

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

4 CASE NO. 20-md-02924-ROSENBERG

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

9 MOTION to MODIFY PTO 30 HEARING (through Zoom)  
10 BEFORE THE HONORABLE ROBIN L. ROSENBERG  
11 UNITED STATES DISTRICT JUDGE and  
12 THE HONORABLE BRUCE REINHART  
13 UNITED STATES MAGISTRATE JUDGE

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1           THE COURT: Okay. Hello, everyone. Maybe I will ask  
2 Judge Reinhart if you are there.

3           Perfect. Okay. We have Judge Reinhart, and I am  
4 here.

5           Good afternoon, everybody. This is Zantac Products  
6 Liability Litigation MDL 2924, we are here on the Zoom platform  
7 given the COVID pandemic.

8           We are here today for a hearing, and the hearing is on  
9 Plaintiffs' motion to modify pretrial order number 30 and  
10 incorporated memorandum of law that appears at Docket Entry  
11 3412, and then we received a response to that motion from the  
12 Defendants, and then -- sorry -- we also have a reply. The  
13 reply is Docket Entry 3533. I can't say offhand what the  
14 Docket Entry is for the response. It is not printed out on the  
15 top of my copy.

16           In any event, it is fully briefed and what I would  
17 like is for counsel who are going to be arguing the motion -- I  
18 would say both Plaintiff and Defense counsel, you can come on.  
19 Whoever is going to have anything to say on this motion, just  
20 put your videos on now.

21           Okay. So, in other words, anyone who is going to be  
22 arguing this motion's video is on now I am assuming.

23           In that regard -- okay, more people are coming on,  
24 that is what I thought. Okay.

25           Let's have all counsel state their appearance for the

1 record.

2 MR. GILBERT: Good afternoon, your Honor, Robert  
3 Gilbert, colead counsel on behalf of Plaintiff. I am joined by  
4 my colleagues and fellow colead counsel Tracy Finken, Adam  
5 Pulaski and Michael McGlamry.

6 THE COURT: Good afternoon.

7 MR. AGNESHWAR: Good morning -- afternoon, your Honor.  
8 I am on Mountain time, so it is still morning for me. Anand  
9 Agneshwar from Arnold & Porter, I represent Sanofi, but I am  
10 speaking on behalf of all of the Defendants today.

11 THE COURT: You are clearly outnumbered on the screen.  
12 Do you need to call for help?

13 MR. AGNESHWAR: Well, if your Honor is going to drill  
14 down into specifics, some of the discovery issues, I may want  
15 to reach out -- I may want to dial the help number to some of  
16 my co-Defendants.

17 THE COURT: Who, me, drill down? That would be  
18 uncharacteristic.

19 MR. AGNESHWAR: Exactly. I am going to try to cover  
20 it all, but if there is a question about, say, GSK's discovery,  
21 David Eccles can handle that. If there's a question about BI's  
22 discovery, Andy Bayman is going to handle that. If there is a  
23 question about generic discovery, Terry Henry is going to  
24 handle that. But I am hopeful that I will be able to  
25 satisfactorily answer the questions that are relevant to this

1       dispute.

2               *THE COURT:* Right. It is not my intention to drill  
3 down in that regard, if it is necessary to support an answer or  
4 whatnot, but that is not my intention.

5               There are a couple of things I just want to ask about.  
6 When I look at the comparison of the Plaintiffs' Exhibit A and  
7 Defendants' Exhibit A -- and one such comparison, and maybe the  
8 only comparison in the docket, appears at 3335-2, and I have it  
9 in front of me -- I seem to be confused by what I can't find on  
10 the chart.

11              So, in the PTO 30, we have a deadline for August 2nd,  
12 which was the completion of discovery by Defendants on issues  
13 related to general causation, and then the results of the  
14 Plaintiffs' expert reports on general causation and revision of  
15 the three dates on which each expert is available for  
16 depositions.

17              We had that August 2nd, that is the completion of  
18 discovery of Defendants related to causation, and then we had  
19 separate date, which was December 20, 2021, for the completion  
20 of all fact discovery of Defendants and fact discovery related  
21 to class certification.

22              In your comparison chart, you have the December 20th  
23 date still there, and then column A for Plaintiffs' proposed  
24 deadline and column B, and then the next column for the  
25 Defendants' deadline also is December 20th, and it says

1 "completion of all fact discovery of Defendants," which kind of  
2 reads like it originally read, "including", it says, "on issues  
3 related to general causation and class certification," but then  
4 you have August 2nd, the next line on your comparison chart,  
5 which was the original date for general causation discovery,  
6 and that is where we have Plaintiffs' proposed deadline for  
7 January 24, 2022, and the Defendants' proposed deadline of  
8 November 1, 2021.

9 Where is the old December 20, 2021, the completion of  
10 all fact discovery?

11 Can we start with -- that is really important for me  
12 to understand everything else that is going on here.

13 *MR. AGNESHWAR:* Your Honor --

14 *MR. GILBERT:* Your Honor, were you addressing that to  
15 me?

16 *THE COURT:* We can start with the Plaintiff because it  
17 is the Plaintiffs' motion and then we will hear from the  
18 Defense.

19 *MR. GILBERT:* Thank you, your Honor. Robert Gilbert  
20 on behalf of the Plaintiffs, and, Ms. Stipes, I will be  
21 speaking, at least initially, exclusively on behalf of the  
22 Plaintiffs.

23 Your Honor, I am glad you started there because in  
24 preparing for today's hearing I noticed that there could be  
25 some confusion there. Actually, it is a result of an

1     inadvertent mistake I think that the Defendants had made in  
2     putting together their initial comparison, which I carried over  
3     in preparing this chart which you are referring to at Docket  
4     Entry 3533-2, and we are looking at pages three of six and four  
5     of six.

6             The December 20, 2021 deadline for the completion of  
7     all fact discovery, including on issues related to general  
8     causation and class certification, is the deadline that we are  
9     proposing that changes from the August 2nd deadline.

10            The next row down, which appears on page four of six  
11     of the Docket Entry 3533-2, what the Defendants have done, and  
12     I am sure it was just by mistake, and I adopted their mistake  
13     in preparing this chart as well, is they added a redline to the  
14     right of the August 2, 2021 and January 24, 2022 date, where  
15     they inserted completion of fact discovery of Defendants on  
16     issues related to general causation.

17            That is not, I repeat, not our request. January 24,  
18     2022 is our proposed deadline solely for the provision of the  
19     Plaintiffs' expert reports on general causation and three dates  
20     on which each expert is available for deposition, which is set  
21     forth beneath that.

22            The redline addition of the words "completion of fact  
23     discovery of Defendants on issues related to general causation"  
24     in the far right-hand column was a --

25            *THE COURT:* Mistake.

1           MR. GILBERT: It was a mistake.

2           THE COURT: Let me take it one step at a time.

3           Can we all agree -- does Defense agree that on page  
4 two -- page three of six, where in the first column for PTO 30  
5 it should be August 2, 2021, for the completion of all fact  
6 discovery of Defendants related to general causation and class  
7 certification, should that be August 2nd? It is kind of like  
8 the old August 2nd date sort of?

9           MR. GILBERT: Your Honor, Robert Gilbert again. That  
10 is actually incorrect. I believe you misspoke. August 2nd was  
11 only the deadline for the completion of fact discovery of  
12 Defendants on general causation issues, not on class  
13 certification.

14          THE COURT: I understand. The event is a little  
15 different and you have also removed the expert report. I am  
16 thinking about in terms of like general causation discovery, it  
17 is the old August 2nd date.

18          MR. AGNESHWAR: That is correct, your Honor.

19          THE COURT: Okay. That was the confusion. Now, both  
20 sides are proposing December 20 for the completion of all fact  
21 discovery of Defendants, including on issues related to  
22 general -- the completion of all fact discovery.

23          MR. AGNESHWAR: Your Honor, one tweak to that. The  
24 old PTO 30 had a deadline for completion of fact discovery of  
25 Defendants just on general causation.



1           *THE COURT:* Right.

2           *MR. AGNESHWAR:* The reason why this redline is there  
3 is, we kept that intact, but moved it three months in  
4 accordance with all of the other deadlines moving. So, we have  
5 November 1, 2021, deadline for completion of fact discovery of  
6 Defendants on issues related to general causation.

7           Just to be totally clear on this, the original -- I'm  
8 sorry. Were you going to ask something?

9           *THE COURT:* I am not clear, and I want to --

10          *MR. AGNESHWAR:* Okay.

11          *THE COURT:* Is it the Defendants' position that all  
12 fact discovery, including general causation and class  
13 certification, is done by December 20th?

14          *MR. AGNESHWAR:* Yes.

15          *THE COURT:* Okay. Is that the Plaintiffs' position?

16          *MR. GILBERT:* Yes.

17          *THE COURT:* Okay. Now, which actually was the old --  
18 okay. So, it is kind of like it was the old -- it is kind of a  
19 combination of the old December 20 in part and the old August  
20 2nd. We have done away with August 2nd, and now everyone is in  
21 agreement that on December 20th, all fact discovery of the  
22 Defendants is done, including issues of -- including, but not  
23 limited to, but including, because we wanted to make sure we  
24 got that general causation out there, general causation and  
25 class certification.

1           We are all in agreement up until there, although I  
2 understand there are some disagreements about other things  
3 before then, but we will talk about before and after  
4 December 20, but I just wanted to understand that.

5           So, then, the January 24th versus -- 2022, versus the  
6 November 1, 2021, is that just about the Plaintiffs saying what  
7 used to be August 2nd with our expert reports on general  
8 causation and our three dates for depositions, that is now --  
9 we want it pulled down to January from August, and the  
10 Defendants are saying we want to -- we will go with November 1?

11           MR. GILBERT: For the Plaintiffs, correct, your Honor.

12           THE COURT: Okay. Then Defendants?

13           MR. AGNESHWAR: For the Defendants, mostly correct,  
14 but just to pick apart the -- so, December 20th was kind of  
15 this final date for completion of all discovery of Defendants,  
16 and we included everything, general causation and everything,  
17 just to be iron clad about that.

18           But the original PTO 30 also had a separate deadline  
19 of August 2nd for the completion of fact discovery of  
20 Defendants related to general causation. We kept that date --  
21 we kept that line item intact, but moved it to November 1,  
22 2021.

23           So, just like the original PTO 30 had both Plaintiffs'  
24 expert reports and completion of general causation fact  
25 discovery on August 2nd, we just moved that three months,

1 November 1, 2021.

2 What Plaintiffs did was, they removed entirely that  
3 interim deadline for completion of fact discovery of Defendants  
4 on issues related to general causation.

5 *THE COURT:* Okay. So there is still -- while there is  
6 agreement that all fact discovery is done on December 20th,  
7 there is a disagreement as to whether there should be a  
8 separate category, and therefore a separate deadline, for  
9 general causation discovery; and then if so, what that deadline  
10 looks like.

11 Plaintiffs have collapsed the two, all discovery,  
12 including fact discovery as to general causation,  
13 December 20th, albeit different both datewise and -- well, not  
14 necessarily datewise as to all fact discovery, but certainly  
15 different as to the general causation because we know that was  
16 earlier in August. You have kind of collapsed the two and said  
17 December.

18 *MR. AGNESHWAR:* Yes.

19 *THE COURT:* And Defendants are okay with the final  
20 date of December 20, in fact, you were okay with that back at  
21 PTO 30 as well, but you still want to hold on to an earlier  
22 date, some earlier date, in this instance November 1, as  
23 opposed to December 20th, for general causation deadline.

24 That kind of cuts off general causation, and then you  
25 have this period between, arguably, November 1 and

1 December 20th, where you are doing non-general causation  
2 discovery?

3 MR. AGNESHWAR: Exactly.

4 THE COURT: Okay. Just a couple of minutes on just  
5 that bifurcation.

6 I understand it was there before, but we can change  
7 things that were there before, unless we shouldn't. So, I just  
8 want to understand, not about the dates right now, but why the  
9 bifurcation. I just really -- I don't want a lot of big, big  
10 arguments on things.

11 This is kind of like a very practical hearing. I just  
12 want to understand the whys, and I really want to understand  
13 the whys that matter, and the whys that you are just -- in a  
14 perfect world would wish for this, but, you know, we can get it  
15 done this way, you know, because I don't know that everyone is  
16 going to win on every point here.

17 Kind of like really educate the Court on what matters  
18 and what doesn't so I can make the right decision on how to  
19 amend PTO 30 that works for both sides, for all sides.

20 MR. GILBERT: I'm happy to do so, your Honor.

21 THE COURT: I am going to ask from Defense first  
22 because I want to understand why the bifurcation, and then I'll  
23 go to Plaintiffs for why not the bifurcation.

24 MR. AGNESHWAR: Let me start by getting to the very  
25 practical issue your Honor raised. This is not the biggest

1 deal in the world and this is not something that I am going to  
2 fall on my sword on. If some general causation discovery seeps  
3 over November 1st, I don't think that's the big deal in the  
4 world. In fact, I think, as you see from our brief, frankly, I  
5 think the record on general causation already exists for  
6 everyone to file their expert reports and brief it.

7 We just didn't see a reason why structurally that was  
8 the structure in place in the original PTO 30. We feel that it  
9 is a very generous extension of three months from that and we  
10 didn't see any real reason to depart from the original  
11 structure, but it is not the end of the world if the Court  
12 feels that there should be seepage.

13 *THE COURT:* Okay. I appreciate that, and that kind of  
14 approach is going to be very helpful to the Court, when you can  
15 acknowledge certain things and then go for the other things  
16 that matter. It will make the outcome a better outcome for  
17 everybody, I assure you.

18 From the Plaintiffs, why no bifurcation?

19 *MR. GILBERT:* Thank you, your Honor, Robert Gilbert on  
20 behalf of the Plaintiffs.

21 While bifurcation may have made sense in the, quote  
22 unquote, perfect world that you alluded to that was PTO 30 when  
23 we all got together and negotiated it in May and June of 2020,  
24 as you recognize, this is not a perfect world, and  
25 circumstances are such today that on June 9th, there is simply

1 no reasonable way that Plaintiffs can complete the discovery  
2 that is needed in order to begin to finalize expert reports on  
3 general causation before December 20th.

4 That is why we collapsed the -- what my colleague, Mr.  
5 Agneshwar, refers to as the August 2nd date, why we collapsed  
6 it into one single deadline, which we didn't suggest be  
7 changed, 12/20 of this year, we are sticking with that date,  
8 and why we propose that, unlike the circumstance before where  
9 we would have given the expert reports beforehand, we are now  
10 giving them literally three business weeks after the close of  
11 discovery, save for a ten to 12-day holiday break that most  
12 nonlawyers take. And some lawyers actually get to take it,  
13 too, but not in this case.

14 So, I hope that answers your question. We're at  
15 June 9th, December 20th is literally six months and 11 days  
16 away from now, and there is no way for us to complete the fact  
17 discovery of Defendants on issues related to general causation  
18 any sooner than December 20th.

19 *THE COURT:* Okay. I am going to sum it up. My  
20 understanding is that the Plaintiffs want the later date, and  
21 the reason for the collapse is, they need more time, and they  
22 can get it done by December 20th, but they can't get it done  
23 sooner, regardless of whether parties disagree on why.

24 And the Defendants are saying there is no prejudice,  
25 they were trying to adhere to a structure that the Court had in

1 place, but other than that, there is really no prejudice to  
2 having it as one date, and that date being December 20th.

3 You are on mute.

4 MR. AGNESHWAR: Sorry. I'm trying to put myself on  
5 mute when somebody else is talking just to avoid any background  
6 noise.

7 Yes, I think that is exactly right. We would still  
8 say, even if there is some of this seepage on last-minute kind  
9 of discovery, we suspect -- our proposal is that their expert  
10 reports on general causation be filed on November 1st.  
11 Obviously, they can supplement if something -- if your Honor is  
12 inclined to let it be one date and there is some document that  
13 comes up that somebody wants to rely on, they could seek to  
14 supplement it in a rebuttal report.

15 THE COURT: Well, maybe we should stick with this for  
16 one moment, and then I am going to go back to pre December 20.

17 Assuming for discussion purposes that December 20  
18 becomes the new date for completion of all fact discovery of  
19 Defendants, including on issues of general causation and class  
20 certification, that there is no bifurcation, I would think that  
21 would then change your November 1 date.

22 Would that not? And would it be more in line, then,  
23 with where the Plaintiffs are?

24 MR. AGNESHWAR: So, your Honor, no, we think that  
25 November 1st is plenty of time for Plaintiffs to file their

1 expert reports on general causation, even if there is some  
2 lingering discovery that is done after that for a few weeks or  
3 so. That happens commonly in cases like this, commonly in  
4 MDLs. So, I don't think that the deadline for their expert  
5 reports to be filed should necessarily correlate with the end  
6 of discovery.

7 I see that -- look, the original PTO 30 had this  
8 deadline for generic discovery against Defendants, but also had  
9 a final completion of all discovery, including general  
10 causation discovery against Defendants. So, it also  
11 contemplated that there might be some seepage there, but we had  
12 this earlier goal.

13 So, whether it is written down or not, I think the  
14 Plaintiffs right now should be focused on finishing up whatever  
15 general causation discovery they need, but it is our kind of  
16 strong view, just to differentiate things we don't care about  
17 and things we care about, that November 1st should be like the  
18 absolute latest that they file their expert reports on general  
19 causation.

20 In cases like this, it is typical that, if something  
21 happens later on, somebody moves to supplement.

22 *THE COURT:* So, your view, to summarize, is that if  
23 December 20th is the general causation deadline for discovery,  
24 that an earlier date, such as November 1, a month and 20 days,  
25 you know, not quite two months before the end of general



1 causation, that the expert reports by the Plaintiffs would be  
2 completed and disseminated and the dates that they are  
3 available for deposition.

4           So, given that there is a possibility, for argument's  
5 sake, that the general causation deadline wouldn't be until  
6 December 20, the remedy to the Plaintiffs would be, if you  
7 learn of things within the next one month and three weeks, you  
8 then move the Court to supplement the expert reports that you  
9 have retained your experts, they have drafted, they have  
10 expended resources and time, and you ask the Court, hoping  
11 Defendants don't object, to tweak it.

12           Of course, then we know that down the pipeline, here,  
13 you know, Defendants are going to be working on their expert  
14 reports based on what the Plaintiffs have done.

15           I know cases go both ways. I have seen -- you know,  
16 parties sometimes want expert reports after their discovery,  
17 some have them before discovery is over, some have class cert  
18 before and after, so I do know it is -- it's an issue that is  
19 particular to the lawyers and to the cases, and this is your  
20 all case, so I am not trying to step in the shoes of you as the  
21 lawyers, but I am trying to think ahead.

22           What we don't want to have happen, don't you agree, is  
23 that something happens in the last month and a half, and the  
24 Plaintiffs want to amend, and they point back to this hearing  
25 and say, well, Mr. Agneshwar contemplated that we might have to

1 supplement, but you have already retained and had your experts  
2 working on what they put forth, let's say, on your date, for  
3 example, November 1. In order to avoid all of that, how would  
4 we do that practically?

5 MR. AGNESHWAR: Your Honor, first of all, let me just  
6 say there is a date for Plaintiffs to file rebuttal reports,  
7 and that is on January 11, 2022, which would be several weeks  
8 after the December 20 --

9 THE COURT: Isn't a rebuttal report to rebut what you  
10 say and not to bring in something new that they might have  
11 found between November 1 and December 20?

12 I don't want to be difficult. I am trying to avoid  
13 problems. You don't want motion practice either and you don't  
14 want to have to redo your -- I am not saying I am wedded to one  
15 person's -- I have a completely open mind here, but as long as  
16 we are talking about a potential catchall date for general  
17 discovery, might we want to contemplate the expert reports  
18 being, at a minimum, the same date for argument's sake?

19 Now, it was the same date in the old PTO 30, it  
20 actually was the same date as when general causation ends on  
21 August 2nd, the expert reports on general causation are August  
22 2nd.

23 Do you not think, at a minimum, it could be  
24 December 20th? I will let the Plaintiffs be heard on  
25 January 24th, but is there prejudice to the --

1           MR. AGNESHWAR: Yeah. So, your Honor, no, I would not  
2 agree with that. In fact, I would say if your Honor is  
3 concerned about that contingency, then I would probably take  
4 back my soft consenting to separating out general causation  
5 discovery and all discovery.

6           The reason why, to me, it is not a big deal if the  
7 deadline for general causation discovery is a few weeks after  
8 their deadline for the Plaintiffs' expert reports is because I  
9 just -- I just can't imagine in my wildest dreams something  
10 happening in those last few weeks that is going to motivate  
11 Plaintiffs to say, ah-ha, this is something that is really  
12 relevant and necessary for general causation.

13           When I read the Plaintiffs' briefs -- I thought your  
14 Honor was very clear to the Plaintiffs to articulate very  
15 specifically what is outstanding that they need for their  
16 experts to rely on for general causation. I didn't see it in  
17 their briefs.

18           In fact, in the Eleventh Circuit, the Eleventh Circuit  
19 is all about epidemiology. There is a wealth of epidemiology  
20 on the relationship, if any, between Zantac and various kinds  
21 of cancer. So, to me, it is no big deal to extend that a few  
22 weeks because I just don't think it is realistic that anything  
23 is going to happen in those few weeks that is going to merit  
24 any kind of supplementation.

25           If your Honor is concerned about that, I would say

1 let's stick with the November 1st deadline for general  
2 causation discovery of Defendants, which is more than adequate.

3 *THE COURT:* Okay, I understand.

4 From the Plaintiff, you have been doing a lot of  
5 discovery, case has been going on 18 months. Plaintiffs  
6 generally want to move their cases along. I usually am having  
7 this discussion reversed, that Defendants are trying to  
8 postpone some deadlines.

9 So, with all the discovery that has been done, with  
10 all the additional discovery that will be done, why is it that  
11 the Plaintiffs can't look to an expert report deadline that,  
12 you know, at a minimum, is at the date you are cutting off your  
13 general causation, your proposal, but maybe even a little bit  
14 earlier?

15 I know you are all very experienced attorneys, you  
16 have likely engaged in cases where an expert report was  
17 required by a deadline by a Court to be issued before the  
18 final, final, final date of discovery because usually motions  
19 for extension of discovery kind of always come in. Why?

20 *MR. GILBERT:* Your Honor, thank you for the question.  
21 Robert Gilbert on behalf of the Plaintiffs.

22 I want to address your question, but first I want to  
23 respond to something that my colleague, Mr. Agneshwar, said,  
24 actually something he didn't say.

25 The Defendants have absolutely failed to show this

1 Court how they would be prejudiced if these deadlines are  
2 extended the way we have proposed. They have not sought to  
3 show any prejudice, they have not represented any prejudice,  
4 they have failed to even raise the specter of prejudice in  
5 their papers, and Mr. Agneshwar has not mentioned the word  
6 prejudice today, and that is because they can't show prejudice.  
7 The only side that would be prejudiced here is the Plaintiffs.

8 *THE COURT:* Right. I do want to understand  
9 Plaintiffs' position on the date for the expert report, and it  
10 is now being proposed to be after -- after a general causation  
11 date, which structurally would be another change.

12 And secondly, a date that is -- August, September,  
13 October, November, December, January -- almost six months later  
14 than when originally set, so I just want to understand the why.

15 *MR. GILBERT:* The why is -- thank you for the  
16 question.

17 The why is because we are in this place today on  
18 June 9, 2021 through no fault of our own. I am not blaming  
19 Defendants. We laid out the issues in our papers. A lot of it  
20 has to do with COVID that impacted them, a lot of it has to do  
21 with their own internal decision making. We are not here to  
22 litigate all of the details that we laid out in our reply.

23 It is June 9, 2021, and while you made reference to  
24 the discovery that has been done, the more significant issue is  
25 the discovery that needs to be done. As the Court is well

1     aware, there are clinical studies, pre-clinical studies,  
2     post-clinical studies, all sorts of studies that have not even  
3     been produced yet.

4             On June 9, 2021, without having that scientific  
5     evidence, without having been able to take all of the requisite  
6     depositions of brand witnesses that are critical to the  
7     development of the general causation case and that will be  
8     taken not before we get those documents, but after we get those  
9     documents and others and review them, it is infeasible,  
10    impractical and, frankly, nearly humanly impossible to  
11    accomplish something by December 20th, that requires us on the  
12    same date, let alone before that date, to provide the expert  
13    reports.

14            Expert reports in this particular instance are not  
15    drafted in a week, and they are not even drafted in the course  
16    of a couple of weeks. It is a lengthy process that takes place  
17    in terms of collaboration between counsel and the experts.  
18    There are numerous experts involved.

19            And if, your Honor, if by the time early December 2021  
20    comes around, we are substantially complete at that point,  
21    virtually complete at that point with all but the last crumbs  
22    of fact discovery, it is then, and only then, that we will be  
23    able to sit down with our experts and work with them as they  
24    finalize their reports for service after the new year.

25            The Defendants, by the way, did not want to have

1 deadlines over the Christmas holidays. That was something that  
2 came up last time we negotiated, came up again. By the way, we  
3 have no problem with that because we join them in thinking that  
4 everybody deserves a break over the holidays.

5 Literally three business weeks after the close of  
6 discovery, which is six months from now, we believe is not only  
7 a reasonable ask, it is a critical ask so that we can then put  
8 forward these reports.

9 There will be no, as you alluded to earlier, no basis  
10 at that point to come back and say we didn't have the  
11 discovery, etc., etc. It makes sense. That is why we set it  
12 up this way, recognizing that it is different than the way it  
13 was done before.

14 *THE COURT:* Okay, thank you.

15 Let me skip around a little bit to the May 14th date,  
16 which is a bellwether question.

17 We have May 14th, as it always has been, a date where  
18 the parties meet and confer concerning any outstanding general  
19 causation discovery, and the parties begin discussions  
20 regarding process for selection of potential bellwether  
21 personal injury cases. I don't remember what date I stayed PTO  
22 30, but it was in effect until I stayed it.

23 Did you ever get to the point of beginning your  
24 discussions regarding the process for selection of the  
25 potential bellwether personal injury cases?

1           MR. GILBERT: No, your Honor, we have not.

2           THE COURT: Did I stay PTO 30 before or after May  
3 14th?

4           MR. GILBERT: It was right around May 14th, your  
5 Honor, and I can't quote your words from that hearing, but my  
6 recollection of them is that you effectively stayed all of the  
7 deadlines at that point in time.

8           I am not suggesting that you specifically mentioned  
9 May 14th, but I believe that the inference was that you were  
10 staying all of the deadlines until the Court had an opportunity  
11 to see the papers and consider the parties' respective  
12 positions.

13          THE COURT: Okay. From Plaintiffs, you are saying  
14 that no discussion has taken place yet with respect to the  
15 process for bellwether selection?

16          MR. GILBERT: That is correct your Honor.

17          THE COURT: Would Defense concur with that?

18          MR. AGNESHWAR: I do, your Honor.

19          THE COURT: So let me -- I am sorry.

20          MR. AGNESHWAR: I was going to say, we had proposed a  
21 new deadline for the beginning of discussions about bellwethers  
22 in our proposal.

23          THE COURT: Sorry, we have to have movement in this  
24 courtroom or the lights go out. I can do that, but Ms. Stipes  
25 cannot do that.



1           I want to understand succinctly what -- it was your  
2 language to begin with. What did you mean when you had the  
3 Court include that language in PTO 30? What do the parties  
4 contemplate by such discussions? You discuss things all the  
5 time.

6           What is a -- what is beginning a discussion regarding  
7 process for selection of potential bellwether, not which case  
8 is a potential bellwether, but the process? Can I just hear  
9 very succinctly from Plaintiffs and then Defense?

10          *MR. GILBERT:* Yes, your Honor.

11          *THE COURT:* What is that?

12          *MR. GILBERT:* I am going to call on Mr. Pulaski to  
13 answer your question succinctly.

14          *MR. PULASKI:* Thank you. Good afternoon, both Judge  
15 Rosenberg and Judge Reinhart.

16           Initially, when we started this process with PTO 15  
17 where we spent literally hundreds of hours drafting and  
18 negotiating, renegotiating and drafting, we started with a  
19 bellwether process idea in which this Court also noted that the  
20 vision of the Court, as contemplated by PTO 15, was that all  
21 parties would work toward reducing the bellwether pool during  
22 the 18-month period preceding the filing of Daubert and up to  
23 the Court's rulings on Daubert motions.

24           That was our vision as well and the basis of the  
25 registry and the census and everything we have done.

1           Later, in pretrial order 24, there is mention of a  
2 process by which to handle bellwether, and then in PTO 30. And  
3 so, what our belief is, is that we have this tool in the  
4 registry that allows us clarity as to now over 110,000 cases,  
5 and we have the ability to begin a bellwether process.

6           The discussions themselves would talk about a process  
7 itself, how are we going to start, are we going to start with  
8 500 cases or a thousand cases, and which cancers are we going  
9 to start with, and how we should begin to winnow those cases  
10 down from a thousand cases to 200 cases, so that when we get to  
11 the finalization of Daubert and the Daubert motions and  
12 rulings, we have cases ready and available that we can then  
13 choose from to begin a process of case specific discovery and  
14 everything we need to do to have a trial within a year after  
15 Daubert.

16           The process itself shouldn't take more than a month to  
17 discuss and get put in place, and we can go back and forth. We  
18 have that safe process that everybody on this call and all the  
19 lawyers involved have dealt with before.

20           The issue arises as to the -- our vision, and I think  
21 this Court's vision, which is different than the Defendants'  
22 vision. Our vision is that we set that process in place, begin  
23 the process of creating a pool for the bellwether process that  
24 begins a month from whenever this Court decides that discussion  
25 will start, and we are ready to start today.

1           And then, after that time we begin the process of the  
2     actual selection of a bellwether pool and the reducing of  
3     bellwether cases so that when we get to a Daubert ruling we can  
4     have a trial within a year and not within 18 months or 24  
5     months after Daubert, because if we don't do that, that is what  
6     we are going to be looking at, and I don't think anybody wants  
7     that.

8           *THE COURT:* Okay. So, your intention by the language  
9     as you construe it in the Court's original order, like the  
10    parties suggested, is that you are not selecting the cases, it  
11    is not merit based at this point, it is a process, and you are  
12    suggesting that -- well, you are suggesting May 14th, but we  
13    are now at June 9th, so presumably it is not May 14th anymore,  
14    but it is some date soon where --

15          *MR. PULASKI:* Correct. There is absolutely no reason  
16    that I can think of at all to hold up that process.

17          *THE COURT:* Is there a separate team on the  
18    Plaintiffs' side, and then I will ask that on the Defense side,  
19    tasked with the bellwether selection process? Do you have a  
20    committee? Do you have a group of lawyers separate from  
21    lawyers who are doing the discovery or doing the arguing or  
22    doing everything else, just working on --

23          *MR. PULASKI:* Correct. We --

24          *THE COURT:* Who would be engaged in those discussions?

25          *MR. PULASKI:* We have both a bellwether and data

1 analytics team that -- to be honest, your Honor, we have  
2 already been working on it. In anticipation of the May date,  
3 we have been working on it for three months already.

4 *THE COURT:* But you have not discussed that with the  
5 Defendants yet.

6 *MR. PULASKI:* We have not.

7 *THE COURT:* From Defense, what I really want to know  
8 is if you disagree with anything Mr. Pulaski has said about,  
9 you know, kind of like how he described the selection. You  
10 don't have to commit to that being the selection process, but  
11 he is talking about a process, not identifying which cases,  
12 obviously. That would be difficult to do right now.

13 It was always contemplated that that would occur on  
14 May 14th, so it was always contemplated it would occur before  
15 Daubert, before experts. I am just trying to understand what's  
16 the Defendants' understanding of what is involved in discussing  
17 a bellwether process. Is there any prejudice to beginning now?

18 Do you have a separate team so that you are not taking  
19 resources away from what else you are doing, and other things  
20 you are doing, and to engage in a conversation about a process?

21 *MR. AGNESHWAR:* Yes, your Honor. First of all,  
22 Ms. Sharpe reminded me that it was at the April 20th CMC that  
23 your Honor vacated the PTO 30 deadline, so it was before the  
24 May 14th deadline.

25 *THE COURT:* All right. You are all off the hook,

1       then.

2               MR. AGNESHWAR: I was saying to myself, phew, when I  
3       saw that text.

4               I don't totally disagree with Mr. Pulaski's view. The  
5       way we look at it from the Defense side is, this was something  
6       Plaintiffs wanted to begin the discussions about bellwethers,  
7       and we are fine with that.

8               If you look at the way bellwethers are selected in  
9       Courts across the country in cases like this, there are all  
10      kinds of ways. There could be random selection, there could be  
11      each side doing picks, there could be strikes. Those kind of  
12      philosophical discussions as to what a process is going to look  
13      like can begin, there is no question about that.

14              I think where I might disagree with Mr. Pulaski is on  
15      how far that process can go and what we were envisioning before  
16      Daubert is decided.

17              What I would say is, look, you know my view, I want  
18      the MDL to be up front, out front in everything, but there are  
19      practical issues here when our view of the case is also that  
20      there is no there there, and this big threshold issue, the  
21      800-pound gorilla of Daubert, really needs to be decided to set  
22      the stage of whether this litigation survives; and if so, what  
23      is it going to look like.

24              I am not going to predict how the Court is going to  
25      rule on Daubert, but there is a myriad of different issues that

1 are going to be on the table. Are there any cancers for which  
2 the Plaintiffs have evidence; if so, which ones? Is it zero,  
3 is it one, is it all ten? Is there going to be issues of how  
4 long somebody needed to use the drug? Is there going to be  
5 issues of what kind of latency period there needs to be?

6 I just don't think you can drill down into, you know,  
7 what that is going to look like until the Court rules on  
8 Daubert.

9 So, the Plaintiffs have put in their schedule that we  
10 not only engage in this process, but they are even  
11 contemplating some case specific discovery, and to me, that  
12 just makes no sense, to be working on cases when we have no  
13 idea what the Court is going to say is in or out with Daubert.

14 Frankly, that just leads me back to why it is so  
15 important not to put off Daubert more than it absolutely has to  
16 be, because it is going to have implications for the rest of  
17 the case, including the selections of bellwethers.

18 So, I would say, I hope I am doing this concisely, but  
19 we are happy to negotiate process and talk about all these  
20 conceptual ways that bellwethers can be picked, but it has to  
21 stop short of identifying particular cancers and working up  
22 cases and the like.

23 I would like to -- at some point, whenever it is  
24 convenient for your Honor, I would like to respond to some of  
25 the things that Mr. Gilbert said in his remarks earlier.

1           THE COURT: Okay. Hold that thought, then, and I will  
2 make sure everybody is heard on everything.

3           Okay. There is another May 14th date which has to do  
4 with parties meet and confer concerning any outstanding general  
5 causation discovery.

6           Here, we had it as May 14th, Defendants are saying,  
7 June 15th, which is soon, today is the 9th, and Plaintiffs are  
8 saying July 15th.

9           I am imagining that you are meeting and conferring all  
10 the time regarding outstanding general discovery, and it won't  
11 end whether it is July or June. So I am not understanding  
12 this.

13           Why is there a dispute about a meet and confer date  
14 for general causation discovery?

15           MR. GILBERT: Your Honor, Robert Gilbert on behalf of  
16 the Plaintiffs.

17           The date, this was obviously a deadline or a date that  
18 was included in the prior schedule, PTO 30. My recollection,  
19 as one of the lead negotiators of that schedule, is that it was  
20 included specifically so that we would be able to sit down with  
21 each other and say to the Defendants, look, you guys are behind  
22 on such and such, we are not going to be able to meet our  
23 August 2nd deadline in time if you don't finish with such and  
24 such by next week, and so on and so forth.

25           You are right, the meet and confers about outstanding

1 discovery both with regard to general causation and other  
2 issues are going on on a daily, if not hourly, basis.

3 *THE COURT:* So, should we get rid of that line? Does  
4 it serve any purpose? Should there just maybe be a sentence  
5 that says the Plaintiffs and the Defendants have an ongoing  
6 obligation to meet and confer regarding all matters, including  
7 general causation?

8 I don't want to get hung up on this June and July. Is  
9 the line necessary?

10 *MR. GILBERT:* I will defer to Ms. Finken on this, but  
11 I would be inclined to say the line is not necessary given the  
12 practicalities of where we are today.

13 *THE COURT:* Ms. Finken.

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

15 I agree, I don't think the line is necessary given  
16 where we are sitting here today. When we entered that deadline  
17 in place last summer, it was a very different world we were  
18 living in, and we were looking at a drop-dead date on what  
19 outstanding discovery items we might need.

20 We have been working through that process, as your  
21 Honor is aware and Judge Reinhart is aware, on an ongoing basis  
22 since the inception of the litigation. I would be fine if your  
23 Honor wanted to take that out of the schedule.

24 *THE COURT:* What about from the Defense?

25 *MR. AGNESHWAR:* No objection, your Honor. That was a



1 Plaintiff ask to have some last-minute checks, but we are  
2 meeting and conferring all the time.

3 *THE COURT:* We will make sure that there are  
4 last-minute checks for sure because we have processes in place  
5 to ensure that, so nothing is going to slip through the cracks.

6 Okay. So, then we get to the August 16th date, which  
7 is the completion of the joint process and plan for selecting  
8 the potential bellwether personal injury cases, which again,  
9 that language was in the old one -- old order, which then went  
10 on to say would be refined and amended for good cause as  
11 appropriate until final bellwether selection following Court's  
12 general causation of Daubert ruling.

13 So, the Plaintiffs want this date as August 16th, the  
14 Defendants want it November 15th. I guess, again, you know,  
15 the same question, and if the answer is not different from what  
16 you gave before about what that process and plan for  
17 actually -- I mean, you know, you are beginning the discussions  
18 earlier for the process of selecting, and now you are talking  
19 about completing the process, the process for selecting.

20 I don't know if that actually means you are selecting  
21 them or you are completing the process. Maybe you will explain  
22 that.

23 Then, if it is still just the process and not tied to  
24 the selection which -- because I know, Mr. Agneshwar, you have  
25 that view, which makes sense, that until you know what Daubert

1 rulings show, you are not going to know which cases, but just  
2 completion of the process, which that must be what you  
3 understand it to be, otherwise, I couldn't imagine you would  
4 agree to even a November 15th date because that is still before  
5 Daubert.

6           So, if it is just the process, and you are completing  
7 the process, I want you to explain that if I am right. If I am  
8 right, what is the big difference between August 16th and  
9 November 15th? In other words, what is the information that, I  
10 guess to the Defendants, you would have in November that you  
11 wouldn't have in August that would facilitate completing the  
12 process, unless it is just time, resources?

13           I am assuming you have a separate team, too, that is  
14 dealing with this. Can you try to answer those questions?

15           MR. AGNESHWAR: Sure, your Honor. There is no magic  
16 to the date specifically. I think the Plaintiffs have added a  
17 number of things here that I referenced in my prior remarks  
18 about narrowing the pool, about formal discovery, and  
19 submitting regular reports. I think they are over  
20 bureaucratizing the process as to what can happen right now,  
21 and we are happy to talk to them any time.

22           I, frankly, don't think it's -- I have negotiated  
23 bellwether selections before and it is not a huge deal to do.  
24 There are various frameworks you use, you sit down with the  
25 other side and you can knock it off.

1           That's why, even after Daubert, we have only needed 14  
2 days to actually go towards picking the Plaintiffs at that  
3 point.

4           So I think -- I don't think it is any big deal if we  
5 want to start that earlier or later. Again, my view is that  
6 there is only so far you can go before the Court rules on  
7 Daubert. I think what the Plaintiffs added in here is much  
8 further than is practical or possible to go.

9           *THE COURT:* So, with the redline out, doesn't it still  
10 read: Completion of joint process and plan for selecting  
11 potential bellwether personal injury cases to be refined and  
12 amended for good cause as appropriate until final bellwether  
13 selection following the Court's general causation Daubert  
14 ruling.

15           Are you comfortable with that language?

16           *MR. AGNESHWAR:* I am.

17           *THE COURT:* So, if that language was there, it doesn't  
18 sound like you would have a problem with the August 16th date.

19           *MR. AGNESHWAR:* No, your Honor.

20           *THE COURT:* Okay. Plaintiff.

21           *MR. PULASKI:* I just want to clarify a few things,  
22 because I didn't speak after Mr. Agneshwar initially spoke  
23 about the bellwether process and now about this.

24           When we negotiated PTO 15, and this is going back to  
25 the very first thing we actually did in this litigation, one of

1 the first things we did in this litigation, we negotiated PTO  
2 15 for the registry and the census where the Plaintiffs' Bar  
3 has spend literally millions of dollars, tens of thousands of  
4 hours of time to put together this registry that gives clarity  
5 and a true 30,000-foot view of this litigation to a minutia of  
6 detail on every single client that there is.

7 That being said, if we start a process or we -- if we  
8 agree to a process, which should only take a month, and we  
9 don't start the process, which again the Court has stated  
10 before what its vision was, and our vision was that we would  
11 begin reducing the bellwether pool during this 18-month  
12 period preceding the filing of Daubert.

13 If we do not do that we are causing a massive  
14 disservice to this litigation and will extend the trial date by  
15 at least a year. I don't think anyone wants to extend what  
16 already will be a delay to another year delay.

17 What I am saying is that the process by which we agree  
18 to, okay, here is what we are going to do and then beginning to  
19 pick a thousand cases to start with, and then winnowing those  
20 down to 200 cases can be done prior to Daubert, it should be  
21 done prior to Daubert. That was the whole point of this  
22 registry process and our vision.

23 What I think Mr. Agneshwar is discounting is the fact  
24 that, once we get past Daubert, we start over again with case  
25 specific discovery and depositions and expert depositions and

1 everything else, and if we don't have that smaller pool to pick  
2 from -- and we still have to pick from that smaller pool. When  
3 you just said we are going to have a final selection of cases  
4 for bellwether, that contemplates that we already have winnowed  
5 it down to a narrower selection to choose the final selection.

6 If we do not have a process in place to have the  
7 process, but also begin all of that so that we are done prior  
8 to Daubert and ready to go, we are looking at an additional  
9 year on top of the probably year after Daubert to get to trial.

10 *THE COURT:* Okay. We are going to get to that.

11 I am seeing some agreement. Defendants are agreeing  
12 to August 16th like you are contemplating, which was always in  
13 PTO 30, there is just some disagreement about the language.

14 You want all that language that is redlined out there  
15 on the draft at 3533-2 and the Defendants don't want it. That  
16 is the disagreement today.

17 *MR. PULASKI:* Correct.

18 *THE COURT:* Not necessarily one that has to be  
19 resolved today, but that is the disagreement. I am hearing the  
20 Defendants say they actually -- they could -- they could abide  
21 by an August 16th date to complete it, right? That is what I  
22 heard.

23 You are on mute. We have to get that on the record.

24 *MR. AGNESHWAR:* I am going to keep the mute button  
25 off.

1           Yes, that is right, your Honor, subject to all the  
2 caveats that I said earlier.

3           *THE COURT:* Okay. Okay.

4           It seems like when we get into the disclosures,  
5 Plaintiffs and -- I am on page three of six. So, again, I  
6 understand what has been redlined out by the Defense with  
7 respect to bellwether we have kind of covered, so I am not  
8 going to focus on that right now.

9           We have Plaintiff disclosure, Defense disclosure,  
10 Plaintiff supplemental disclosure. While the dates may differ,  
11 it does seem like both parties contemplate kind of like a  
12 one-month period between Plaintiffs disclosure and Defendants  
13 disclosure, and a two-week period between Defendants  
14 disclosure and Plaintiffs supplemental.

15           Plaintiffs have us finishing that process by December  
16 3rd, Defendants have us finishing that process by October 15th,  
17 and PTO 30 had that deadline of July 16th.

18           So, am I correct that you are not disagreeing, really,  
19 about how much time, you know, kind of the sequence, it is just  
20 you have different dates. You are apart, you know, by about a  
21 month and a half or so.

22           *MR. GILBERT:* That is correct, your Honor. Robert  
23 Gilbert on behalf of the Plaintiffs.

24           *THE COURT:* Defense as well?

25           *MR. AGNESHWAR:* Yes, your Honor. As I said earlier,

1     what we took was the structure of the original PTO 30 and  
2     pretty much moved everything back to Daubert for 90 days.

3             *THE COURT:* I am certainly not hearing from Plaintiffs  
4     that anything about disclosures is contingent on your finishing  
5     your discovery, unlike your expert reports. I don't want to  
6     open up a can of worms. I am not hearing that. So, deadlines  
7     before.

8             *MR. GILBERT:* Yes, except that -- let me be clear,  
9     because I don't want you to infer something by my silence.

10            We structured these deadlines, starting with  
11    October 22nd and ending on December 3rd, thinking about how --  
12    based on where we are today, when we would realistically be in  
13    a position to provide the disclosure of those disciplines so  
14    that we know we have gotten through a reasonable amount of this  
15    discovery on paper, we have gotten through certain of the  
16    depositions, we are not completely there yet, but we now know  
17    what the disciplines are and what the specializations are of  
18    those experts.

19            Making it sooner -- and I will just use the  
20    Defendants' October -- the Defendants' September 1st deadline  
21    that they are trying to force us into, essentially means that  
22    between now and Labor Day, or before Labor Day, we have to  
23    complete sufficient discovery so that we know by that date.

24            So, we chose October 22nd because we believe we can  
25    meet October 22nd. We didn't choose a sooner date because we

1 don't believe we can get there sooner.

2 *THE COURT:* Okay.

3 *MR. McGLAMRY:* Your Honor, this is Mike McGlamry.

4 Could I just add, I think essentially what both  
5 parties have done is, they have utilized the same three  
6 categories of description, disclosure, response, supplement,  
7 based on the same time frame that was originally in PTO 30,  
8 except we tie it to 12/20, and they tie it to November 1st.  
9 Otherwise, they are the same sort of sequencing description and  
10 objective.

11 *THE COURT:* Would the same go, then, for the  
12 Plaintiffs' expert reports, Defendants' expert reports, and  
13 Plaintiffs' rebuttal reports, kind of like six weeks in between  
14 Plaintiffs' expert reports and Defendants' expert reports, and  
15 then three weeks in between the Defendants' expert reports and  
16 the Plaintiffs' rebuttal so that that is kind of like a  
17 nine-week period?

18 *MR. GILBERT:* Yes, your Honor. Robert Gilbert on  
19 behalf of the Plaintiffs.

20 The structure is the same, the difference, as you  
21 noted earlier and Mr. Agneshwar pointed out, is that our expert  
22 report date, disclosure date, is after the close of discovery  
23 so that we don't have to do it twice, and they wanted it  
24 before.

25 Other than the difference in the dates, the structure



1     that we and they are proposing are the same.

2             *THE COURT:* But I do see that between Plaintiffs'  
3     expert -- rebuttal expert reports and expert depositions on general  
4     causation, it looks like the Plaintiffs are contemplating six  
5     weeks, between April 7th and May 20th of 2022, whereas the  
6     Defendants are saying ten weeks. So that seems like a material  
7     difference, or potentially, a month difference.

8             Whereas for the Defendants it would be the difference  
9     between January 11, 2022 and March 23, 2022.

10            *MR. GILBERT:* Your observation is accurate. Robert  
11     Gilbert again on behalf of the Plaintiffs.

12            We tried -- as I may have mentioned earlier, or I was  
13     going to as part of our presentation, we tried to use our best  
14     judgment to shorten any areas where we felt we could condense  
15     timeframes that affect us as well as the Defendants.

16            This was one of those areas where we felt that the  
17     timeframe could be condensed a little bit, but not -- in order  
18     to not lose more time on the back end.

19            *THE COURT:* Okay. And let me hear from the Defense.  
20     Is it the case that you don't think six weeks -- you know,  
21     forget what the actual deadlines are that will be filled in,  
22     but the just the concept of six weeks between the Plaintiffs'  
23     rebuttal expert reports and expert depositions on general causation,  
24     is that doable for the Defendants? Is there prejudice if it  
25     is not as much as ten weeks?

1           MR. AGNESHWAR: I think the Plaintiffs' proposal is  
2 too tight. What we originally negotiated for was two months  
3 for depositions. Now that we know how many cancers they are  
4 alleging, ten cancers, and we are thinking about all the  
5 different experts, we wanted to put an extra week of cushion in  
6 there, and that is how we came to our deadline.

7           THE COURT: An extra month of cushion you mean, right?

8           MR. AGNESHWAR: Is it? It's an extra like ten days I  
9 think. It's two months in the original PTO 30 and it is maybe  
10 two months and a week or so for --

11          THE COURT: No, I am sorry, I wasn't clear. It is a  
12 difference of a month between what Plaintiff has and what you  
13 have now, but you are saying it is just an extra ten days or so  
14 from the original.

15          MR. AGNESHWAR: Exactly.

16          THE COURT: I am sorry. Is that the expert date for  
17 conclusion of -- yes, completion of expert depositions.

18          I know it is hard to tell right now, but like how many  
19 experts do you think there are? Can somebody give me a  
20 ballpark of how many experts there may be for each side and,  
21 therefore, how many depositions there may be?

22          MR. GILBERT: Robert Gilbert on behalf of the  
23 Plaintiffs. I am going to call on colead counsel, Ms. Finken,  
24 to try to answer your question based on the information we know  
25 today.

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

2           Your Honor, I don't know that we can give you a  
3 definite amount of experts at this point in time, but what I  
4 can tell you is that typically there are at least five to ten  
5 experts on general causation alone, and I don't foresee it  
6 being any different in this case with what we are doing now.

7           *THE COURT:* Okay.

8           *MR. GILBERT:* Judge, if I may add, Robert Gilbert,  
9 regardless of whether you go with the nine weeks or you go with  
10 the six weeks, I want to point out that essentially we, as the  
11 Plaintiffs, will have taken all of the Defense causation  
12 experts before this period expires.

13           In other words, Mr. Agneshwar is concerned that the  
14 Defendants will have sufficient time to take the Plaintiffs'  
15 Daubert experts because it has to come after the Plaintiffs'  
16 rebuttal reports have been served.

17           The Defendant' reports, under our proposal, will be  
18 served on March 14, 2022, so we will be able to get started  
19 taking those Defendants' experts immediately after they serve  
20 those reports because they are not doing rebuttal reports.

21           *THE COURT:* Does that make a difference to you, Mr.  
22 Agneshwar, in terms of what you would propose if the Defendants  
23 were -- so, are you proposing that there might be a deadline  
24 short of the expert deposition deadline proposed by Plaintiff  
25 of May 20, where you would have completed Defendants' expert

1 depositions?

2 MR. AGNESHWAR: Are you asking me, your Honor?

3 THE COURT: No. I'm asking Plaintiff.

4 MR. GILBERT: I am sorry. Your Honor, I was not  
5 suggesting a separate deadline, I was just suggesting from a  
6 practical standpoint, what Mr. Agneshwar expressed concern  
7 about in having sufficient time really relates to their ability  
8 to take the depositions of our experts because they are not  
9 effectively -- in all likelihood, wouldn't take those expert  
10 depositions until after the rebuttal reports are served.

11 We are confident that if the Defendants'  
12 expert reports are served on March 14th, as we propose, that we  
13 will be able to get started taking those depositions  
14 immediately because, in some respect, they may impact upon what  
15 our rebuttal expert reports say.

16 THE COURT: Right. I would think that possibility.  
17 So, it is possible you would try to get your depositions done on or  
18 before your proposed April 7 date for your rebuttal reports?

19 MR. GILBERT: Correct. That would be a best practice  
20 in order for us to test their expert reports before our experts  
21 have to serve the rebuttal reports.

22 THE COURT: Does that change anything, Mr. Agneshwar,  
23 in terms of the amount of time you believe that Defendants need  
24 between rebuttal and --

25 MR. AGNESHWAR: No, it doesn't, your Honor. That is

1 the same structure that was in place with the original PTO 30,  
2 and frankly, your Honor asked about the number of experts,  
3 there are ten cancers at issue here. I, obviously, have no  
4 transparency into what the Plaintiffs' strategy is here, but  
5 every cancer is like a different disease. It is not like it is  
6 cancer.

7 There are ten different cancers, and I am imagining  
8 that they will have ten different experts opining on the  
9 etiology of different cancers and the epidemiology of those  
10 cancers.

11 I am a little skeptical that it is going to be as few  
12 as ten experts on the Plaintiffs' side. I think it is going to  
13 be more. I would rather build in a cushion to take the  
14 depositions and take less time, than have a constrained amount  
15 of time and have to come back to the Court and ask for more  
16 time to be able to complete those depositions.

17 We also tried to cut time wherever possible. If you  
18 notice, we have a shorter time between completion of expert  
19 depositions and the actual filing of Daubert motions than was  
20 in the original PTO 30. So, we tried to make up the time that  
21 we added for the depositions.

22 *THE COURT:* Okay. Speaking about that, let's go to  
23 that aspect.

24 We have a difference of three weeks and one week  
25 between expert depos on general causation and Daubert motions

1       being filed.

2               What is the Plaintiffs' position about why you need  
3       three weeks as opposed to the Defendants' proposed one week? I  
4       mean, the depositions will be taken, you know, over this period of  
5       time. They are not going to all be crammed into the last week,  
6       or day, or even couple of weeks.

7               You have your law and briefing team, clearly, a  
8       different team, I am imagining the team that is drafting the  
9       motions. Can that time be shortened?

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

12              That time can be shortened. I want to make sure we  
13       are talking about the same thing. You are talking about the  
14       difference between, in our proposal, May 20th, the completion  
15       of the depositions on experts on general causation, and June 9th,  
16       versus the Defendants' proposal of March 23rd to March 30th?

17              THE COURT: Exactly.

18              MR. GILBERT: Ours is about 18 days; theirs is seven  
19       days. Yes, it can be shortened from 18 days.

20              THE COURT: To seven days?

21              MR. GILBERT: I think seven days is a little bit  
22       tight. I think somewhere in between that would certainly not  
23       be unreasonable.

24              THE COURT: Okay. Okay. And then --

25              MR. AGNESHWAR: Your Honor, can I make one point of

1 clarification?

2 What Mr. Gilbert was saying earlier about the  
3 sequencing of expert depositions, that has not been something  
4 that we discussed, and I am not sure I agree with him. I don't  
5 see us putting forward our experts before we see the whole --  
6 the rebuttal reports and everything, but that is something I am  
7 sure we can talk about. It doesn't -- the schedule doesn't  
8 need to be micromanaged in that way, and it isn't set forth  
9 that way now.

10 *MR. GILBERT:* Your Honor, may I respond briefly?

11 *THE COURT:* Yes.

12 *MR. GILBERT:* Robert Gilbert. As you recognized just  
13 a moment ago, I think, in your own remarks, it would only be  
14 natural for the Plaintiffs to take the depositions of the  
15 Defendants' experts based on their reports before we have to  
16 file our supplemental reports.

17 I have never heard of a proposition like Mr. Agneshwar  
18 just proposed to the Court, that they wouldn't give us their  
19 experts to take depositions before we finish our rebuttal  
20 reports. That makes absolutely no sense, frankly.

21 *THE COURT:* Okay. First of all, I don't want anyone  
22 reading anything into my remarks about substantive -- going to  
23 the merits of any potential argument.

24 So, whereas it is true I made a comment along those  
25 lines, it just seemed like a logical flow. It is not intended

1 to prejudice arguments relating to sequencing of depositions.

2           You haven't proposed it, and now it is raising a  
3 question in my mind as to whether, you know, I need to send you  
4 back to talk about that, because I don't want to -- I guess it  
5 could be a fight today or a fight later, or maybe it won't be a  
6 fight at all if you sit down and talk about it. Clearly you  
7 have identified a potential area of disagreement, but you have  
8 been so good about resolving most disagreements. This one  
9 maybe just has not been exhaustively discussed yet.

10           Please, none of my comments are intended to prejudice  
11 arguments that haven't been made about any of this. And so, I  
12 just want to be very, very clear about that.

13           I am just making a note that there is potentially a  
14 disagreement there. I am sure you are making a note of that.

15           I guess I would ask you, do you think that it would  
16 make sense to meet and confer about just that now, and that  
17 that actually be included into a PTO 30 amendment, the  
18 sequencing of your expert reports, or do you think that broad  
19 deadlines are sufficient, and if there is a disagreement later  
20 on, it comes to the Court through the normal course and we  
21 either have you work it out or the Court makes a ruling?

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

24           I am a big believer in discussion. I think in an  
25 effort to try to actually -- in a gratuitous effort to try and



1 explain to the Court why I felt the ten weeks wasn't necessary  
2 to complete the depositions, I made comments about us taking the  
3 depositions of their experts and obviously my colleague, Mr.  
4 Agneshwar, has now expressed some disagreement with that.

5 As you noted, there is a disagreement that appears to  
6 exist. We would be happy to discuss it from the Plaintiffs'  
7 standpoint. I do think it should not be something left for  
8 later on since we now know that the parties have very different  
9 views of that.

10 *THE COURT:* Mr. Agneshwar.

11 *MR. AGNESHWAR:* I am happy to talk to Mr. Gilbert  
12 about it now or put it off for later. I think it is something  
13 that would be discussed in the normal course of things anyway,  
14 and reach out to the Court for resolution if necessary.

15 *THE COURT:* Okay.

16 *MR. AGNESHWAR:* I am not sure it needs to be baked  
17 into this revised PTO, but if the Court wants us to, we will be  
18 happy to discuss it.

19 *THE COURT:* Okay. And then, I think that you --  
20 between your motions and the opposition you both have -- all  
21 sides have the six weeks between the opposition and the -- is  
22 it between the opposition and the reply you are off by a week  
23 or so; is that about right?

24 *MR. GILBERT:* Correct, Judge. Robert Gilbert.

25 On the oppositions, we are essentially structurally in

1 alignment.

2 I would note for the Court that it previously was a  
3 90-day period for opposition. This is one of the areas where  
4 we felt we could condense the time for our opposition, so we  
5 cut it in half. The Defendants essentially agreed to that same  
6 period of time, we are just arguing over what those deadlines  
7 should be.

8 On the reply, we are suggesting two weeks, and they  
9 are suggesting three weeks. In the original PTO it was 30  
10 days. From the Plaintiffs' perspective, as a show of good  
11 will, that is not a make it or break it date from our  
12 perspective.

13 *THE COURT:* From Defense?

14 *MR. AGNESHWAR:* We would like the three weeks just  
15 because of the number of cancers involved, the number of  
16 experts, and the amount of briefing that I am expecting.

17 *THE COURT:* Okay. Where do the Motions for Summary  
18 Judgment fit into all of this? I mean --

19 *MR. AGNESHWAR:* Go ahead, Bobby.

20 *MR. GILBERT:* I was going to let you go ahead first  
21 because, typically, Motions for Summary Judgment come from the  
22 Defendants.

23 *MR. AGNESHWAR:* Typically, if we are filing motions on  
24 Daubert to say that there is no reliable evidence that  
25 Ranitidine causes any cancer, we would add on to that a Motion

1 for Summary Judgment, that the Court should grant our Daubert  
2 motions and then, because there is no expert testimony to  
3 support the case, the Court should grant summary judgment and  
4 dismiss the entire thing.

5 *THE COURT:* So, it is part of the relief that you seek  
6 in the Daubert motion, but your experience is, you don't have a  
7 separate deadline?

8 *MR. AGNESHWAR:* Correct, at least summary judgment  
9 motions that relate to Daubert. This is one where different  
10 cases are different. In some cases there aren't Daubert  
11 motions that seek to dispose of the whole case, there may be  
12 this opinion or that opinion. Here, this whole thing has been  
13 set up because there is that threshold issue as to whether the  
14 Plaintiffs can climb that first hill.

15 So, I am a hundred percent sure that we will have  
16 Daubert motions with Motions for Summary Judgment.

17 *THE COURT:* Like its own motion or it's a form of  
18 relief within the same motion?

19 *MR. AGNESHWAR:* We would probably -- I don't think I  
20 have thought that far ahead, but we would probably do it in the  
21 same motion.

22 *THE COURT:* What about a summary judgment that,  
23 arguably, is not related to Daubert? I am not suggesting what  
24 it is or isn't, but assume a world where there might be another  
25 issue that Defendants want to raise.

1           MR. AGNESHWAR: I expect there will, so if the Court  
2 allows, let's say, a particular cancer A to proceed, and then  
3 we have picked bellwethers, and those cases are proceeding, I  
4 expect there will be Motions for Summary Judgment based on  
5 learned intermediary. I expect there would be specific  
6 causation Daubert motions and Motions for Summary Judgment on  
7 top of that as well.

8           THE COURT: Okay. That suggests that you are not --  
9 we are not accounting for any other type of Motion for Summary  
10 Judgment other than related to Daubert for cross-cutting issues  
11 that, to the extent that there are any Motions for Summary  
12 Judgment divorced from Daubert, it would be in the bellwether  
13 litigated process?

14           I know you can't think that far ahead, but let's say  
15 all of a sudden there is an issue. Shouldn't we have a  
16 deadline? Should it be the same deadline as the Daubert motion  
17 so we make sure that if something comes up where there is a  
18 Motion for Summary Judgment on a cross-cutting master pleading  
19 issue, but it is not Daubert, that it be the same time?

20           MR. AGNESHWAR: Well, I think the way we envisioned  
21 the schedule working was that there was this big threshold  
22 issue of general causation that we wanted to do first. I think  
23 everybody agreed to that, and so that is what we were going to  
24 focus on.

25           There very well may be other cross-cutting motions,

1 some of the Motions to Dismiss right now. If the Court allows  
2 some pleadings to survive, those may be cross-cutting motions  
3 for summary judgment, no doubt about it.

4 We were envisioning that we would focus this first  
5 part of the case on general causation because that will tell us  
6 the overall landscape of the case, will allow us to pick  
7 bellwethers if anything survives, with knowledge of what  
8 cancers are in, and then we can kind of get to everything else.

9 *THE COURT:* Plaintiff.

10 *MR. GILBERT:* Yes, your Honor, Robert Gilbert.

11 Let me first say that all of the remarks that I am  
12 going to give now are to the exclusion of the class cases, so I  
13 don't want to lump those into this response.

14 We partially agree with what Mr. Agneshwar said.  
15 Typically, the other summary judgment motions are typically  
16 raised in the context of specific bellwether cases, learned  
17 intermediary doctrine, a particular issue with regard to  
18 Statute of Limitations, some other issue.

19 Those would typically be raised down the road once you  
20 have the specific bellwethers chosen, and you have the second  
21 set of motion practice. When I say the second set of motion  
22 practice, that is Daubert motions on specific causation for  
23 those individual bellwether cases and Motions for Summary  
24 Judgment and Motions in Limine.

25 Typically, that is how it is done.

1 I could not foresee, under this schedule -- and I do  
2 agree with my colleague that the way they articulated it during  
3 the negotiation was that they were testing Daubert first, and  
4 we are extremely confident that we are going to defeat their  
5 Daubert motions, but there was never any discussion in the  
6 earlier negotiations that they would be bringing up liability  
7 summary judgment motions at this period as well.

8 Frankly, if that were what they raised to the Court  
9 today, or the Court were to suggest that -- and I don't think  
10 that is the best road to go down here -- I would respectfully  
11 fall back on these deadlines and say 45 days for our  
12 oppositions, if we are going to include non-general causation  
13 Daubert Summary Judgment Motions, is not going to be  
14 sufficient.

15 I think, to summarize, Daubert motions, general  
16 causation Daubert motions, which Mr. Agneshwar posited would be  
17 combined with a summary judgment on Daubert are what both sides  
18 contemplated, and other issues of liability or particular  
19 issues that would lend themselves to summary judgment practice  
20 would be raised in the context of specific bellwether cases  
21 later on.

22 MR. AGNESHWAR: One tweak to that, your Honor. I  
23 agree that if we tried to put in all the other cross-cutting  
24 summary judgment motions with the general causation motions,  
25 that could be a lot of briefing, that could require more time

1 to be built in.

2 I do think what is going to happen as a practical  
3 matter is, the Court is going to rule on Daubert, and there  
4 will be either nothing left or something left, and the parties,  
5 at that point, can meet and confer about a schedule for any  
6 other cross-cutting motions, as well as the schedule for any  
7 individual bellwether cases.

8 I would still urge that we maintain the framework of  
9 dealing with the threshold issue of general causation first,  
10 and then afterwards we figure out a schedule for any other  
11 cross-cutting motions, and then the case specific stuff that  
12 will lead to case specific Daubert motions and case specific  
13 summary judgment motions.

14 *MR. GILBERT:* Judge, brief response, if I may.

15 *THE COURT:* Brief.

16 *MR. GILBERT:* I agree with what Mr. Agneshwar proposed  
17 with the slight caveat that I did not want him to be suggesting  
18 that there should be a division after you deny Daubert  
19 causation. After you deny those motions and we're moving  
20 forward, I don't want -- I thought I heard him say that there  
21 should be a second round of cross-cutting summary judgment  
22 motions followed by bellwether.

23 If I misheard him, great. If I did hear him  
24 correctly, we don't agree with that. There should be a  
25 negotiated schedule after you deny Daubert general causation.

1           If we can't agree, we will be back in front of you  
2     like we are today, but that schedule would lay out the  
3     remaining motions to be handled, briefed, and argued before the  
4     Court and decided before the Court in advance of the selected  
5     bellwether cases, separate and apart from the class cases  
6     which, as I said before, I have excluded from this discussion.

7           MR. AGNESHWAR: I was not suggesting, your Honor, that  
8     we stay discussions of bellwethers for other cross-cutting  
9     summary judgment motions. I was simply suggesting that we  
10    maintain the structure of general causation first, see what, if  
11    anything, is left and then getting to bellwethers as well as a  
12    schedule for other cross-cutting motions, and as the bellwether  
13    is litigated, case specific motions on those cases.

14          THE COURT: When do you begin your bellwether  
15    discovery relative to anything, including Daubert rulings? Is  
16    it tied to Daubert rulings?

17          MR. AGNESHWAR: It is tied to Daubert rulings.

18          THE COURT: Everyone is in agreement that you don't  
19    begin --

20          MR. AGNESHWAR: I don't think everyone is in agreement  
21    with that. I think the Plaintiffs added in to the bellwether  
22    process that there could possibly be some case specific  
23    discovery before we even get to Daubert, and that is one of the  
24    fundamental disagreements that we have here.

25          If I was to take this up to 30,000 feet for a second,



1 I think the two primary disagreements that bring us here today  
2 are the timing of when we are going to get Plaintiffs' general  
3 causation expert reports that is going to take us through the  
4 Daubert process, and the structure of what we are going to do  
5 on bellwethers before and after Daubert.

6 Those are the two fundamental things. As I read the  
7 Plaintiffs submission, and I heard what Mr. Pulaski says, is  
8 they view the bellwether discussions before Daubert as  
9 involving picking specific cases, doing specific discovery,  
10 which I think makes no sense when general causation is still  
11 outstanding.

12 *THE COURT:* Where in the proposal is the Plaintiff  
13 suggesting that bellwether discovery begins before Daubert  
14 rulings?

15 *MR. AGNESHWAR:* That is on the August 16th date, and  
16 what they say is, hereafter begin the implementation of the  
17 bellwether selection process and plan utilizing the registry  
18 and any other resources, including formal discovery as agreed  
19 to by the parties or as ordered by the Court.

20 *THE COURT:* Can I hear from the Plaintiff on your  
21 understanding of your vision of bellwether related discovery?

22 *MS. FINKEN:* I wanted to make one point, your Honor,  
23 if I may. Tracy Finken on behalf of Plaintiffs.

24 Mr. Agneshwar has said multiple times here today that  
25 it is the Defendants' belief that general causation is a

1 threshold issue. I want to make it clear to your Honor that is  
2 Defendants' position, that is not our position.

3 We are confident that we will get past the Daubert  
4 motions and the process that Mr. Agneshwar is suggesting is  
5 just going to delay the conclusion of this MDL by years.

6 Just so your Honor understands where we go once the  
7 Daubert motions are decided on general causation, under Mr.  
8 Agneshwar's plan, we would start the process of narrowing our  
9 bellwether pool. Then we would have to engage in case specific  
10 discovery, which involves taking depositions of the Plaintiffs,  
11 their spouses, treating physicians, prescribing doctors,  
12 collecting all of the medical records that are necessary, which  
13 is a process in itself, followed by, then we would have to do  
14 another round of expert reports, followed by another round of  
15 Daubert motions, and then another round of dispositive motions  
16 and pretrial motions before we would actually get to a trial in  
17 this case.

18 So, we are looking at extending the trial date under  
19 that plan by at least 18 months. I just want that to be clear  
20 to your Honor that it is not the most efficient way to proceed  
21 in relation to getting to an inflection point in this MDL.

22 The bellwether trial and getting that date set is the  
23 inflection point that we need to get to a resolution in this  
24 case. As Defendants would like to say, it is not Daubert, it  
25 is actually bellwether.

1           *THE COURT:* Plaintiffs, where do you have your  
2 proposal that suggests when you actually begin bellwether case  
3 discovery? Is it August --

4           *MS. FINKEN:* Sorry. I will let Adam respond to the  
5 specifics, but I know that we contemplated having a bellwether  
6 pool, engaging in narrowing that pool and getting some of these  
7 processes in place and done prior to the conclusion of the  
8 Daubert rulings.

9           *THE COURT:* We have talked about the selection  
10 process, but I want to understand where you have proposed in  
11 this plan that you are actually undertaking bellwether  
12 discovery, like you have actually reached a deadline where you  
13 have selected your bellwether cases so as to be able to do  
14 discovery.

15           I don't think I saw that in this plan. Did I miss it?

16           *MR. PULASKI:* Your honor, that would be after Daubert,  
17 it would be case specific discovery on the finally selected  
18 bellwether cases.

19           *THE COURT:* So the parties agree, then, on that.

20           *MR. AGNESHWAR:* Yes, your Honor, absolutely. It has  
21 always been contemplated in PTO 30 that bellwether selection  
22 would be finalized 14 days after the completion of Daubert.

23           I believe when we submitted the agreed order to the  
24 Court both myself and Mr. McGlamry told the Court that we had  
25 had discussions about how long we needed to get from bellwether

1 selection to trial, and we decide -- we agreed and we advised  
2 the Court that we would have that discussion after Daubert and  
3 submit a plan to the Court at that time.

4 That has always been the structure of this PTO 30  
5 until the Plaintiffs put in this proposal that references using  
6 the registry and possibly doing some discovery before Daubert,  
7 and that is my fundamental -- what I really take issue about  
8 this.

9 It is not just a debate about whether the schedule is  
10 extended three months or six months, by expanding the  
11 bellwether discussions they are trying to up end the whole  
12 process of general causation first.

13 And we did all negotiate, at lengthy negotiation, and  
14 agreed to and submitted to the Court and even discussed at  
15 CMCs.

16 *MR. McGLAMRY:* Mike McGlamry for Plaintiffs.

17 Since Anand invoked me, I totally disagree with what  
18 he said in terms of what we discussed and what we negotiated  
19 because it comes down to this, your Honor. You asked where in  
20 our schedule. It is at our August 16th date where we talk  
21 about utilizing the registry and any other resources, including  
22 formal discovery, as agreed to by the parties or as ordered by  
23 the Court.

24 The reason for that is this, your Honor: If we have  
25 this discussion about how we are going to go about selecting

1 bellwether cases, part of that is deciding how you are going to  
2 winnow down from -- as Adam was talking about, if you pick a  
3 certain number and you are going to winnow down, well, how do  
4 you winnow down? Is it the Defendants' position to winnow down  
5 they have to have the medical records for each of those  
6 Plaintiffs?

7 That is technically, or arguably, formal discovery,  
8 which could take for a cancer patient six months to a year to  
9 get. If they are saying they don't need any of that, and  
10 because in this case we have the most robust registry with more  
11 data than anything in the world to limit these cases and move  
12 them down, that is one thing.

13 But if they are going to say, oh, before we can get  
14 down to -- pick a number -- 20 cases, 50 cases, a hundred  
15 cases, whatever the number is, we need to do individual  
16 discovery, which is contemplated already by PTO 15, then we are  
17 saying we should be doing that between now and whenever that is  
18 because, otherwise, if we are waiting until after Daubert --  
19 even if we say, okay, we work out a plan, if we are still  
20 having to winnow down from whatever our plan is to a number to  
21 be able to do individual discovery toward an individual trial,  
22 if anybody believes they need to do discovery of any sort,  
23 medical records, take a deposition of a treating physician,  
24 whatever it might be, document productions of some other sort,  
25 then what we are saying is that needs to happen as part of the

1 bellwether process.

2 Because, ultimately, you have to go from a hundred  
3 thousand to some number of cases, and if the process is to  
4 winnow that down so that when Daubert is ruled on and we are  
5 going forward on ten cancers, boom, we can pop something  
6 together to say, okay, here are the five, or two, or ten,  
7 whatever the number is that we agree on, or the Court decides,  
8 then we are ready to go.

9 But if they are going to say, or we are going to say,  
10 oh, wait a second, before we can winnow down from this section  
11 to this section we need A, B, or C, we need to be in a position  
12 between now and then to be doing A, B, and C, whatever that is.  
13 If we can do it just with the registry, which in large part I  
14 think we believe we can do, and that's why it was built and  
15 that's what we paid for, then, fine.

16 But if the Defendants say, hey, no, I have to have  
17 Ms. Jones' entire medical record and we are not going to rely  
18 on you, Plaintiffs, to give it to us, we have to do it  
19 officially, then that needs to happen between now and then.

20 Otherwise, we are not talking about what Mr. Agneshwar  
21 said after Daubert, it is not a two-week period to come back to  
22 you with a number. It is a one-year process to winnow down to  
23 then just decide what are the individual cases that we then  
24 have to do individual discovery for.

25 This is a smoke screen, and so what we need to know,

1 and what we think we negotiated from the beginning, and what I  
2 know Adam cited to in PTO 24, which came out even before PTO  
3 30, that says we are going to be winnowing down these cases in  
4 the 18 months leading to Daubert, the question is, how do we do  
5 that?

6 If we decide how we do it, whatever way that is,  
7 whether that is to do it with some formal discovery or not  
8 formal discovery and just the registry, whatever that is, that  
9 is fine, but if we don't do whatever that is, we will be years  
10 behind when you rule that we can go forward on these ten cases,  
11 these ten cancers, and we need to start getting these cases  
12 ready for trial.

13 *THE COURT:* Okay. Any final remarks? I am going to  
14 conclude shortly. I want to make sure everyone has been heard.  
15 I have exhausted my questions.

16 Any final remarks from either side?

17 *MR. GILBERT:* Your Honor, no final remarks from  
18 Plaintiffs with the following, with the caveat of the  
19 following:

20 Your Honor, there have been numerous instances over  
21 the past six months where the Defendants have come before the  
22 Court and have said they needed an extension under PTO 47, they  
23 have proposed deadlines under PTO 63, they need extensions to  
24 get their clinical studies produced because of COVID, whatever  
25 the case may be. In each case, Defense counsel has made

1 representations to the Court. We, leadership on behalf of the  
2 Plaintiffs, have not objected because we understand the  
3 circumstances.

4 The Court, without fail I think, without exception,  
5 has granted those because the Court realized that they were  
6 reasonable and they were necessary.

7 The representations that we have made to you in  
8 connection with our proposed schedule are based on a lot of  
9 hard and difficult thinking on our part. They are our best and  
10 most well-reasoned representations regarding the time that we  
11 need in order to adequately prosecute this case on behalf of  
12 over 100,000 claimants, not to mention the classes.

13 We urge the Court to give our representations  
14 regarding this proposed schedule the same dignity that has been  
15 given to the Defendants' representations up until now.

16 Thank you.

17 *THE COURT:* Thank you. Final remarks from the  
18 Defense.

19 Your mute is on.

20 *MR. AGNESHWAR:* I thought I stopped turning it off. I  
21 guess I did it by force of habit.

22 Your Honor, I want to come back to something Bobby  
23 said earlier. He said, what is the prejudice to the  
24 Defendants? Respectfully, it is their burden to show -- first,  
25 there are two responses to that.



1           One, it is their burden to show what they need to  
2 support general causation, and I don't think they have done it.  
3 They haven't done it in two briefs they filed. They haven't  
4 done it today in oral argument. There's references to this  
5 study and that study, but they have never said this is the gap  
6 that we have.

7           I don't buy for a second that their experts aren't  
8 already preparing expert reports. There are three dozen  
9 epidemiological studies out there on the relationship with  
10 Zantac and any particular cancer.

11           The issue in this case -- I was listening to the  
12 Motion to Dismiss argument. The issue in this case is not is  
13 it a certain batch, did it get to this temperature, or can this  
14 particular product go up to this NDMA level and stuff.

15           The issue is whether real world use of Zantac causes  
16 any particular kind of cancer, and that is going to be decided  
17 based on epidemiology. If they need something more, I get it,  
18 they are doing discovery. But if they want this kind of an  
19 extension, they should be able to articulate with some  
20 precision.

21           They could have put in an affidavit from an expert  
22 saying this is what I need to complete my report, or somebody  
23 on their science team saying, this is what I need. I submit  
24 they just haven't done that.

25           Second of all, what is the prejudice here?

1           Well, the prejudice, your Honor, is that the  
2 leadership of the MDL is what is at stake here. Now, I know  
3 that we have given the three-month extension, but we have done  
4 that reluctantly. We, candidly, think the Plaintiffs could  
5 file their expert reports next month, or today, frankly,  
6 because, under Eleventh Circuit law, the primary issue is going  
7 to be epidemiology.

8           We recognize that, like in every litigation, there are  
9 hiccups and we haven't been perfect in discovery. We said,  
10 okay, we will give you these three months, and no more.

11           If you play this all out, we are going to have Daubert  
12 decided by, even under our schedule -- while the briefing will  
13 end in June of 2022, presumably, I know the Court works very  
14 fast, there will be hearings after that and maybe a decision  
15 sometime in the second or third -- third quarter of 2022.

16           What the Court -- what I would urge the Court to think  
17 about is that the MDL Court is just one front of a  
18 multi-pronged battle here. There are parallel fronts in  
19 various state courts. There is litigation going on in  
20 California, there is litigation in Tennessee, there is  
21 litigation in Texas, there is litigation in Illinois.

22           This threshold issue in the case of whether, at the  
23 end of the day, there is any there there in this litigation is  
24 something that this Court's guidance on in a thoughtful  
25 opinion, as the Court has always done, will be helpful and

1     instructive as the parties litigate this case all around the  
2     country.

3             We are seeing, and I expect to see more, lawyers in  
4     other jurisdictions seeking trial dates as early as 2022. I  
5     just think if you adopt the Plaintiffs' schedule which has  
6     possibly Daubert not ruled on until the end of 2022, which is  
7     more than two years after this MDL was formed, the primacy of  
8     the MDL in taking a leadership role could possibly be  
9     compromised.

10            And, frankly, I think that is prejudicial to us, but  
11     it is also prejudicial to the Plaintiffs that have invested all  
12     this kind of time in building a leadership structure in this  
13     MDL and building the registry that was designed to encourage  
14     lawyers to file cases in the MDL.

15            So, I respectfully submit, your Honor, that because  
16     the Plaintiffs have not shown, really, any need for more time,  
17     because we have already been generous in giving three months,  
18     and because the consequences of the MDL lagging behind now, if  
19     we get into the end of 2022 and possibly even 2023, will have  
20     ramifications throughout the country, the Court should adopt  
21     our schedule.

22            *THE COURT:* Okay. All right.

23            *MS. FINKEN:* Your Honor, may I respond to that,  
24     please?

25            *THE COURT:* I do want to conclude the hearing, so just

1 a moment or two.

2 MS. FINKEN: Very briefly, your Honor, if you will  
3 indulge me.

4 First, to Mr. Agneshwar's first point about the  
5 discovery that is needed for purposes of expert reports, as of  
6 this past Friday, GSK has still not produced over 500 human  
7 clinical trials that they conducted in relation to Zantac.

8 That is something that is going to need to be  
9 addressed, it is something that Judge Reinhart -- we have been  
10 working with him on over a period of time in trying to get to  
11 an end resolution on that issue.

12 But as your Honor is likely aware, there are multiple  
13 types of scientific evidence that experts consider when  
14 developing their opinions on causation, this is true of both  
15 general causation and specific causation. Clinical trial  
16 evidence is one type of evidence.

17 The term "epidemiology" that Mr. Agneshwar keeps  
18 referring to is an umbrella term, and I would refer your Honor  
19 to the reference manual on scientific evidence that the  
20 Defendants always like to cite to which has a provision about  
21 epidemiological evidence and the types of studies that fall  
22 underneath that umbrella term.

23 The term that Mr. Agneshwar is using it is in relation  
24 to observational studies which are in the published medical  
25 literature, however, randomized clinical trials and clinical

1 trials that are being conducted by the Defendants that have  
2 supported the safety and efficacy of this product that they  
3 have done over the past 40 years are another type of  
4 epidemiological evidence that are cited in the reference manual  
5 for scientific evidence, and they are actually listed as the  
6 gold standard.

7           So, to the extent that GSK has conducted over 500  
8 human clinical trials that they have not produced at this  
9 point, that is something that is necessary for us to obtain,  
10 it's necessary for us to review, and it's necessary for our  
11 experts to have adequate time to consider that in their  
12 methodology of coming to their conclusions for purposes of  
13 expert reports. That is one.

14           The second point on that is that the Defendants have  
15 already told us they intend to rely on the clinical history of  
16 the product and the clinical development and studies to support  
17 their conclusions on the safety of the product.

18           That is another reason why our experts need to review  
19 the body of clinical evidence that has been collected over the  
20 past 40 years that the manufacturers have, that GSK is required  
21 to maintain, that they keep on file for the entire life cycle  
22 of the product, and that they have not yet produced.

23           The second point that Mr. Agneshwar -- very quickly, I  
24 will wrap it up, I promise. He wanted to keep the primacy of  
25 the MDL, first and foremost, in terms of trial. It cannot be

1 at the expense of prejudicing Plaintiffs on their ability to  
2 properly prepare experts.

3 If what Mr. Agneshwar says is true, keeping the trial  
4 dates and the MDL in a position of lead on trial dates, the way  
5 to do that, your Honor, is to set the first bellwether trial,  
6 have us work backwards, have parallel discovery going forward  
7 on bellwethers, as well as general causation and fact discovery  
8 with the Defendants, and get these working in tandem instead of  
9 back to back.

10 Because we are going to have to, under Mr. Agneshwar's  
11 plan, go through this process, start it all over again after  
12 Daubert rulings and go through a whole nother round of Daubert  
13 rulings and a whole nother round of discovery. That is what is  
14 going to put the MDL behind state courts. It is not our couple  
15 of months extension on producing expert reports.

16 If we want to keep the MDL in the lead, your Honor, I  
17 would suggest that you provide a timeframe that you would like  
18 to see the first bellwether trial go forward, and then the  
19 parties can work backwards to make sure everything gets done to  
20 get us to that point in light of the vision of the Court for  
21 purposes of the first trial, and that is how the MDL will stay  
22 in the lead, not the way that Mr. Agneshwar is proposing.

23 Thank you, your Honor.

24 MR. AGNESHWAR: Could I have 30 seconds?

25 THE COURT: See, this is the problem, I'm way too

1 nice, way too indulgent.

2 MR. AGNESHWAR: Very quickly, your Honor.

3 THE COURT: A very quick 30 seconds?

4 MR. AGNESHWAR: Well -- bottom line, your Honor, Ms.  
5 Finken refers to clinical studies. GSK, as I understand it,  
6 has produced all the studies --

7 THE COURT: You know what, I am going to interrupt you  
8 only because we are definitely going to take that off line.  
9 That is going to be the subject -- if Judge Reinhart needs to  
10 get the parties back before him to wrap that up once and for  
11 all, just know you are going to be heard on that.

12 Judge Reinhart is right there. Right, Judge Reinhart?  
13 You are on mute.

14 Don't worry, you will be heard on that, but today is  
15 not the day on that.

16 What was the second point?

17 MR. AGNESHWAR: The second point was that when the  
18 Eleventh Circuit refers to epidemiology, they are referring to  
19 evidence of exposure and disease, including dose response.  
20 That is critical. That is not going to be in some random  
21 studies from 40 years ago, that is going to be on studies  
22 looking at the relationship, if any, between Ranitidine and  
23 cancer.

24 What Ms. Finken is talking about, doing bellwethers  
25 now, that is just upending the whole structure that we --

You have all been heard, I have listened carefully, taken notes. I am not ruling, so don't worry, today, and I appreciate it. So, we are going to conclude the hearing right now.

I want to thank you for the useful information that you have complimented your submissions, it has been very, very helpful. I may have further questions as I digest it, but it is very helpful that I be informed and you have done that.

MR. GILBERT: Thank you, your Honor.

MR. AGNESHWAR: Thank you, your Honor.

MS. FINKEN: Thank you, your Honor.

(Thereupon, the hearing was concluded.)

\* \* \*

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

Date: June 14, 2021

/s/ Pauline A. Stipes, Official Federal Reporter

Signature of Court Reporter

Pauline A. Stipes, Official Federal Reporter



<b>MR. AGNESHWAR: [54]</b> 4/6 4/12 4/18 6/12 8/17 8/22 9/1 9/9 9/13 10/12 11/17 12/2 12/23 15/3 15/23 18/4 18/25 24/17 24/19 28/20 29/1 32/24 34/14 35/15 35/18 37/23 38/24 41/25 42/7 42/14 44/1 44/24 46/24 49/10 49/15 50/13 50/18 50/22 51/7 51/18 51/25 52/19 54/21 56/6 56/16 56/19 57/14 59/19 64/19 70/23 71/1 71/3 71/16 72/11 <b>MR. GILBERT: [39]</b> 4/1 6/13 6/18 7/25 8/8 9/15 10/10 12/19 13/18 20/19 21/14 23/25 24/3 24/15 25/9 25/11 31/14 32/9 38/21 39/7 40/17 41/9 42/21 43/7 44/3 44/18 46/9 46/17 46/20 47/9 47/11 48/21 49/23 50/19 53/9 55/13 55/15 63/16 72/10 <b>MR. McGLAMRY: [2]</b> 40/2 60/15 <b>MR. PULASKI: [8]</b> 25/13 27/14 27/22 27/24 28/5 35/20 37/16 59/15 <b>MS. FINKEN: [7]</b> 32/13 42/25 57/21 59/3 67/22 68/1 72/12 <b>THE COURT: [97]</b>	9/19 10/4 11/20 14/7 15/16 15/17 16/24 17/6 18/8 18/11 40/8 43/25 61/14 <b>20-md-02924-ROSENBERG [1]</b> 1/3 <b>200 [2]</b> 26/10 36/20 <b>2020 [1]</b> 13/23 <b>2021 [16]</b> 1/5 5/19 6/8 6/9 7/6 7/14 8/5 9/5 10/6 10/22 11/1 21/18 21/23 22/4 22/19 72/19 <b>2022 [14]</b> 6/7 7/14 7/18 10/5 18/7 41/5 41/9 41/9 43/18 66/13 66/15 67/4 67/6 67/19 <b>2023 [1]</b> 67/19 <b>20th [20]</b> 5/22 5/25 9/13 9/21 10/14 11/6 11/13 11/23 12/1 14/3 14/15 14/18 14/22 15/2 16/23 18/24 22/11 28/22 41/5 46/14 <b>212-836-8011 [1]</b> 2/3 <b>215-735-1130 [1]</b> 1/14 <b>22nd [3]</b> 39/11 39/24 39/25 <b>23 [1]</b> 41/9 <b>23rd [1]</b> 46/16 <b>24 [6]</b> 6/7 7/14 7/17 26/1 27/4 63/2 <b>24th [2]</b> 10/5 18/25 <b>250 [1]</b> 2/2 <b>2800 [1]</b> 1/23 <b>2924 [1]</b> 3/6 <b>2925 [1]</b> 1/16 <b>2nd [17]</b> 5/11 5/17 6/4 7/9 8/7 8/8 8/10 8/17 9/20 9/20 10/7 10/19 10/25 14/5 18/21 18/22 31/23	<b>500 [3]</b> 26/8 68/6 69/7 <b>55th [1]</b> 2/2 <b>6</b> <b>63 [1]</b> 63/23 <b>7</b> <b>713-664-4555 [1]</b> 1/17 <b>7270 [1]</b> 1/24 <b>7706 [1]</b> 1/20 <b>77098 [1]</b> 1/16 <b>772.467.2337 [1]</b> 2/7 <b>7th [1]</b> 41/5 <b>8</b> <b>800-pound [1]</b> 29/21 <b>8011 [1]</b> 2/3 <b>9</b> <b>90 [1]</b> 39/2 <b>90-day [1]</b> 50/3 <b>9th [5]</b> 13/25 14/15 27/13 31/7 46/15 <b>A</b> <b>abide [1]</b> 37/20 <b>ability [3]</b> 26/5 44/7 70/1 <b>able [12]</b> 4/24 22/5 22/23 31/20 31/22 41/24 43/18 44/13 45/16 59/13 61/21 65/19 <b>about [74]</b> <b>above [1]</b> 72/17 <b>absolute [1]</b> 16/18 <b>absolutely [5]</b> 20/25 27/15 30/15 47/20 59/20 <b>accomplish [1]</b> 22/11 <b>accordance [1]</b> 9/4 <b>accounting [1]</b> 52/9 <b>accurate [1]</b> 41/10 <b>acknowledge [1]</b> 13/15 <b>across [1]</b> 29/9 <b>actual [3]</b> 27/2 41/21 45/19 <b>actually [19]</b> 6/25 8/10 9/17 14/12 18/20 20/24 33/17 33/20 35/2 35/25 37/20 48/17 48/25 58/16 58/25 59/2 59/11 59/12 69/5 <b>ADAM [5]</b> 1/15 4/4 59/4 61/2 63/2 <b>add [3]</b> 40/4 43/8 50/25 <b>added [5]</b> 7/13 34/16 35/7 45/21 56/21 <b>addition [1]</b> 7/22 <b>additional [2]</b> 20/10 37/8 <b>address [1]</b> 20/22 <b>addressed [1]</b> 68/9 <b>addressing [1]</b> 6/14 <b>adequate [2]</b> 20/2 69/11 <b>adequately [1]</b> 64/11 <b>adhere [1]</b> 14/25 <b>adopt [2]</b> 67/5 67/20 <b>adopted [1]</b> 7/12 <b>advance [1]</b> 56/4 <b>advised [1]</b> 60/1 <b>affect [1]</b> 41/15 <b>affidavit [1]</b> 65/21 <b>after [35]</b> 10/3 14/10 16/2
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<p><b>B</b></p> <p><b>been...</b> [10] 60/4 63/14 63/20 64/14 66/9 67/17 68/9 69/19 72/2 72/7</p> <p><b>before</b> [48] 1/8 10/3 10/3 12/6 12/7 14/3 14/8 16/25 17/17 17/18 20/17 22/8 22/12 23/13 24/2 26/19 28/14 28/15 28/23 29/15 33/16 34/4 34/23 35/6 36/10 39/7 39/22 40/24 43/12 44/18 44/20 47/5 47/15 47/19 56/3 56/4 56/6 56/23 57/5 57/8 57/13 58/16 60/6 61/13 62/10 63/2 63/21 71/10</p> <p><b>beforehand</b> [1] 14/9</p> <p><b>begin</b> [16] 14/2 23/19 25/2 26/5 26/9 26/13 26/22 27/1 29/6 29/13 36/11 37/7 56/14 56/19 57/16 59/2</p> <p><b>beginning</b> [7] 23/23 24/21 25/6 28/17 33/17 36/18 63/1</p> <p><b>begins</b> [2] 26/24 57/13</p> <p><b>behalf</b> [18] 4/3 4/10 6/20 6/21 13/20 20/21 31/15 32/14 38/23 40/19 41/11 42/22 43/1 46/10 48/22 57/23 64/1 64/11</p> <p><b>behind</b> [4] 31/21 63/10 67/18 70/14</p> <p><b>behind state</b> [1] 70/14</p> <p><b>being</b> [8] 15/2 18/18 21/10 28/10 36/7 43/6 46/1 69/1</p> <p><b>belief</b> [2] 26/3 57/25</p> <p><b>believe</b> [8] 8/10 23/6 24/9 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