the litigation and to help us know how to better
22 target our resources.

23 This process has been quite productive so far. The
24 brands reviewed the Census Plus forms of approximately 700
25 Plaintiffs, and of those, we identified 350 cases in which it

1 appears that at least one of the brands should be dismissed
2 based on lack of product usage. As an initial step for those
3 350 cases, we just informally reached out to Plaintiffs'
4 counsel and asked that they voluntarily drop the respective
5 brand or brands, and that informal reach out was really quite
6 successful. In about two-thirds of those 350 cases the
7 respective brands were indeed dropped or Plaintiffs' counsel
8 came back and provided an explanation for declining to do so,
9 such as there being a mistake in the Plaintiff's Census Plus
10 form.

11 After that initial reach out, there were about 120
12 cases outstanding for which the requesting brands had not been
13 dropped, so just last month, at the beginning of August, the
14 brand submitted a dismissal list pursuant to pretrial order 52
15 that outlined those 120 cases, as well as the brand or brands
16 requesting dismissal and the basis for doing so.

17 Again, Plaintiffs' counsel has been very responsive to
18 that. Of those 120 cases, there are only about 40 cases that
19 remain outstanding, and by that I mean that the requesting
20 brands have not been dropped nor has an explanation been
21 provided. We plan to reach out to counsel in those cases in
22 the very near term and we will certainly coordinate with
23 Special Master Dodge and Plaintiffs' lead counsel when we do
24 so.

25 So, that is where things stand on the

1 Defendant mapping front, and as I mentioned, this process is
2 very much ongoing. We have reviewed the product usage data for
3 about 700 Plaintiffs. We plan to review the data for the
4 remaining Plaintiffs in the very near term and we expect that
5 we will submit another dismissal list pursuant to PTO 52 in the
6 next month or two certainly.

7 The other process that has been ongoing is the
8 deficiency and delinquency process as outlined in PTO 38. I
9 provided the Court with a brief update on this now several
10 months ago, in December of last year, and since that time, the
11 process has continued in very much the same way. LMI has sent
12 out several additional rounds of delinquency and deficiency
13 notices.

14 The most recent round of notices went out this past
15 July, July 26th, and we just received an updated report from
16 LMI of the delinquencies and deficiencies that remain
17 outstanding since those notices were sent out. So we are in
18 the process of reaching out to Plaintiffs' counsel for those
19 cases to meet and confer and we are hopeful that all of the
20 outstanding delinquencies and deficiencies will be resolved
21 through that informal meet and confer process.

22 All that is to say that the deficiency and delinquency
23 process has been going smoothly. The parties have been working
24 very well together to get these issues resolved outside of
25 court and we are hopeful that it will continue that way.

1 That brings me to the end of my registry update for
2 today. I thank the Court for its time, and I welcome any
3 questions that the Court might have.

4 *THE COURT:* Thank you, Ms. Daily, that was very
5 helpful, very interesting to understand. It's a question I
6 often ask Special Master Dodge, how is the mapping going, how
7 is the deficiency process going, how is -- to Ms. McGlamry's
8 point, the document retrieval.

9 So, these are all questions that I am always asking
10 and your presentations are right on point in terms of what is
11 of interest to the Court in terms of how the registry is
12 working, and I am assuming to all of the viewers here today to
13 understand just exactly what the net result of the intricacies
14 of this structure is and how it is designed to operate, and
15 that in all respects it seems as if it is operating as it is
16 intended.

17 It is not without its hiccups and difficulties, I am
18 certainly aware of that, and any time you are trying a
19 relatively new process, and the registry I think, at least in
20 this form, is relatively new, you learn and maybe there will be
21 ways in which it will be done in a different fashion next time,
22 but I really admire the commitment that both of you and lead
23 counsel have made.

24 It wouldn't work if there wasn't that commitment
25 because it is a lot of time. I know it's a resource intensive

1 endeavor financially and time-wise, and so I can only imagine
2 that it is of utmost importance that the intended results are
3 experienced by both sides of the litigation given everything
4 that has been put into it. So, I thank you for the update.

5 A hard act to follow, Mr. Pulaski and Mr.
6 Petrosinelli, but dare you step into the arena to supplement
7 anything that your very able cocounsel have presented to the
8 Court?

9 *MR. PULASKI:* No, your Honor, I think Ms. McGlamry and
10 Ms. Daily made Mr. Petrosinelli's and my job very easy today,
11 so I have nothing further to add at this point.

12 *MR. PETROSINELLI:* Your Honor, Joe Petrosinelli here,
13 and nothing further to add for me.

14 *THE COURT:* Okay, good job. Thank you. I have no
15 questions and very much appreciate the update, so, thank you.

16 *MS. McGLAMRY:* Thank you, your Honor.

17 *MS. DAILY:* Thank you, your Honor.

18 *THE COURT:* All right. If we could have counsel who
19 are going to be presenting on the topic of bellwethers and the
20 Bellwether selection process, I look forward to hearing your
21 reports as well. Good morning to all of you.

22 I neglected -- you have all been very good about it,
23 but state your name before you are speaking so Ms. Stipes can
24 ensure that she gets your name with your comments for the
25 record.

1 MS. ZOUSMER: Good morning, your Honor, this is Julia
2 Zousmer, counsel for BI, introducing the topic of Bellwether
3 selection on behalf of the Defendants. It is nice to see you
4 again and be here today, albeit virtually.

5 As the Court mentioned at the outset of this
6 conference, Your Honor entered pretrial 65 in June directing
7 the parties to work with Special Master Dodge to determine if
8 agreement could be reached as to discovery relating to
9 Bellwether trials, Motions for Summary Judgment, and/or a
10 proposed post Daubert schedule.

11 The Court provided its vision in PTO 65 that
12 Bellwether trials be conducted within nine to 12
13 months following Daubert rulings and required the parties to
14 begin discussions regarding the process for selection of
15 Bellwether personal injury cases on July 1st, and to complete
16 this process and plan by October 1st, to be refined and amended
17 for good cause as appropriate until final Bellwether selection
18 following the Court's general causation Daubert ruling.

19 I am happy to report today that the parties have been
20 having these discussions and exchanging proposals, and I have
21 had the opportunity to work with Mr. Bayman and Mr.
22 Petrosinelli and the others on the Defense team on this
23 important part of the framework for the future of the MDL.

24 The parties are currently working through big picture
25 concepts for the process and plan, such as where the pool would

1 be drawn from and whether it should be limited to Florida
2 claimants, of which I understand there are about 9,000
3 currently, or whether it should be broader than that.

4 One aspect of picking a Florida pool would be that
5 there would be no issues with regard to lexicon waivers or the
6 ability to subpoena witnesses live to trial. We are making
7 progress and working towards agreement on these big picture
8 issues.

9 Unless the Court has any questions about that, I will
10 turn it over to Ms. Boldt to talk about another one of these
11 areas related to potential random selection of the pool.

12 *THE COURT:* Thank you, Ms. Zousmer, and good morning,
13 Ms. Boldt.

14 *MS. BOLDT:* Good morning, your Honor, Paige Boldt for
15 Plaintiffs and the LDC. I am here to give an update about
16 another threshold concern, which is more of the narrowing down
17 and selection of the Bellwether pool. Obviously, the principal
18 goal of the Bellwether process is to select cases that are
19 representative of thousands of persons in the MDL, and so that
20 results in these initial trials can be illustrated and inform
21 the parties and the Court.

22 There is generally two ways to narrow Bellwether
23 pools, random selection of cases and the other being parties
24 intentionally selecting them, with most MDLs utilizing a hybrid
25 of these methods to balance out the pros and cons of each.

1 Parties selection of bellwethers is often a reasonable
2 tool because the parties' attorneys are in the best position to
3 know the true scope and issues of a litigation's participants.
4 However, selection comes at the expense of representativeness
5 as both sides will select bellwethers favorable to them and can
6 end up selecting outliers as your trial cases.

7 So, when the first case is tried, if it is chosen by
8 the opposing party, it is easier to ignore the resulting
9 verdict and the parties may be hesitant to rely on it for
10 settlement resolution purposes. In this litigation with our
11 multiple cancer injuries, each of the bellwethers must be as
12 representative as possible.

13 So we turn to the random selection which, on the other
14 hand, is the only statistically valid method of a truly
15 representative pool. However, Judge Eldon Fallon of the
16 Eastern District of Louisiana has previously written that
17 random selection "can be problematic" because "there is no
18 guarantee that the cases selected to fill the trial selection
19 pool will adequately represent the major variables."

20 So, in order to leverage the pros of both random
21 selection and party selection, MDLs opt to a hybrid of random
22 selection of Plaintiffs to fill Bellwether pools and then
23 having both sides deselect them there to make sure they
24 adequately represent the litigation. In MDLs like Abilify,
25 Benicar, Talcum Powder, and Zimmer hips, Bellwether pools were

1 randomly populated and both sides deselected down to those that
2 were ultimately tried.

3 Additionally, both closer in time and physical
4 location to your Honor, the Northern District of Florida's 3M
5 earplugs MDL has also utilized this combination of random
6 sampling and deselection, but specifically for the cases
7 participating in that MDL's census. As your Honor has already
8 heard about this morning, the Court's incentivizing Zantac
9 Plaintiffs has led to very successful participation in the
10 Zantac census registry. This robust demographic data about
11 Plaintiffs from across the country has already been a guide at
12 many steps in this litigation thus far and would be the best
13 use for this Bellwether process.

14 But rather than both sides scouring 140,000 cases in
15 the registry, we have agreed that a smaller sampling of this
16 data would effectively represent the total pool of registry
17 participants, and from there, both sides would be able to
18 winnow down to the cases that are most relevant for the Court's
19 attention.

20 After identifying cases that would qualify based on
21 certain injuries and threshold issues, like Ms. Zousmer
22 identified, we would utilize a Microsoft randomizer program and
23 submit unique identifiers like an lmi ID number for the
24 software to generate a list of randomly selected, statistically
25 significant participants, somewhere between five and

1 20 percent.

2 From there, both sides would go through a
3 selection/deselection process to pull out the outliers from
4 that pool. And the two steps would guarantee statistically
5 representative Bellwethers that are also characteristic of the
6 major variables in this litigation and allow both sides to rely
7 upon the results of future Bellwether verdicts in trials.

8 So, that is the update for the overall selection idea
9 of the threshold issue that the parties have agreed about, and
10 with the Court's permission, I am going to transition to Mikal
11 Watts and Andrew Bayman for the status of the meet and confers
12 on the remaining topics.

13 *THE COURT:* Okay, wonderful, thank you, Ms. Boldt. I
14 appreciate that update.

15 *MR. WATTS:* Good morning. This is Mikal Watts. I do
16 want to tell the Court that Paige Boldt has done a great job on
17 this issue, and she is the person that runs the Plaintiffs'
18 Bellwether committee meetings every week, which is pretty cool.

19 Judge, on the meet and confer, basically I drafted up
20 a proposed Bellwether order, all the coleads got in with their
21 thoughts. We sent it over. They sent back one big spread
22 about when trials were going to happen. Of course, the last
23 scheduled deposition is on December 4th, so I wanted
24 December 5th to be the first trial, and they wanted it sometime
25 in Joe Biden's fourth term, converting him into Franklin

1 Roosevelt or something.

2 So, we squeezed, squeezed, squeezed, and we are
3 getting there. The bottom line is, we have gone back and forth
4 with three different drafts, two different responses.

5 Special Master Dodge has led us through a myriad of
6 meetings and pushed us, which she has done great. We made a
7 lot of progress yesterday. We had about an hour long call with
8 Special Master Dodge, Mr. Petrosinelli, Mr. Bayman and I,
9 together with Mr. Pulaski, and we realize there is not a whole
10 lot of air between us anymore.

11 They need to go back and confer with their clients to
12 get client approval about the concepts that we are talking
13 about. We scheduled a Zoom call for next Monday at
14 4:00 o'clock, we scheduled a followup call for next Tuesday
15 from the airport where I am headed to Brussels to take
16 depositions.

17 We have every reason to believe that we are going to
18 get you either an agreed order by October 1st, or if there are
19 just a couple of sticking points, it will be an order that
20 looks the same with some minor exceptions where we say X and
21 they say Y, I say December 5th, they say the fourth term of the
22 Biden administration, whatever it is. But we are down to that
23 kind of thing.

24 All the big picture topics, we are shockingly pretty
25 much in agreement, so I am very bullish on it, and I think Mr.

1 Bayman will back me up. So I will cede the floor to him.

2 *THE COURT:* Okay, thank you.

3 *MR. BAYMAN:* Good morning, your Honor. Andrew Bayman
4 on behalf of Boehringer Ingelheim and the Defendants for this
5 purpose.

6 I agree with Mr. Watts, I think we conceptually have a
7 lot of agreement on certain parts of this. I think there are
8 some threshold issues which still need to be resolved, and they
9 are important, obviously: What is the pool you are going to
10 draw from, how many in the pool, what is the sequencing of
11 events, when certain things are provided.

12 Obviously, as was reflected earlier in the
13 presentation by -- the excellent presentation by Ms. McGlamry
14 and Ms. Daily, it is important that we have good data from the
15 census and so this true-up process, which is the one we have
16 been using, is important so that there is proof of use and
17 proof of use of particular products, that certain other things
18 by claimants are vetted, such as claimants who have cancer
19 before having taking Zantac, for example, just certain
20 claimants who we would agree would not be part of a pool.

21 That work that is being done now is very important to
22 what we are going to be doing ultimately, but I do agree with
23 Mr. Watts that I think, while we differ on certain time
24 periods, how long to do this versus this, we differ on some of
25 the sequencing of events, I think overall in the framework we

1 are not all that far apart. We are going to continue to keep
2 talking. As Mr. Watts mentioned, we have dates on the
3 calendar, and I share his optimism that we would either present
4 to you a joint proposal on October 1, or competing proposals
5 with just the issues in dispute, if you would, or the time
6 periods in dispute, and then allow you to hear us after that
7 and make an ultimate decision.

8 *THE COURT:* Okay. So, I guess what I am hearing is
9 that there is largely, in important respects, meeting of the
10 minds on kind of the structure and the process for selecting
11 potential Bellwether cases, but where there may be disagreement
12 is on certain deadlines that relate to what, kind of like the
13 pretrial and trial date, sort of the discovery deadlines and
14 other pretrial deadlines before you actually get to the actual
15 trial date of the Bellwether trial?

16 Is that mainly where -- I am not committing you to
17 that, but I am just wanting to make sure I understand.

18 *MR. WATTS:* Judge, if I could, Mikal Watts. I think
19 you said it right and when Mr. Bayman and Mr. Petrosinelli and
20 I were on the phone yesterday, we kind of separated what we
21 call the big structural issues about how you get from 140,000
22 cases down to a manageable number where you are trying four,
23 five six, seven, eight of them, whatever you decide you want to
24 do, and I think we are there.

25 It is largely using the Microsoft randomizer process

1 to get from 140,000 to some very small subset of that, and then
2 you have a series of additional information as parties select,
3 deselect, select, deselect.

4 So, to use the example I was using, Vioxx, you don't
5 have a marathon runner being the Plaintiff pick and a 350-pound
6 guy blaming Vioxx for his heart attack being the Defense pick.
7 So that selection, deselection.

8 I have done this before, and this order that we sent
9 largely is the work of Kirkland and Ellis who talked me into it
10 in the Syngenta corn case and it works great. It gets rid of
11 the outliers. I think Mr. Bayman actually came up with, or Mr.
12 Petrosinelli yesterday, if we are in the middle of discovery
13 and we realize we have a marathon runner and a 350 pound heart
14 attack, you know, that we can deselect those out and quit
15 spending resources.

16 So, those big structural issues on how to do it, I
17 think we are getting there, subject to client approval.

18 What we are going to have disputes about, and we are
19 going to work them out I think, but is timing, and a lot of
20 that is, if the Court were to tell us what day you want to have
21 the trial, we could reconstruct it from there, but your order
22 said nine to 12 months. Of course, I heard six months and he
23 said 15 months. We are getting down to that.

24 I think we are close from the standpoint of how much
25 time from the time a Plaintiff is selected as the Bellwether

1 trial Plaintiff, how much time do we need between that
2 selection date and the time of trial, there is some
3 disagreement on that. We also brain stormed yesterday
4 different ways that we could close the gap between the two of
5 us. I think Mr. Bayman said it right. Kind of a light went
6 off yesterday that we are not that far apart.

7 *MR. BAYMAN:* The only thing I would add, your Honor,
8 is, I do think certainly the structural issues have to be
9 resolved in the beginning and issues about sequencing.

10 We believe that we would be entitled to certain
11 information in advance of the randomization to help us, that
12 the Plaintiffs want to do randomization and then winnow the
13 pool down. So, there are things like that structurally that
14 still need to be worked out, but I think Mr. Watts is right.

15 When we look at a lot of when they provide certain
16 information in their plan and when we are saying we want it,
17 there is not a lot of difference. I think that we can continue
18 to keep discussing and are optimistic that we can bridge these
19 issues, or if not, certainly narrow them for your Honor.

20 *THE COURT:* Okay. Just out of curiosity, although the
21 plan may speak to it, in the deselection process, is it
22 envisioned that one side or the other would have sole
23 discretion to do that or is it based on -- would it be based on
24 objective criteria?

25 *MR. WATTS:* So, the way we have it -- Mikel Watts

1 again. I'm sorry, Judge.

2 The way we have it structured right now is pretty much
3 a deselection for whatever reason you choose. We have the
4 randomization, of course we have to do it for every one of the
5 cancers in the case, so we have so many of each kind of cancer,
6 but then we take what is a very large number, use the
7 randomizer to select a set percentage of it. Whether that be
8 5 percent, 10 percent, 15 percent, or 20 percent, it is not
9 really important. Then at and that point in time, based on the
10 information that is in the census already, you have a
11 deselection to get down to a smaller number.

12 Then you set up a series of increasing burdens on the
13 Plaintiff from the standpoint of providing additional
14 information as the selection, deselection process goes down so
15 that -- and I think it was Mr. Agneshwar who said we don't want
16 to spend a ton of money on something that is not going to end
17 up being a trial Plaintiff.

18 So, we are trying to structure a lot of that work from
19 the standpoint of I give them a medical authorization for a set
20 number of Plaintiffs so that we can begin the process of
21 ordering medical records well before Daubert.

22 That way, when you make your rulings on Daubert and we
23 know what is going, we are not wasting another six months to
24 just start collecting medical records and the like.

25 But the answer to your question is, as we go from a

1 large number and winnow it through selection, deselection, it's
2 largely each side can do it for whatever reason they choose to
3 in their advocacy roles of trying to get rid of the outliers.
4 By going from deselection to selection, deselection to
5 selection, my experience has been that you get rid of the
6 outliers and you try cases that look like the top of the bell
7 curve that are representative.

8 *MR. BAYMAN:* We proposed a two-step strike process
9 where you would strike at the beginning so you didn't waste the
10 time and the money on doing discovery on a Plaintiff that
11 either side knew wasn't going to be a representative Plaintiff
12 in the end, and then strike at the end before trial, which is,
13 I think, more typical.

14 What we are talking about saves spending time and
15 money on Plaintiffs that either side or both sides know is not
16 going to be a Bellwether Plaintiff in the end for the kind of
17 reasons Mr. Watts described.

18 *THE COURT:* How much information do you think you will
19 already have at that point, whatever that point is, at some
20 point, through the registry that would result in, you know, not
21 quite the same burden as if you are just beginning a case anew,
22 and asking -- getting initial disclosures and doing your first
23 set of -- I mean, where do you think you would be with the
24 viable potential pool of Bellwether claimants based on just the
25 ordinary workings of the registry and the winnowing process

1 that is going on and the medical record retrieval and things of
2 that nature?

3 How much of a head start would that give you as to a
4 pretty good sampling, and by what date? How does that all
5 match up with Daubert and with this ultimate selection?

6 *MR. WATTS:* Mikel Watts. I think that the registry is
7 critical to what we are trying to do. I think it will be the
8 standard in every future MDL. The reason is, is we have so
9 much information already that allows us to start this process,
10 and then the cleansing process that you heard with respect to
11 the registry will go on, and we need that to happen as the
12 winnowing is going, right.

13 But inevitably you get a bomb that goes off, somebody
14 gets a medical record and it turns out your star Plaintiff
15 served 14 years in the pen, and you have this and so you are
16 trying to take that out. Or you have somebody that said they
17 didn't have a family history of a particular kind of cancer,
18 and then they had a bunch of family history of that same
19 cancer, so I would want to deselect that.

20 So, a lot of that information is already in the
21 registry. The initial vetting would be based -- largely based
22 on demographics. I suspect the Plaintiffs wouldn't be desiring
23 to have their first Bellwether Plaintiff be a 98 year old. At
24 the same time, Mr. Bayman may want to strike the five year old
25 pediatric case.

1 So that will happen, but the idea is we are trying to
2 have the winnowing happen prior to Daubert to a certain extent
3 so that we are not wasting a ton of resources, and then after
4 Daubert, immediately after Daubert, we start what is either a
5 three-month or a four-month specific case discovery process on
6 a number of the cases that are left.

7 Mr. Petrosinelli suggested, and I agree, that let's
8 say we start that process off with the Plaintiff's deposition,
9 and bad things happen in depositions from time to time, so we
10 may want to kill a case as a Bellwether right off, or they
11 determine that it is the equivalent of the marathon runner on
12 Vioxx, so they want to kill the case right off.

13 If we are going to have that deselection ultimately,
14 why would we waste the resources to continue to go through the
15 discovery process? I thought Mr. Petrosinelli had a really
16 good idea there.

17 *THE COURT:* So --

18 *MR. WATTS:* But the concept is that we would order the
19 records well in advance so that we are not waiting on records
20 when it is time to do the case specific discovery.

21 *THE COURT:* So, is the vision, then, that there would
22 be actually identified cases at the time of Daubert, and that
23 based on the Daubert rulings, you would go to that universe of
24 cases you have selected and maybe pull some out, maybe not?

25 *MR. WATTS:* Sure. Let me use the example of just

1 cancers. If the Court says the following 12 cancers survive
2 and everything else doesn't, of course we do not want to spend
3 any time or resources trying to get you Bellwether cases on
4 something you said didn't get past general Daubert. But we
5 will already have the records, and that is the one potential
6 for resources that are expended that somebody could say is
7 wasted, is if we order a bunch of records on a bunch of cases
8 and you say that cancer doesn't survive Daubert, well then all
9 those records and the expense of that has been to some argument
10 wasted.

11 But what we don't want to do is, we don't want to
12 waste the resources on case specific discovery before we know
13 which cases we are going to be trying to set up a Bellwether
14 Plaintiff for.

15 *MR. BAYMAN:* Your Honor, if I might just chime in to
16 your prior question. We think the registry information is
17 important, but the CPFs are limited to basic personal
18 information about product usage, injury alleged, and what are
19 the, what Mr. Watts calls the structural issues still in debate
20 is, when do we get fact sheets.

21 Our view is the fact sheets are important for doing
22 the vetting prior to the randomization, such as medical
23 background, other medical problems, diagnoses, concomitant
24 medications, lifestyle information like smoking, alcohol,
25 caffeine, other drugs, more information about health care

1 providers and pharmacies, more information than the CPFs
2 provide in the registry.

3 So, that is one of the structural issues we are
4 discussing is, our plan would be to get the fact sheets as part
5 of that vetting process, again before Daubert, but to do that,
6 vet those, and then as soon as your Daubert ruling hits we do
7 the randomization. The Plaintiffs say randomize first, then
8 later provide the fact sheets and other information, so that is
9 one of the issues that we are still debating.

10 *THE COURT:* Is your proposal -- again, when I say
11 proposal, I use that loosely just based on what you said.

12 Would it be every claimant would fill out a fact
13 sheet, or how would you decide who, under your scenario, would
14 fill out a fact sheet?

15 *MR. BAYMAN:* I think that is where we would be open to
16 discussions with the Plaintiffs, whether it might be some
17 percentage of the pool. First you have to decide on the pool,
18 is the pool all Florida residents or is the pool broader than
19 that.

20 Once you decide on the pool, then I think we would be
21 open to discussions with the Plaintiffs about what percentage
22 would be required to file the fact sheets, provide the fact
23 sheets as part of the vetting process while we are gathering
24 the medical records and the authorizations.

25 That is why we are continuing to have discussions

1 about how this all can be sequenced, and I think that is a term
2 I used earlier, but other than the timing of certain deadlines,
3 the sequencing is something that is still being discussed among
4 the parties.

5 *MR. WATTS:* Our view on the fact sheet issue is as
6 follows: Number one, the old way of MDL thinking is if the
7 Defendants are having to do work, why shouldn't the Plaintiffs
8 have to do work? So you make 150,000 people fill out fact
9 sheets, it creates an extraordinary waste of resources. I
10 can't over emphasize the millions and millions and millions of
11 dollars it takes to fill out fact sheets for 140,000 people.

12 So, what we have done is, the order that we have
13 proposed and submitted, and I don't think there is a lot of
14 push back, would take a snapshot of what is in the census as of
15 a particular date. The present date that is in the order is
16 September 21. Now, why is that in there?

17 Number one, it is probably not lost on the Court that
18 September two years ago is when all this broke with an FDA
19 thing, so there are all sorts of Statute of Limitations issues
20 and everything like that.

21 So, the presumption is that people that are going to
22 go into the registry for purposes of pooling are getting into
23 the registry right now, and there is a reason for that, so that
24 gives you a protection from the standpoint of Bellwether
25 selection, and that is what I call the anti-sandbagging

1 protection. We don't have a situation where somebody has kept
2 their very worst cases out because they have fear of losing
3 them to the Statute of Limitations.

4 So, we take a picture of what is in the registry, and
5 for example, last week I put every case I've got into the
6 registry except for two, and the reason for that is, in these
7 discussions I wanted it to be clear that we are not having a
8 situation where the Plaintiffs are playing some game of poker
9 where we're keeping out the bad ones, putting in the good ones,
10 trying to stack the deck and the like.

11 So, with that representation, and I have every reason
12 to believe, based on what I have seen from the registry, that
13 every law firm in the case is either going in the registry,
14 going to State Court, whatever they are doing, but they are not
15 picking and choosing.

16 So, because of that, as a matter of just statistical
17 significance, you have so many cases, 140,000 of them, there is
18 no way to jerrymander the system. So, that makes the Microsoft
19 randomizer that the Kirkland and Ellis law firm talked me into
20 in a case with 200,000 Plaintiffs make all the sense in the
21 world. You let the randomizer come in and select or deselect
22 what in some cases could be 99 percent of the cases. You still
23 have 1,400 cases, which statistically is going to be
24 representative of the 140,000.

25 What you have done is, you have just saved the

1 resources of filling out Plaintiff fact sheets for 138,600
2 people who are never going to be the Bellwether anyway, and so
3 it serves no purpose.

4 Now, once you get to that 1400, then we have
5 selection, deselection, and as -- then we've got the
6 secondary issue of how much work, how much resources are we
7 going to expend prior to Daubert in order to save time.

8 So, we have this winnowing process and you have the
9 Plaintiff provide more information in the form of a Plaintiff
10 fact sheet. Originally what we have got going is, the first
11 thing you have to do is, you have to show up with a medical
12 authorization so we can get the records ordered because -- the
13 LDC member that was talking about some people say X, but their
14 prescription records don't back it up, this kind of thing.

15 So we get those ordered immediately, we get the
16 records ordered through authorization. All that process of
17 collecting the backup data while we are getting down to a
18 manageable number takes place before your Honor rules on
19 general causation Daubert, and then immediately after your
20 Honor rules on general causation Daubert, we start this
21 intensive case specific discovery, taking depositions, etc.
22 which, as you know, is very, very expensive.

23 During that process Mr. Petrosinelli said, hey,
24 let's save some more resources, give everybody a pull so we are
25 not wasting resource on somebody we know is not going to be a

1 Plaintiff.

2 It has really been a good discussion from the
3 standpoint of how do we get ready for trial as quickly as we
4 can, pursuant to the Court's order after Daubert, but at the
5 same time not waste an incredible amount of resources in ways
6 that -- frankly, past Bellwether selection orders have made the
7 mistakes in the past that we have learned from, and we are not
8 going to waste the money or the time, more specifically, that
9 it takes to get 140,000 people through a fact sheet process, a
10 deficiency process, dismissal processes. I have seen that over
11 and over and over again in MDLs and I think that both sides
12 generally agree it is a giant waste of time and money.

13 *MR. BAYMAN:* To be clear, your Honor, we are not going
14 to be asking for 140,000 fact sheets. To be clear, this is
15 something that is subject to further discussion, and the end
16 number may not be that far off. The difference is, we say do
17 that on the front end, do the vetting, do the winnowing, then
18 have randomization ready to go, and we start discovery as soon
19 as you rule on Daubert.

20 The Plaintiffs say do the randomizer, narrow the pool,
21 then winnow for five months, then we get -- so, again, some of
22 it is how you sequence it, and that is what we are trying to
23 work through, and I know that Mr. Watts said, you know, we are
24 depending on statistical significance to make reasonable
25 decisions about the distribution of the cases. That holds true

1 for the distributions of the cancers among the Zantac users.

2 So, we are -- you know, we are continuing to, as they
3 say, debate these, and I think with more discussions, I
4 continue to remain optimistic that if we don't have an
5 agreement, we can get pretty close, because I don't think the
6 numbers are going to be that far off in what we are looking at.

7 MR. WATTS: I agree.

8 MR. McGLAMRY: Your Honor, this is Mike McGlamry. I
9 add this only because I think that what I am hearing also on
10 this, and also just from knowing what is going on with this,
11 is, number one, thank you for taking such an interest in
12 putting together a Bellwether plan because it is critical to us
13 and our clients. And I would say this, that at some level I
14 hope we don't sort of generate unintended consequences.

15 We have done, I think -- and you heard earlier from
16 others about the registry, about how wonderful that has been,
17 and as a result, 140,000 some odd people are participating,
18 which is unheard of, and in every other litigation 92 percent
19 of those people we would not know about at this point. But we
20 can't create a process that then sort of ruins all of that by
21 requiring 140,000 people to do a bunch of other things because,
22 as others have already said, how expensive this process has
23 been at this point.

24 So, at some level it's sort of let's don't let form
25 overdue substance because at some level we have all done, you

1 know, getting ready for a Bellwether trial and doing this
2 process and we don't need to have, because we have such a
3 wonderful registry, that everybody, and the Court particularly,
4 have spent so much time doing and putting together, be an
5 impediment to getting where we need to go as quickly as we can
6 go.

7 I always tell this to the special master, and she
8 rarely listens to me, but I will say it for this purpose. At
9 some level, your Honor, you need to tell us when you want the
10 trial, and as Mr. Watts indicated, we'll back all of those
11 things up because, in my experience, the lawyers, which I know
12 we have on both sides of this, we will get this thing done.

13 The randomizer is one of the best ways to do that
14 because you are kind of cutting through some of the chaff, and
15 I think we, and I think this is true on both sides -- once your
16 Honor, as you have been doing, pay attention to this and the
17 timing, because the rest of this stuff is going to play itself
18 out, we will get it figured out. We always do.

19 And so don't let either one of us say, oh, we need to
20 do all these things to slow this process down. It needs to
21 happen, in our opinion, quicker rather than later, and so we
22 ask you to sort of tell us what to do.

23 Secondly, and I will end this because this is really
24 somewhat unrelated, but I have somewhat of an interest in this,
25 I want to thank you for letting the LDC and next gen members

1 participate in this in a meaningful way. They are already, as
2 Mr. Watts indicated, as critical to this litigation as there
3 ever is.

4 We all know that old guys like Andy and I cannot do
5 the work that is required in this without a tremendous amount
6 of resources, and as you have already seen today, and you will
7 see as we go on, and you have seen before in these things, that
8 the LDC and next gen lawyers are great. They are smarter than
9 any of us could ever be, and we appreciate the fact that you
10 are allowing them to shine, to get in front of the Court and
11 not just be behind the scenes telling us old people what to do,
12 that they are actually in the front lines, and we appreciate
13 that.

14 Thank you, your Honor.

15 *MR. BAYMAN:* Your Honor, I would echo that. I am not
16 as old as Mr. McGlamry, but I cannot do this without the help
17 of Ms. Zousmer, who knows our plan and the Plaintiffs' plan in
18 detail inside and out and continues to provide me with the
19 information that I need.

20 I will say though, again, we are not looking for
21 140,000 fact sheets. I think the thinking behind our plan was,
22 don't do a lot of work prior to your Daubert rulings because
23 some cancers may be eliminated.

24 Under the Plaintiffs' plan, we could be working on
25 cases in the winnowing process that ultimately do not survive

1 Daubert because they have that work being done before Daubert,
2 whereas we would be getting the fact sheets, vetting the pool,
3 winnowing it down, and then we would be prepared to go as soon
4 as your Daubert ruling to have randomized picks and we could
5 start.

6 I just wanted to make that clear.

7 I think we can -- we are obviously proceeding in good
8 faith. Mr. Watts and I have tried cases in various places
9 under different kinds of plans, and I think we have a good team
10 of leads that are very involved, Mr. Petrosinelli, Mr. Pulaski,
11 Mr. Agneshwar. We have our LDC members who are supporting us
12 and I, again, remain optimistic that if it is not an agreed
13 plan, it is one that has limited things for you to decide.

14 Obviously, we are working -- to Mr. McGlamry's point,
15 we are mindful of pretrial order 65, and what you said your
16 vision is for a trial, and we propose a trial within 12 months,
17 and the Plaintiffs propose a trial within six months. So,
18 again, we are mindful of your Honor's instructions.

19 *THE COURT:* Okay. Well, there is a lot there, so
20 thank you. Gosh.

21 Well, a couple of takeaways. I don't know, Mr. Watts,
22 you are not included among the old guy club, so maybe that's a
23 good thing for you. Sorry, Mr. Bayman, you were thrown in
24 there with Mr. McGlamry if you didn't want to be there.
25 Clearly undisputed throughout everyone's comments is that

1 Ms. Boldt and Ms. Zousmer and all of the other LDCs are
2 amazing. The MDL could not go forward without you, so that is
3 like an undisputed -- if there was a summary judgment motion on
4 that the movant would win, undisputed.

5 Look, I am not going to prejudge anything. I think
6 you know me well enough to know that I want to hear from --
7 from both sides. I look forward to getting the plan on October
8 1st, pursuant to the pretrial order.

9 I would say that, you know, great in terms of reaching
10 agreement, that is always a good thing. It is good on so many
11 levels, not just because it would, arguably, make my job
12 easier, but because it reflects a joint investment in what it
13 is that you are putting together, and this is a very important
14 part of the MDL, and you have the expertise.

15 So, look, there is going to be a degree of deference
16 that I will afford to your collective thinking. It is not to
17 say I am not going to ask questions because I am curious, and I
18 know enough to ask the questions, but I don't know a lot. So,
19 I am going to wait until I get it, and if you disagree, if
20 there are areas that you disagree, that is fine.

21 We have had many steps of the way in this MDL going
22 back to previous orders on how the discovery was going to go
23 forward and how the Motions to Dismiss were going to be
24 briefed, and I try to always get your input. If there is not
25 agreement on the written submission, if I feel I need to hear

1 more, we will come back together and I will ask why do you say
2 this, why this many fact sheets, why this date, so I understand
3 it, and then I will make the best determination I can as to
4 which plan or which version of both.

5 So, you will continue to be heard, but this actually
6 turned out to be incredibly helpful. I didn't really think of
7 it in terms of your laying the groundwork for me then to be
8 able to receive the October 1st submission with a more informed
9 level of understanding, and you can be sure that if I have more
10 questions you will be right back here to answer them. So, this
11 is all very, very helpful.

12 You know, I am not here to say fact sheets, good, bad,
13 how many. No, I am not going to do that right now. I will say
14 in my role as a committee member, as the chair, actually, of
15 the MDL subcommittee, and I have been at enough conferences to
16 know that I do understand that is the old way of doing things,
17 not to say it's obsolete, but facts sheets have been around. I
18 have heard some of the benefits that come from the fact sheets
19 and I have certainly heard some of the negative aspects.

20 I guess primarily what comes to mind is sort of the
21 voluminous nature of some of them, 50 plus pages, and it's time
22 consuming and it's resource intensive, not to say that in
23 certain instances it is not accounted for, but it seemed to be
24 a reason why everybody was embracing the registry and the
25 Census and the Census Plus.

1 I can tell you when I would let others know, whether
2 it is on the committee or conferences, that the Census and
3 Census Plus didn't exceed five pages, the jaws dropped. They
4 couldn't believe the progress that had been made from the 50
5 pages.

6 Now, I understand when you get closer to trial you
7 need more information. In a non-MDL you would be doing your
8 interrogatories, your request for production, your request for
9 admissions. So, whether you envision -- how you envision
10 whether there is going to be a fact sheet, if so, how many, how
11 that interplays with traditional discovery, you will tell me
12 that and I want to understand your thinking.

13 But this all sounds very good. I thank you for your
14 commitment to working together. It is just really a hallmark
15 of what I place such importance on. It doesn't mean that I
16 expect you always to agree, but I do expect you to work
17 together and to realize where you disagree, so you can really
18 hone in on areas and make the job -- I don't want to say easier
19 for me, but it is better for you, because if you are clear with
20 me about where you don't agree, then that is where I am going
21 to devote my attention, and in all other respects, you are kind
22 of getting what you are presenting and what you want where
23 there is agreement.

24 Sometimes, when the parties go sideways and they just
25 get angry with each other, even though in substance it is such

1 a small area of disagreement, because of personalities or --
2 you know, you lose sight and it just becomes a mess for the
3 Court, and the Court ends up making bad decisions as a result
4 of that.

5 So, help the Court make a good decision about how this
6 plan goes down. Whether it is what the Plaintiffs want or the
7 Defense wants, or some hybrid, just help me make a good
8 decision so at least it is clean, it is clear, it gets you to
9 where you need to be. Maybe there is a difference of a month
10 or two, but it is really important that you help me out in that
11 regard. It sounds like you are doing everything you need to do
12 to do that.

13 I have no other questions or comments, and thank all
14 of you for your collective work on this important area of the
15 case.

16 *MR. WATTS:* Thank you, Judge.

17 *MR. BAYMAN:* Thank you, your Honor.

18 *MR. McGLAMRY:* Thank you, your Honor.

19 *THE COURT:* Okay. Lastly, we have the State and
20 Federal update. If we could have counsel appear and state your
21 name for the record as you present.

22 *MR. HUYNH:* Good afternoon, your Honor, Tommy Huynh.
23 I am a member of the LDC and represent Sanofi, but am speaking
24 for all the brands today.

25 *THE COURT:* Good afternoon.

1 MR. HUYNH: Your Honor, as you are aware from our
2 slide deck and update at the last status conference in July,
3 there were at that time State Court cases pending in
4 California, Tennessee, Texas, Illinois, New York, Baltimore,
5 and New Mexico.

6 The number of filed cases and Plaintiffs in those
7 jurisdictions have not changed significantly since the last
8 CMC, but I do want to note that seven Tennessee cases were
9 recently removed to Federal Court following the dismissal of
10 certain brand Defendants for lack of product use. So there are
11 now 51 cases pending in Tennessee instead of 58.

12 What has changed since the last CMC is there have been
13 State Court cases filed by at least five Plaintiffs who were
14 part of the MDL's census registry. Two of these Plaintiffs
15 filed their cases in Illinois State Court, one in Missouri, and
16 two in Pennsylvania. Other Plaintiffs who were not in the
17 registry have also filed cases in Pennsylvania.

18 Pennsylvania and Missouri are new State Court
19 jurisdictions with Zantac cases. Defendants removed the cases
20 in Missouri and Illinois filed by three Plaintiffs and moved to
21 stay those proceedings pending transfer to this MDL.

22 The judge assigned to the case pending in the Eastern
23 District of Missouri is Judge Sarah Pitlyk. The Illinois case
24 was just remanded earlier today. In Pennsylvania the two
25 Plaintiffs just filed their complaints two days ago, on

1 September 13th, so they remain pending there at this time.

2 Your Honor, turning to the possibility of
3 Federal/State Court coordination briefly, we think that looking
4 at where the various Zantac litigations stand, there are
5 opportunities for coordination between this MDL and the State
6 Courts. The complementary case schedules in certain State
7 Court jurisdictions in fact allow for this type of
8 coordination.

9 In this MDL, Daubert motions on general causation are
10 due May 9, 2022, and briefing closes in July 2022. By
11 comparison, in Tennessee, for example, general causation expert
12 disclosures for Plaintiffs and Defendants are due in February
13 and April 2022, respectively. Similarly, in California, expert
14 discovery begins in April 2022, expert and dispositive motions
15 are due in August, and the hearing on these motions is set for
16 September 2022.

17 There is also a Texas State Court case pending before
18 Judge Robert Vargas. Unlike Tennessee and California, however,
19 that case is still on an earlier track than the MDL. It has
20 Daubert and summary judgment motions due April 11, 2022, and a
21 May 2022 trial date.

22 Finally, I understand from your opening remarks that
23 your Honor already has the names and contact information for
24 the assigned State Court judges. We are happy to continue to
25 provide your Honor with contact information for newly assigned

1 State Court judges to help facilitate any coordination the
2 judges determine is appropriate.

3 With that, I don't have anything further, your Honor,
4 and Mr. Agneshwar and I are happy to answer any questions you
5 may have.

6 *THE COURT:* Thank you. I found that the chart that
7 you had provided last time with the PowerPoint was helpful.
8 So, to the extent that you want to continue to update that so
9 it becomes sort of a running updated summary of the different
10 cases, I think that would probably be prudent because it would
11 keep me current with all of the cases.

12 I made note of it, and I know I will have the
13 transcript, but I did find that the chart that you provided
14 last time was helpful, and I actually worked off of that when I
15 made my calls to the judges whom I have reached thus far.

16 *MR. HUYNH:* Yes, we are happy to do that for you, your
17 Honor.

18 *THE COURT:* Great, thank you, I appreciate that.

19 *MR. KRAUSE:* Your Honor, Adam Krause for the
20 Plaintiffs. I believe I can make ours fairly brief.

21 On behalf of the liaisons for State and Federal Court,
22 I wanted to report that we are in communication with
23 California, Tennessee, Illinois, New York, Pennsylvania, and
24 Texas. In speaking with those State Court lawyers, I can
25 report that each of those lawyers representing those Plaintiffs

1 feel that the coordination is going smoothly. Our view here in
2 the MDL is the same. Each of the lawyers have told us that
3 they would like to proceed with their autonomy.

4 I know you spoke with Judge Bennett and Judge Stokes
5 in Tennessee, and by doing so you probably learned that each of
6 these State Court cases are on different tracks. Many are just
7 starting, they are in their infancy, some are further along
8 with trial dates already established, as Mr. Huynh just said,
9 down in Texas.

10 I don't think anyone would disagree that the epicenter
11 of this case is here in this courtroom. I know Mr. Huynh
12 suggested that State Court judges be -- coordinate with the
13 MDL, and I think that is important. I think you reaching out
14 is great with this coordination, just note that some of these
15 cases are very far along, again, some of these Texas Court
16 cases, and others don't even have judges assigned to them yet.

17 So, I think that particularly in New York, there are
18 some cases that don't have judges assigned to them, but they
19 are at various stages.

20 And lastly, I just wanted to report that there are
21 additional State Court cases that I do know are going to be
22 filed in several jurisdictions coming up. I don't know how
23 many there are, but there are ones that will be additionally
24 filed in the upcoming weeks, and I wanted to keep you apprised
25 that, in talking to some of the State Court counsel, they have

1 notified me that they are going to file a few more in the
2 upcoming weeks going forward.

3 *THE COURT:* Okay, great. Thank you so much, Mr.
4 Krause.

5 *MR. MATTHEWS:* David Matthews for the Plaintiffs, your
6 Honor, and I think between Mr. Huynh and Mr. Krause, they have
7 covered everything adequately. Thank you.

8 *THE COURT:* All right. Terrific. Thank you.

9 *MR. AGNESHWAR:* Your Honor, Anand Agneshwar for the
10 Defendants. Same, nothing to add beyond Mr. Huynh's
11 presentation.

12 *THE COURT:* Great. I think you did it last time, but
13 when you update the chart, include the case numbers. I know
14 when I called one judge, he actually didn't even know what --
15 it wasn't clear what case the judge had. I can't remember
16 whether I had it on the chart. We found it, and I was able to
17 let the judge know. So the case numbers are important.

18 Look, I recognize that the State Court cases will be
19 on their own track and, you know, look, they do things
20 differently in State Court and Federal Court and they do things
21 differently from one State Court to another State Court, or
22 from one judge to another judge. So, you are never going to
23 have perfect alignment and coordination, however you choose to
24 define coordination.

25 I don't think anybody can quarrel with there being

1 open lines of communication, and to the extent that there could
2 be efficiencies and coordination, again, that never hurts, and
3 probably in all likelihood always helps, but I certainly
4 realize we are different animals, each of us, because of the
5 nature of our cases.

6 An MDL is different than having one case or 43 cases
7 or 58 cases; State Court is different than Federal Court. So,
8 we are not necessarily going to see uniformity I guess. I
9 don't want anybody to confuse coordination and collaboration
10 and communication, sort of one size fits all uniformity.
11 Certainly that is not my mission.

12 It is just a very different approach that I have,
13 which is just to introduce myself and to let them know who I
14 am, and what the MDL is doing and answer any questions, and
15 again, see what is happening in State Court, and have us share
16 information.

17 Again, I think it all enures to the benefits of the
18 litigants, and that is the idea. It is not about power
19 grabbing or usurping authority of anybody, whether it be the
20 lawyers or the judges. It is about ultimately what is in the
21 best interest of the cases that are before the different judges
22 and how can this be done in the most efficient and equitable
23 manner.

24 So, getting these updates certainly help me, and as I
25 say, the judges really do appreciate the calls. Many of them

1 have said they have never really received a call from a Federal
2 judge in an MDL before, and they just were really appreciative
3 of it.

4 So, I credit you with keeping that as a primary focus
5 of this case because it doesn't go unnoticed. People
6 appreciate it, other judges appreciate it. So, thank you.

7 I think that is the last matter on the agenda, so we
8 probably are ready to conclude at this point.

9 I think we have become more efficient with our
10 conferences. We are almost at an hour, maybe went a little bit
11 over an hour, not by as much as I have gone over before, so I
12 will call that a good thing. I am sure it is good for you as
13 well.

14 So, everybody be well. Thank you for the time and
15 preparation that you gave to presenting such an informative
16 conference for the Court's benefit and those who are observing
17 here today. I will get some orders out in the next couple of
18 days, once I hear confirmation from our special master with
19 respect to the dates I spoke about for Science Day and for the
20 Motions to Dismiss and anything else the Court may want to hear
21 on.

22 With that, we will conclude the case management
23 conference and everybody be well and remain safe.

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

25 * * *

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

3
4 Date: September 16, 2021

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

6 Signature of Court Reporter
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Pauline A. Stipes, Official Federal Reporter

<p>MR. AGNESHWAR: [1] 50/8 MR. BAYMAN: [8] 24/2 27/6 29/7 32/14 33/14 37/12 40/14 45/16 MR. HUYNH: [3] 45/21 45/25 48/15 MR. KRAUSE: [1] 48/18 MR. MATTHEWS: [1] 50/4 MR. McGLAMRY: [2] 38/7 45/17 MR. PETROSINELLI: [2] 9/5 17/11 MR. PULASKI: [2] 9/6 17/8 MR. WATTS: [9] 22/14 25/17 27/24 30/5 31/17 31/24 34/4 38/6 45/15 MS. BOLDT: [1] 19/13 MS. DAILY: [3] 9/7 12/19 17/16 MS. McGLAMRY: [5] 9/8 9/10 9/16 12/18 17/15 MS. ZOUSER: [1] 17/25 THE COURT: [24] 2/21 9/9 9/11 12/14 16/3 17/13 17/17 19/11 22/12 24/1 25/7 27/19 29/17 31/16 31/20 33/9 41/18 45/18 45/24 48/5 48/17 50/2 50/7 50/11</p>	<p>2 2,667 [1] 11/15 20 percent [2] 22/1 28/8 20-md-02924-ROSENBERG [1] 1/3 200,000 [1] 35/20 20005 [1] 2/3 2006 [1] 13/16 2015 [1] 13/15 202-434-5567 [1] 2/3 2021 [2] 1/5 53/4 2022 [7] 47/10 47/10 47/13 47/14 47/16 47/20 47/21 21 [1] 34/16 210-447-0500 [1] 1/20 210-448-0500 [1] 2/13 212-836-8011 [1] 2/7 250 [2] 1/22 2/6 26th [1] 15/15 2700 [1] 1/23 28th [1] 3/3 2925 [1] 1/11 2nd [2] 7/24 8/8</p>	<p>6 6,068 [1] 11/11 6,249 [1] 11/8 60654 [1] 2/16 6333 [1] 2/17 64112 [1] 1/23 65 [4] 4/1 18/6 18/11 41/15</p> <p>7 700 [2] 13/24 15/3 713-664-4555 [1] 1/12 725 [1] 2/2 7706 [1] 1/16 77098 [1] 1/12 78249 [1] 2/13 78257 [1] 1/19</p> <p>8 8011 [1] 2/7 816-760-2700 [1] 1/23</p> <p>9 9,000 [1] 19/2 92 percent [1] 38/18 98 [1] 30/23 99 [1] 35/22</p>
<p>/ /s [1] 53/5</p>	<p>3 3,538 [1] 11/9 30 [1] 11/23 300 [1] 1/15 30309 [1] 2/9 30326 [1] 1/16 312-995-6333 [1] 2/17 3391 [1] 1/15 3434 [1] 2/21 350 [4] 13/25 14/3 14/6 26/13 350-pound [1] 26/5 353 [1] 2/16 37,197 [1] 10/22 38 [2] 13/7 15/8 3M [1] 21/4 3rd [2] 7/24 8/9</p>	<p>A Abilify [1] 20/24 ability [1] 19/6 able [5] 4/22 17/7 21/17 43/8 50/16 about [41] 3/10 5/11 5/12 7/20 8/19 9/14 10/12 14/6 14/11 14/18 15/3 17/22 19/2 19/9 19/10 19/15 21/8 21/10 22/9 22/22 23/7 23/12 23/13 25/21 26/18 27/9 29/14 32/18 32/25 33/21 34/1 36/13 37/25 38/16 38/16 38/19 44/20 45/5 51/18 51/20 52/19</p>
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<p>1 1,400 [1] 35/23 10 [1] 28/8 100 [1] 1/19 10019 [1] 2/6 10th [1] 11/17 11 [1] 47/20 1180 [1] 2/9 119 [1] 2/12 11:00 o'clock [1] 7/14 12 [4] 18/12 26/22 32/1 41/16 120 [3] 14/11 14/15 14/18 12th [2] 2/2 2/16 138,600 [1] 36/1 13th [1] 47/1 14 [1] 30/15 140,000 [12] 9/20 21/14 25/21 26/1 34/11 35/17 35/24 37/9 37/14 38/17 38/21 40/21 1400 [1] 36/4 149 [1] 9/14 15 [2] 1/5 26/23 15 percent [1] 28/8 150,000 [1] 34/8 16 [1] 53/4 1600 [1] 2/9 1725 [1] 1/11 1st [5] 18/15 18/16 23/18 42/8 43/8</p>	<p>5 5 percent [1] 28/8 50 [2] 43/21 44/4 51 [1] 46/11 52 [2] 14/14 15/5 5567 [1] 2/3 55th [1] 2/6 561-803-3434 [1] 2/21 5726 [1] 2/12 58 [2] 46/11 51/7 58,146 [1] 10/21 5th [2] 22/24 23/21</p>	<p>6 6,068 [1] 11/11 6,249 [1] 11/8 60654 [1] 2/16 6333 [1] 2/17 64112 [1] 1/23 65 [4] 4/1 18/6 18/11 41/15</p> <p>7 700 [2] 13/24 15/3 713-664-4555 [1] 1/12 725 [1] 2/2 7706 [1] 1/16 77098 [1] 1/12 78249 [1] 2/13 78257 [1] 1/19</p> <p>8 8011 [1] 2/7 816-760-2700 [1] 1/23</p> <p>9 9,000 [1] 19/2 92 percent [1] 38/18 98 [1] 30/23 99 [1] 35/22</p>

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<p>arena [1] 17/6</p> <p>arguably [1] 42/11</p> <p>arguing [1] 7/17</p> <p>argument [1] 32/9</p> <p>Arnold [1] 2/5</p> <p>around [2] 4/21 43/17</p> <p>as [94]</p> <p>ask [6] 9/2 16/6 39/22 42/17 42/18 43/1</p> <p>asked [1] 14/4</p> <p>asking [3] 16/9 29/22 37/14</p> <p>aspect [2] 11/1 19/4</p> <p>aspects [1] 43/19</p> <p>assigned [5] 46/22 47/24 47/25 49/16 49/18</p> <p>assuming [1] 16/12</p> <p>Atlanta [2] 1/16 2/9</p> <p>attack [2] 26/6 26/14</p> <p>attention [3] 21/19 39/16</p>	<p>44/21</p> <p>attorneys [5] 7/17 10/3 10/3 11/1 20/2</p> <p>August [2] 14/13 47/15</p> <p>authority [1] 51/19</p> <p>authorization [3] 28/19 36/12 36/16</p> <p>authorizations [1] 33/24</p> <p>autonomy [1] 49/3</p> <p>available [2] 12/2 12/4</p> <p>Avenue [2] 1/11 1/22</p> <p>awaiting [1] 9/15</p> <p>aware [4] 5/17 6/15 16/18 46/1</p> <hr/> <p>B</p> <p>baby [1] 9/10</p> <p>back [13] 7/13 12/18 14/8 22/21 23/3 23/11 24/1 34/14 36/14 39/10 42/22 43/1 43/10</p> <p>background [1] 32/23</p> <p>backup [1] 36/17</p> <p>bad [4] 31/9 35/9 43/12 45/3</p> <p>balance [1] 19/25</p> <p>Baltimore [1] 46/4</p> <p>Bar [1] 12/1</p> <p>barring [1] 7/25</p> <p>based [14] 4/23 7/6 7/22 14/2 21/20 27/23 27/23 28/9 29/24 30/21 30/21 31/23 33/11 35/12</p> <p>basic [1] 32/17</p> <p>basically [1] 22/19</p> <p>basis [2] 11/24 14/16</p> <p>BAYMAN [11] 2/8 18/21 22/11 23/8 24/1 24/3 25/19 26/11 27/5 30/24 41/23</p> <p>be [105]</p> <p>BEACH [3] 1/2 1/5 2/21</p> <p>Beach/Ft [1] 2/21</p> <p>because [30] 3/11 6/3 6/18 13/15 16/25 20/2 20/17 35/2 35/16 36/12 38/5 38/9 38/12 38/21 38/25 39/2 39/11 39/14 39/17 39/23 40/22 41/1 42/11 42/12 42/17 44/19 45/1 48/10 51/4 52/5</p> <p>become [1] 52/9</p> <p>becomes [2] 45/2 48/9</p> <p>been [41] 3/4 3/14 4/19 4/22 5/7 5/10 5/19 5/22 5/22 7/18 7/19 10/7 10/20 10/21 11/10 12/6 13/3 13/8 13/23 14/12 14/17 14/20 14/20 15/7 15/23 15/23 17/4 17/22 18/19 21/11 24/16 29/5 32/9 37/2 38/16 38/23 39/16 43/15 43/17 44/4 46/12</p> <p>before [17] 1/8 6/21 17/23 24/19 25/14 26/8 28/21 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