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

CASE NO. 20-md-02924-ROSENBERG

IN RE: ZANTAC (RANITIDINE) .
PRODUCTS LIABILITY . West Palm Beach, FL
LITIGATION. . January 26, 2022

STATUS CONFERENCE (through Zoom)
BEFORE THE HONORABLE ROBIN L. ROSENBERG
UNITED STATES DISTRICT JUDGE and
THE HONORABLE BRUCE REINHART
UNITED STATES MAGISTRATE JUDGE

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1 *THE COURT:* Okay, good afternoon, everyone, welcome to
2 the January case management conference in the MDL.

3 We originally had scheduled to have this case
4 management conference in person as we were able to have the
5 last one, but unfortunately, due to the resurgence of the COVID
6 pandemic, we decided it was prudent to convert this to a Zoom
7 only conference.

8 We actually were always going to do it as a hybrid,
9 but we are very much looking forward to having certain of the
10 attorneys come here in person, as I think we all enjoyed
11 getting to meet one another in person last time. We will
12 resume that in the next case management conference which is
13 scheduled in March, which is already on the website's calendar.
14 We will be in person with the Zoom option so that we can
15 include as many people as possible.

16 I think we have a really interesting overview of
17 issues today because some important deadlines were reached on
18 January 24th, two days ago, and I think that that is a nice way
19 to segue into our first topic, which I understand Ms. Finken
20 and Mr. Nigh and Mr. Cheffo will update us on as to designation
21 of cancers, expert reports, and the state of discovery.

22 So, if I could ask those counsel to turn on their
23 videos and, welcome, great to see everybody. We will have Mr.
24 Nigh as well, if he is there.

25 *MS. FINKEN:* Your Honor, we are not sure if he is

1 going to be -- we are not sure we communicated to him that he
2 might have a speaking role today in the hustle and bustle of
3 everything going on, so I am not sure if he is on the
4 conference or not, but I am prepared to handle it.

5 *THE COURT:* Perfect. It may have been my oversight.
6 We have Judge Reinhart on as well, and I know he joins me in
7 welcoming everyone, and I am sure is equally interested in the
8 update, particularly as it relates to discovery, not that he is
9 not interested in many, many other things, but several of our
10 topics today, and I want to take this opportunity to thank
11 Judge Reinhart for being so available.

12 I think the parties would agree. Each and every time
13 there has been a dispute that required the Court's attention,
14 Judge Reinhart has been available, has dropped other things,
15 and he has other important matters that he handles, and he
16 makes himself immediately available because he appreciates that
17 time is money and delay can really interfere with ongoing
18 progress of the case.

19 He has a keen awareness of that and so has been very
20 attentive to this case, and I know that I appreciate it. I am
21 sure I speak on behalf of the parties as well.

22 With that, let me have counsel make their presentation
23 on the first topic of our agenda.

24 *MS. FINKEN:* Tracy Finken on behalf of Plaintiffs. I
25 don't know, Mark, if you want to enter your appearance first.

1 *MR. CHEFFO:* Mark Cheffo for the Defendants.

2 *MS. FINKEN:* Your Honor, as you are aware, the expert
3 causation report deadline for general causation reports was
4 January 24th. Plaintiffs have served 12 expert general
5 causation reports to support five of the designated cancers,
6 which is liver, pancreatic, bladder, stomach, and esophageal.
7 We served those along with our requirement to serve three
8 deposition dates for each expert, and those have gone over to
9 Defense counsel.

10 So, we anticipate that we will be receiving Defense
11 expert reports at the beginning of March, and then moving into
12 taking expert depositions and all of the hustle and bustle that
13 goes along with that.

14 *THE COURT:* Okay.

15 *MR. CHEFFO:* Good afternoon to you and Judge Reinhart,
16 and again, thanks for all the work that you are both doing with
17 your staffs. I know we all appreciate it very much. I may
18 take a minute or two longer than Ms. Finken, but not much
19 longer than that.

20 You have good lawyers on the other side, you would
21 expect to see a stable of experts and reports that are
22 consistent with that level of experience, so we are getting
23 through them, but we thought it might be helpful to the Court
24 and folks who happen to be on just to get a quick preview. I
25 am going to give rough numbers from our analysis. Obviously

1 this may change a little bit as time goes on.

2 As Ms. Finken said, there are the five cancers that
3 she indicated, down from the ten and the eight, so Plaintiffs
4 have kind of been targeted in their review. What that means
5 from a practical level is, if there is 160,000 plus claims
6 based, again, on our math and LMI and all that data, which is
7 helpful, but not perfect, our estimate is that is about 46,000
8 claims. So, of 160,000 plus, there are 46,000 within the
9 cancers that the Plaintiffs intend to pursue here in connection
10 with Daubert, so that is a very significant 70, 75 percent of
11 the cases are not covered -- claims are not covered.

12 The other thing we tried to do because we thought the
13 Court might be interested in terms of the mapping, the 80
14 percent, 80/20 percent, I think that is a good news story in
15 the sense that if you look at that data, 38,000 of the 46,000
16 mapped and non-diverse parties, which is again rough math,
17 82 percent, so if you had -- which we think would be consistent
18 with at least the 80 percent because they are non-diverse, so
19 they should be subject to Federal Court jurisdiction, so that
20 is another perhaps fortuitous, but positive.

21 Then a few --

22 *THE COURT:* Wait, I am sorry. Mr. Cheffo, do you
23 mean -- let me make sure I am understanding -- that about 80
24 percent map to being diverse?

25 *MR. CHEFFO:* Correct.

1 *THE COURT:* Diverse, Federal jurisdiction.

2 *MR. CHEFFO:* Exactly, your Honor. So, it is 80
3 percent of the -- what we believe are the designated cancer
4 group, so it is 80 percent of the 40. That is why the number
5 38,000 would be diverse, which again, assuming all of those
6 were in fact diverse and assuming they all check the box, if
7 you will, that would be at 82 percent and that would be above
8 an 80/20 threshold that your Honor knows the parties have been
9 talking about.

10 We are kind of in a range that gets us to where
11 hopefully the parties want to be in terms of tolling and
12 Federal Court jurisdiction. So, that is our back of the
13 envelope map, but I think it is a good news story.

14 A few things -- this is not in any way to kind of meet
15 and confer, or raise issues that we haven't. There is not a
16 lot, but we think that there may be certain opinions in
17 whole -- mostly in part that are what we would perceive to be
18 beyond general causation. We are going to go through those
19 when we have a chance and talk to the Plaintiffs about that.

20 Maybe they will agree and say, yeah, because this will
21 affect what we need to respond to. If they don't, obviously it
22 is something that we will deal with the Court on how we should
23 approach it, but that is just something that we wanted to flag
24 for the Court.

25 I think what is also important is in the actual expert

1 reports that were submitted several of the Plaintiffs' experts
2 have indicated not just that they are proffering a general
3 causation opinion on the five designated cancers, but they also
4 said that they looked at the others, and they don't believe
5 that it would pass an opinion of general causation with respect
6 to the five that were dropped. We think that is significant
7 for the Court and litigation.

8 And then there is just this issue, again, I think -- I
9 tried to speak to Mr. McGlamry, certainly nothing negative, we
10 have all been running around. There is an issue that is still,
11 at least in our mind, open, which is whether it's the intention
12 or the belief or the view of the Court that we need to have
13 every single general causation expert that might ever testify
14 if this litigation may go on for 15 years.

15 Just to give us kind of a preview, we are aware of one
16 exception in litigation which we think is different, but as a
17 general rule, the way we typically -- I have approached this in
18 dozens of MDLs, I think on our side it is the same.

19 Typically you will have general causation experts who
20 will say I believe X, Y, and Z, then they go through the
21 process with your Honor, and you will say either, yes, they
22 pass the methodology in Daubert, thumbs up, or no, they don't.

23 If they do, typically, when you have a very large --
24 you don't keep Dauberting people, but you may have experts who
25 may have a general causation opinion who will testify

1 consistent with the opinion that was passed by the Court, as
2 opposed to saying we have 46,000 Plaintiffs, you need to tell
3 us every single individual, whether he or she in all time for
4 the next two years, five years, ten years will testify.

5 That is something that I think the parties need to
6 work -- in our view, it would be unworkable to have to name,
7 particularly if this case didn't resolve quickly and got
8 remanded, cases all over the country, whether we would in the
9 next five weeks have to say here is all the people who could
10 ever testify. Again, that is not anything we have ever done.

11 There may or may not be a difference of opinion on
12 that, but if not, that is something I think we are going to
13 need your Honor to resolve relatively quickly. We could file a
14 short brief or something.

15 I don't want to get ahead of ourselves and I don't
16 want to preempt anything, but I thought this was the time
17 because these all cascade, these dates, and I wanted to
18 preview, as I said, some of the good news in terms of the data
19 and also some of the areas where I think just by the crush of
20 time we haven't had a chance to talk to the Plaintiffs, but we
21 will.

22 I am going to stop there, your Honor, unless
23 Ms. Finken has more to add or my colleagues, or your Honor or
24 Judge Reinhart have any questions.

25 *MR. McGLAMRY:* Your Honor, I would like to respond to

1 what he referenced about me.

2 *THE COURT:* You may.

3 *MR. McGLAMRY:* I will say that Mr. Cheffo, I don't
4 communicate with him at all, emailed me last night. My
5 granddaughter was born yesterday afternoon, so I have to take a
6 pass on getting back to him.

7 *THE COURT:* Congratulations.

8 *MR. McGLAMRY:* Thank you. I know on other issues we
9 were supposed to hear from him on Saturday and we didn't hear
10 for three or four days.

11 The issue that he is raising has been brought up by
12 the Defendants now at least four times, initially in May of
13 last year, that they had proposed a PTO that allowed them not
14 to put up all of their general causation experts according to
15 the PTO 30. We said no. We had a meet and confer, we said no.
16 They responded to the motion we had to clarify or to extend PTO
17 30, did not raise it.

18 They did not raise it when this Court entered PTO 65.
19 They did not raise it when we raised the issue of needing more
20 time to do the expert reports because of the fact that the
21 Defendants had not produced their product on time. They did
22 not raise it then.

23 They raised it in the past couple of weeks. We had a
24 meet and confer with the special master about this the other
25 evening, Mr. Cheffo was not involved, and essentially they were

1 given their chance to put up or shut up, and they did not file
2 anything or do anything.

3 Obviously, for them to come in after we have named and
4 provided experts to suggest that they don't have to put up all
5 of theirs we would say is absolutely wrong and, you know, to
6 the extent the Court wants to entertain that issue in some way,
7 obviously, we will address it, but this is something that has
8 been out there for over eight months and is unfair, and for us
9 to stop and change this is not right at this point.

10 *MR. CHEFFO:* First, Mr. McGlamry, congratulations on
11 your granddaughter. Yes, I did try to reach him yesterday, so
12 I wasn't casting aspersions. I am happy to address quickly on
13 this.

14 I think the view that would -- now it is clarified
15 that what Mr. McGlamry is suggesting is that -- I guess it's a
16 goose/gander rule that -- I think the Plaintiffs may have
17 identified two epidemiologists or a few toxicologists.
18 Frankly, I can tell you, your Honor, I have never seen this
19 before, the view that he said, that -- you have a multi-party
20 litigation, four brand Defendants, the idea that we would have
21 to get together on Daubert, right, and say, looking forward,
22 assuming we lose on Daubert, we need to tell the Court right
23 now exactly the people, the ten, the 15, it could be 20 or 30
24 people who would be general causation experts.

25 Your Honor has certainly been through this and even in

1 a neutral case, if the case got remanded or multi party, it
2 just certainly would be literally the most efficient. I think
3 it would be incredibly novel, I have never seen it before, it
4 would be wasteful. The idea, where I think the Court has
5 always been, and the reason why this was raised -- and frankly,
6 I don't think any of us really ever believed that this was the
7 Plaintiffs' position because we have never seen this before,
8 the idea --

9 *MR. McGLAMRY:* Your Honor, we have said this to them
10 specifically since May.

11 *MR. CHEFFO:* Can I just finish?

12 *MR. McGLAMRY:* I do not know how he cannot understand
13 what our position is --

14 *THE COURT:* Okay. We have traditionally allowed
15 everybody to speak and have their word, so -- without
16 interrupting. So, let's let Mr. Cheffo finish, and then we can
17 have Mr. McGlamry respond, and if Mr. Cheffo needs to respond
18 again, that would be fine until we exhaust what you need to
19 say.

20 *MR. CHEFFO:* Thank you, your Honor. I started this by
21 saying, you know, this is a goose/gander rule. If Mr. McGlamry
22 feels like this is not the time, I am not in any way trying to
23 sandbag, I wanted to raise the issue. If he has the strong
24 view that he said, then the answer to me, because it is an
25 important issue to us, this is up to your Honor, but we could

1 file a short brief on this.

2 The last thing I would say is, from a practical
3 perspective, could you imagine in a situation where basically
4 their experts are saying, we think it passes general causation,
5 like Bradford Hill, and they have designated a few people --
6 they haven't designated a hundred, there are 46,000 claims.
7 For us to come and say it is Nancy Smith, it's Peter Jones,
8 it's John, a laundry list of all these people saying the same
9 thing, that would be unprecedented, unnecessary.

10 Then what would happen is we would have to file
11 Daubert motions for a hundred different people. Never happened
12 in the world that I am aware of.

13 What normally happens is we say put up your expert or
14 two for Daubert, your Honor tests those. Again, if your Honor
15 says I believe it passes the 702 Daubert standards, then there
16 is a trial in two years or three years. That expert could not
17 do different things, they wouldn't redo Daubert, but they would
18 testify consistent with -- it's the same thing as if, God
19 forbid, an expert became incapacitated, right. You wouldn't
20 say, sorry, the Plaintiff lose, they have no expert.

21 Again, we are happy to brief this quickly. I think we
22 do need an answer on this relatively quickly, but the proposal
23 that I am understanding from Mr. McGlamry, it would take your
24 Honor, you know -- it would, frankly, be a waste of time to
25 have to go through multiple Daubert briefs on essentially the

1 people that are saying the same thing, and I think would be
2 confusing, so it is not practical.

3 If we have a chance to brief it, if your Honor wants
4 that, I think you will see what I am suggesting is the absolute
5 norm in MDL practice. Thank you, your Honor.

6 *MR. McGLAMRY:* Your Honor, can I respond?

7 *THE COURT:* Yes.

8 *MR. McGLAMRY:* Again, your Honor, this exact argument,
9 not by Mr. Cheffo, but others on behalf of Defense was made in
10 May, the same proposal made in May, we rejected it. We had a
11 meet and confer with the special master, it was rejected. They
12 never raised it with the Court.

13 The prospect that you could name a number of experts
14 now and go through Daubert -- and, of course, those people on
15 our side, because we put up our experts, they are going to get
16 challenged in their depositions. What they are proposing then
17 is that later they could come back and say, oh, we don't want
18 to use this expert that got cross-examined on a report that was
19 put in timely.

20 I get to get the benefit of all of that, the change of
21 time, the change of evidence, examinations of the other experts
22 and their depositions, and rewrite a report, and now, then --
23 which would force you and us to go back through Daubert
24 because -- just because somebody is the same kind of expert
25 doesn't mean they either have the same background, they utilize

1 the same methodology, they have the same evidence, they have
2 been cross-examined. We have done all that.

3 The point of all that is, they raised this eight plus
4 months ago, if in fact we were going to raise this timely in a
5 way that the Plaintiffs could have taken advantage of that and
6 hold back our people, and sandbag the Defense at a CMC, then we
7 should have done this before. Obviously, whatever the Court
8 wants us to do, we will do, but we thought we had addressed
9 this with Defense counsel and the special master before we
10 designated our experts.

11 *MR. CHEFFO:* The last thing I will say, your Honor,
12 and I will close on this, is that we have had discussions,
13 there is no doubt about that, but the idea -- you are the
14 Article III Judge or Magistrate Judge Reinhart. The idea that
15 we had a meet and confer, and they said we are thinking this is
16 our position and we said that is our position, that is not the
17 end of the story. It's not like we made a motion in some other
18 court or you ruled on it and we are rearguing it.

19 We have made our position clear. We didn't really
20 think this was their position. I think when they think about
21 it, the idea that they have two experts, I think they have two
22 epidemiologists, their position is that will last for 46,000
23 claims doesn't make sense.

24 We have had this discussion, we have been ongoing and
25 we are waiting to see what they did, and I think -- our view is

1 actually consistent with it. I am not going to convince Mr.
2 McGlamry, he is probably not going to convince me. It is an
3 important issue, I don't think we waived it, I don't think we
4 sandbagged. That is what these CMCs are for, to flag some
5 potential issues where reasonable minds see it differently, so
6 that your Honor can give us a thumbs up or thumbs down. That
7 is all I was trying to do.

8 I am not asking for a ruling, I am just previewing it
9 so that your Honor doesn't get a motion and say, what is this.

10 *MR. McGLAMRY:* I have no further comments, your Honor.

11 *THE COURT:* Okay. Does that cover the comments on all
12 of the first agenda item, the discovery, final designation of
13 cancers and expert reports?

14 *MS. FINKEN:* Your Honor, can I make one objection to
15 Mr. Cheffo's characterization of what our experts did or did
16 not say in the reports? Your Honor can certainly have the
17 reports, you can read them yourself to see what the experts do
18 or do not say.

19 I think it was inappropriate to comment on expert
20 opinions and his interpretation of them on the record today.

21 *MR. CHEFFO:* I can read it if you'd like, Ms. Finken.

22 *MS. FINKEN:* Judge Rosenberg can read them herself,
23 she has them.

24 *MR. CHEFFO:* I think I accurately stated where your
25 expert said the evidence was not --

1 *THE COURT:* Again, I think we have had a very good
2 history over almost our two year anniversary of this case
3 coming up soon, that the CMCs are cordial, respectful,
4 professional. Absolutely the parties can disagree. They are
5 not intended to make motions. The Court doesn't render
6 rulings.

7 While we cover substance, it is sort of a certain kind
8 of substance. It is substance as it relates to updates on
9 where we are, and where we need to go, and where we have been,
10 and it is for the benefit of the Court, it is for the benefit
11 of lead counsel, and I would say in large part it is for the
12 benefit of the many other people who attend. We have about 188
13 people who aren't necessarily privy to the day-to-day ongoing
14 of the MDL, despite everyone's effort to try to keep everyone
15 updated in so many ways, through CMCs, through the Court's
16 website, and things of that nature.

17 Suffice it to say that there will be the right day and
18 time to get into the substance of the expert reports. We have
19 PTO 65 that sets out all of the exchange deadlines, the Daubert
20 motion briefing, and no doubt the Court will be hearing
21 argument based on that briefing. So, let's wait for the
22 appropriate time to get into the substance of those issues.

23 And it is fine to flag issues for the Court, that is
24 always helpful, but, you know, the Court is not resolving any
25 issues, clearly not ones that are hotly disputed. So, we will

1 leave those topics at that for now.

2 Was there anything else that you wanted to cover in
3 the first point?

4 *MS. FINKEN:* I don't believe so, your Honor. Thank
5 you.

6 *MR. CHEFFO:* No, your Honor, thank you.

7 *THE COURT:* Terrific. Thank you so much.

8 Yes, PTO 65 was a big day in the MDL, so again for
9 everyone's benefit, the Florida -- Southern District of Florida
10 website has a place, a link where you can go to the MDL Zantac
11 case and it will show you all of the PTOs that have been
12 entered, and it will also -- it has a calendar, so it shows you
13 when anything has been scheduled, and for those who are new
14 with us here today, or don't live and breathe these PTOs, we
15 are now up to 71.

16 PTO 65 is the second amended -- second pretrial order
17 establishing case management schedule, and on January 24th, two
18 days ago, we had several things that were scheduled to occur in
19 that PTO, the completion of all fact discovery of Defendants,
20 including on issues related to general causation, and fact
21 discovery related to class certification, and Plaintiffs'
22 expert reports on general causation and provision of three
23 dates on which each expert is available for deposition.

24 And so, just for those who don't live and breathe this
25 every day, I wanted you to be aware of where that came from.

1 Counsel doesn't need to come back on, but the Court
2 would like to be aware of when those depositions are taking
3 place. So, if we can -- if you can just keep the Court
4 informed as to when the depositions of the experts are taking
5 place, and that would be the same for when Plaintiffs take the
6 depositions of the Defense experts.

7 Those expert reports from the Defense, just to
8 complete the chronology here, is on March 7, 2022, and then
9 March 28th is the Plaintiffs' rebuttal reports, if any, on
10 general causation, and May 31, 2022, is the completion of
11 expert depositions on general causation.

12 Are you going to put together a master schedule? I
13 know you have a schedule that you keep of depositions
14 generally. It would be informative for the Court to kind of
15 know when you are going into your depositions.

16 *MS. FINKEN:* Your Honor, as you are aware and you are
17 referring to, we keep a master interactive schedule with the
18 court reporting agency that handles the depositions, and we
19 will likely be keeping the same type of schedule for the expert
20 depositions.

21 Certainly once we get the dates worked out with
22 Defendants and figure out when they are going to go forward
23 exactly, we can keep your Honor apprized of those dates and
24 when those depositions will be.

25 *THE COURT:* Okay, that would be very helpful. I know

1 sometimes, between counsel's schedule and expert schedules,
2 that that process, just scheduling the depositions, can be very
3 onerous, so I hope that you are getting on it very quickly,
4 setting those dates very quickly. I am not saying when to set
5 the dates, but just to set the dates quickly.

6 Maybe have a backup date should some emergency arise
7 out of anyone's control so you have at least one, maybe two
8 backup dates for each of these experts, because what we don't
9 want to have happen is that a deposition doesn't take place
10 because a date didn't work, because of something outside of
11 someone's control, and that then impacts what the Defendants
12 do, and what the Plaintiffs do again.

13 As you know, I am really trying to ensure that we
14 adhere to the schedule that we have, PTO 65. I know you went
15 through a lot of effort to meet all of the deadlines thus far,
16 and it is the Court's intention, given all the hard work you
17 have put into it, to ensure that we do meet these deadlines.

18 Those are just some helpful hints that I am sure you
19 have already thought of, and have seen fit, but I know Judge
20 Reinhart and I can speak from experience on our end, it is not
21 uncommon to get motions because someone's schedule -- they
22 can't go forward, and it has a domino effect. So, please take
23 care to have backup plans and double backup plans for these
24 depo dates.

25 *MR. CHEFFO:* Your Honor, in fairness, Plaintiffs did

1 give us some dates. It wasn't something I was going to raise
2 because I think we can work it out. Many of them will be fine.
3 There were a few where we thought that they were a little back
4 ended. We haven't had a chance to talk about this yet. To
5 your point, we didn't want to have a situation where someone
6 gets sick or whatever. We will talk about it and we will say,
7 can you move this one over here. I really don't expect there
8 to be an issue with that.

9 I also absolutely agree with Ms. Finken that we will
10 hopefully have a calendar for their depositions and ours, and
11 make sure that your Honors both have access to that.

12 *MS. FINKEN:* Your Honor, to respond to Mr. Cheffo, we
13 are happy to talk about the dates. The dates that we
14 provided -- as you said, we were instructed to provide three
15 dates the expert was available. Once we have a response from
16 Defendants on which date works, we will certainly lock that
17 down.

18 Those dates that we provided were based on the
19 expert's schedule, but as I said, depending on what issue
20 specifically Mr. Cheffo is referring to, to the extent that
21 there is flexibility beyond those three dates, we can work that
22 out.

23 *THE COURT:* It is true that the order says three
24 dates, so this is behind the intent of the order, I guess,
25 which is to do everything you can, and you all are very

1 seasoned, so you know to have that cushion, to have that backup
2 plan. If it means six dates because the three dates are the
3 locked ones, but if something were to happen, we know so and so
4 is available on another date. If it helps for you to
5 communicate with your experts that this is what the Court
6 wishes and also wants to provide -- ensure that there is
7 adequate buffer during the period of time in which Plaintiff is
8 to conduct its depositions, Defendants their depositions, that
9 the experts work with you.

10 You all are busy, so if you can give up dates -- I
11 know the experts can be a little more forthcoming with the
12 dates, I know they are busy.

13 *MS. FINKEN:* They actually have full-time jobs, so
14 they are working around -- besides doing what they are doing
15 for us, consulting, they have hospital and other jobs.

16 They actually have a harder time than we do in getting
17 a date set, but we will work with Defense counsel and try to
18 get this worked out to the extent that there are dates that
19 don't work.

20 *THE COURT:* Okay. We have flagged that as an issue
21 that everybody will pay special attention to.

22 All right. Let us move on to an update on general
23 fact discovery deadline. We talked a little bit about
24 discovery and deadlines, but this will focus us on general fact
25 discovery deadline. I think we have Ms. Finken, Mr. McGlamry,

1 and then we have for Defense Ms. Sharpe. Was anybody else
2 going to join you on this?

3 *MS. SHARPE:* Good afternoon, your Honor. No, our plan
4 is no. If something in particular comes up, I won't promise
5 that somebody else might not pop on to address a question that
6 the Court might have, but the plan is that I will cover it.

7 *THE COURT:* Perfect. Let's hear what the update is on
8 this topic.

9 *MR. McGLAMRY:* Thank you, your Honor. Mike McGlamry
10 for the Plaintiffs. I want to give you a shout out about the
11 Court web page because you said not everybody lives and
12 breathes this every day, but some of us do, and I will tell you
13 that the website is up on my computer at all times, and it is
14 very helpful. Again, I give a shout out.

15 As you mentioned, PTO 65, close of general causation
16 discovery was Monday, the 24th, and as you know and I know
17 Judge Reinhart knows, a lot has gone into the last several
18 months in terms of things to sort of wrap up and deal with and
19 address and that sort of thing.

20 Also, in the original PTO 30 schedule, which then,
21 when you amended it by PTO 65, left in place was an opportunity
22 for the parties to stipulate, if possible, to sort of an
23 extension of discovery or deal with discovery issues beyond
24 that date so long as it did not affect -- adversely affect any
25 of the other timelines going on.

1 And so, we are working on a stipulation, literally, I
2 think we are this close to the exact language of it, with the
3 Defense that lists out each of those topics.

4 A couple of those have already been sort of submitted
5 to the Court as stipulations, for example, the one Patheon
6 manufacturing issue. There are a couple like that, a couple
7 deal with additional depositions to be taken. Of course, we
8 have the Sanofi email issue, you know, that the Court has dealt
9 with, and particularly Judge Reinhart has dealt with over the
10 past several weeks.

11 Essentially, it is about ten items or issues, if you
12 will, three or four of which are by stipulation, and we should
13 be able to get that to the Court in the next day or so that
14 sort of pins all of that down so that, one, the Court knows
15 that we have all agreed that it will not affect any of the
16 timelines or any deadlines, and that this is sort of it, and
17 not, you know, sort of a leakage factor of, well, if this, then
18 that. It will just be those that are in this stipulation.

19 That is why we put -- even though we already had, for
20 example, the Patheon stipulation on file and it is in the
21 record, we went ahead and listed it along with the other.
22 There is also another stipulation, I think, that was filed, I
23 want to say maybe Monday now about some class discovery, and so
24 that is listed. So, there is several of the ten that are not
25 new or different, they are just to make sure there is one place

1 where the Court will see all of it that would remain to be
2 completed.

3 It is not a great deal. It is kind of sort of pinned
4 together loose end types of things as we finish this up, and we
5 appreciate that opportunity to do that, and we will get that
6 stipulation to you soon.

7 *THE COURT:* Okay.

8 *MS. SHARPE:* Good afternoon again, your Honor. This
9 is Paige Sharpe on behalf of Sanofi, but speaking for the brand
10 defendants as well as Patheon with respect to this topic, which
11 I think, happily, I can keep brief because Mr. McGlamry and I
12 are in agreement as to the things that he mentioned.

13 As he said, there are a couple of items here that
14 involve nonparty discovery, and so that has been a little bit
15 more challenging to schedule since they are third parties to
16 the litigation. So, the stipulation, in addition to
17 referencing some additional discrete discovery as to the
18 Defendants, will also reference some nonparties, and in
19 particular Mr. McGlamry referred to subpoenas as to, I think,
20 third party retailers, and a stipulation that has already been
21 entered on the Court's docket.

22 The one additional thing I would underscore is that
23 the parties have agreed that these extensions don't affect the
24 expert discovery deadline. That is what PTO 30 provides for,
25 is that the parties can reach agreement as to discovery

1 extensions that do not impact non-discovery deadlines. I did
2 want to make sure that your Honor is aware of that and we are
3 proceeding under the order otherwise as to experts.

4 *THE COURT:* I appreciate that, and it makes it all the
5 better that you are agreeing to what limited scope of
6 additional work, nonparty discovery you anticipate.

7 It becomes more problematic when you are fighting
8 about whether you can do it, and if you can do it, what you
9 should be doing, but it sounds like what I am hearing is that
10 all parties agree certain limited nonparty fact discovery still
11 needs to be conducted, you are working together, you have
12 identified what it is, you have a time frame for doing it, it
13 exceeds the January 24 deadline for fact discovery Defendants,
14 but you are in agreement.

15 You are furthermore in agreement that none of this
16 discovery, regardless of what you uncover or don't uncover,
17 will in any way impact any of the deadlines that are following
18 January 24 in PTO 65, and you are going to memorialize that in
19 a stipulation that what, you will file with the Court?

20 *MR. McGLAMRY:* That is correct, your Honor. It is
21 intended, like I said, to give the Court a complete rundown of
22 all the particular issues, and they are, you know -- for
23 example, as I mentioned, there are a couple that deal with some
24 additional depositions that are being taken. I believe they
25 have been scheduled, I can't tell you for absolute sure, but

1 again, those are coming up, and so, it is not going to affect
2 any other sort of deadline.

3 Experts or otherwise, motions, Bellwether, all of that
4 is absolutely sort of separate. We just are kind of finishing
5 these things up, and just wanted to make sure you had it all in
6 one spot.

7 *THE COURT:* Okay, terrific. Thank you so much.

8 *MR. McGLAMRY:* Thank you, your Honor. Thank you,
9 Magistrate Judge Reinhart.

10 *THE COURT:* Okay. The next topic is the Bellwether
11 process. We have Mr. Pulaski, Mr. Bayman, and Ms. Zousmer to
12 address that.

13 And again, by way of orientation, we have the
14 Bellwether selection order that is on the website. It is
15 pretrial order number 69, which outlines the Bellwether process
16 as it -- you know, as to the subject matter that it covers. I
17 am not suggesting that it covers everything related to
18 Bellwether, but it covers the selection process and getting us
19 up to a certain point in time, after which the Court indicated,
20 I believe, in the order toward the end -- in fact at the very
21 last page, on page 11, the Court indicated that "The Court
22 recognizes the importance of the Bellwether trials for all
23 parties and believes that various factors may help to inform
24 the Court as to the manner in which cases should be prepared
25 for Bellwether trials.

1 "The Court anticipates setting a hearing immediately
2 after issuing its last Daubert ruling to discuss with the
3 parties the additional procedures and the schedule that will
4 lead to the beginning of the first personal injury Bellwether
5 trial in this MDL. The parties have represented that they will
6 be ready to commence the first Bellwether trial in the summer
7 of 2023, if not sooner, and the Court is prepared to preside
8 over this trial at the earliest appropriate date."

9 That order was entered the 19th day of November.

10 With that, let's get an update on our Bellwether
11 process.

12 *MR. PULASKI:* Thank you, your Honor, Adam Pulaski for
13 the Plaintiffs.

14 At this point, we have come to the initial phase of
15 the Bellwether process, and we have selected 400 individuals to
16 be in the initial discovery pool for the Bellwether process.
17 In that regard, we have potential Bellwether trial picks who
18 are now submitting medical authorizations to Marker, who is the
19 provider with the Defense we have agreed to, and are well
20 underway with submitting all of those.

21 We had some delays in some of the submissions to
22 Marker with respect to some clients where there were deceased
23 individuals involved. I think the Court is aware of that,
24 where we have set up a process now to file those cases at a
25 later date.

1 In addition to that, we had an issue with respect to
2 submitting medical authorizations because we didn't have the
3 proper representative to file the medical authorizations
4 without an estate being completed. So, the end of last year,
5 December 23rd, PTO 18, which this Court has entered into that
6 allows for incapacitated and deceased individuals to obtain
7 medical records without having a probate complete, was revised
8 and now, after a little bit of delay we have -- yesterday we
9 had a webinar with some 400 attorneys on it.

10 Everybody is under -- aware that they need to use PTO
11 18 to assist in that regard because we can get the medical
12 authorizations signed quickly. Our message to the Plaintiffs'
13 Bar yesterday was to try and get all that finished in ten days
14 and submitted to Marker for those individuals that have not
15 already submitted the medical authorizations to date.

16 Now, I am sure Mr. Bayman and Ms. Zousmer have some
17 comments, but we will be on our way towards a different
18 process, which is a selection, deselection process for those
19 individuals who either didn't qualify for one reason or another
20 to be a Bellwether candidate, or who may fail to complete a
21 step and the Defendants will have a substitution right, and we
22 will be discussing those.

23 There will be another randomization for some people
24 where the cancers were improperly noted. As Mr. Bayman stated
25 earlier, we had some people with multiple types of cancers, and

1 so, when they were chosen for a particular cancer in the
2 Bellwether process, it may have been a secondary cancer and not
3 the primary cancer, so we had a discussion yesterday with Mr.
4 Bayman, Ms. Zousmer, and Special Master Dodge. We plan on
5 having weekly calls with them to keep up with the process to
6 make sure everything runs smoothly.

7 Now that we also have our de-designations of cancers
8 from yesterday, we will have a number of these Bellwether
9 claimants actually be removed from the Bellwether process
10 because their cancer is no longer designated in the MDL.

11 I think that covers the bulk of what is going on with
12 the Bellwether process right now, and I will turn it over to
13 Mr. Bayman and Ms. Zousmer to fill you in on things from their
14 perspective.

15 *THE COURT:* Let me -- to confirm based on the order,
16 and I am sorry if you said it and I overlooked it, that you are
17 going to, starting on February 1st, so that is just next
18 week -- well, you've agreed upon the form of the CPF Bellwether
19 supplement, the census plus form, Bellwether supplement, that
20 would have been done by December 3rd. And starting on February
21 1 and continuing on a rolling basis through April 30, each
22 Plaintiff in the initial discovery pool will be serving
23 electronically via LMI a complete CPF Bellwether supplement
24 executed under oath by the Plaintiff?

25 *MR. PULASKI:* That is correct, your Honor. For those

1 listening in on the Plaintiffs' side of things, a CPF
2 supplement is somewhat akin to a fact sheet and it will need to
3 be entered into and certified and turned in prior to that date.

4 *THE COURT:* Okay, thanks.

5 All right. From the Defense.

6 *MR. BAYMAN:* Good afternoon, your Honor, Andrew Bayman
7 on behalf of the Defendants, and along with my colleague, my
8 partner, Julia Zousmer. Ms. Zousmer is going to cover
9 developments since the last CMC and the entry of your pretrial
10 order, flag a few issues, and then I am going to flag a few
11 issues going forward.

12 So let me turn it over to her.

13 *MS. ZOUSMER:* Good afternoon, your Honor, Julia
14 Zousmer for Defendants.

15 There was mention earlier about living and breathing
16 this MDL every day, and certainly with respect to the
17 Bellwether process, that is something Mr. Pulaski, Mr. Bayman
18 and I and others have been doing and I appreciate this
19 opportunity to walk through in a little bit more detail the
20 developments since the last CMC.

21 The process that this Court ordered under PTO 69 has
22 gotten well under way, starting in November with the
23 authorizations packet that the parties negotiated and agreed
24 upon, and then about six weeks ago, on December 10th, the
25 randomization of 336 initial discovery pool Plaintiffs across

1 the eight cancer types that Plaintiffs' leadership counsel had
2 disclosed their intent to litigate as of that time.

3 Randomization was a smooth and efficient process, and
4 upon selection of the 336 cases, Plaintiff subsequently
5 discovered that 70 of those Plaintiffs were deceased, and with
6 one or two exceptions, had not begun the probate process yet.

7 As your Honor knows, and as Mr. Pulaski made a
8 reference to, the parties negotiated a PTO to accommodate the
9 need for those Plaintiffs to have extra time to undergo the
10 probate process and open estates so that they could file their
11 short form complaints.

12 With respect to the living Plaintiffs who were
13 selected for the pool, those Plaintiffs got their short form
14 complaints in by the Court's PTO 69 deadline, which was
15 December 16th. And your Honor entered PTO 70 and the amended
16 PTO 18 that Mr. Pulaski referred to keeping the other deadlines
17 intact for the deceased Plaintiffs and providing the process
18 for appointment of limited purpose representatives authorized
19 to execute the medical records authorization forms on behalf of
20 deceased Plaintiffs so the process could move forward.

21 Those authorizations were due in all cases by
22 January 14th, which Mr. Pulaski mentioned there were some
23 delays.

24 As your Honor heard, also yesterday the Plaintiffs
25 disclosed general causation experts for five cancers they

1 intend to continue to litigate through the Daubert stage of
2 this MDL, so that changes the number of Bellwether Plaintiffs
3 in the pool from the 336 who were randomly selected in December
4 to 147 Plaintiffs across the five remaining cancer types who
5 allege -- I think there are 47 Plaintiffs who will be in the
6 bladder cancer pool, and then 25 Plaintiffs each in the
7 esophageal, liver, pancreatic, and stomach cancer pools. 97 of
8 the 147 Plaintiffs are living and 50 are deceased.

9 As your Honor has also mentioned, a CPF supplement is
10 next on the horizon, and there is a deadline for that on a
11 rolling basis from February 1st to April 30th. We did work
12 hard and agree on the form of that CPF supplement and we worked
13 with LMI on the implementation of the form, so we are hopeful
14 and optimistic that those will be ready and submitted on a
15 rolling basis soon.

16 Then we will use what we learn from those CPF
17 Bellwether supplements and the records that are going to be
18 collected to vet the cases for eligibility criteria that we
19 will agree on by March 1st, pursuant to the Court's order. I
20 think Mr. Pulaski referred to that as the selection,
21 deselection process, which I think the Court's order refers to
22 as the vetting for eligibility criteria.

23 So, we have had a few busy months behind us and have
24 more of them ahead, and look forward to it, and with that, I
25 turn it over to Mr. Bayman.

1 *THE COURT:* Thank you. Let me ask a quick question.

2 Is it fair to say that coming upon the number of --
3 well, I was going to say the number of deceased persons who
4 made it past the randomizer, coupled with the change going from
5 the eight to the five designated cancers, that hasn't in any
6 material way changed the intent of how the Bellwether selection
7 process was to unfold.

8 Is that a fair characterization, or are you still
9 evaluating that?

10 *MS. ZOUSMER:* I think there is one change that comes
11 to mind for the Bellwether process, the intent of the
12 Bellwether process that I can think of, which is that for
13 the unfiled claimants in the pool, the intent was always that
14 the Court's order -- the Court would have jurisdiction over
15 those Plaintiffs right away because they would file short form
16 complaints by December 16th, so that was five days or six days
17 after they were selected.

18 That, I think, gave the Court comfort that for the
19 Plaintiffs who didn't comply with aspects of the order, you
20 would have jurisdiction to dismiss those cases if we filed a
21 motion, or to require those claimants to do whatever it is the
22 Court wanted to require them to do, and now we have this period
23 until March 10th where we don't have short form complaints for
24 Plaintiffs who are selected for the Bellwether pool.

25 That is a practical change in the intent of the

1 process that I think the deceased Plaintiff issue brought to
2 light.

3 *THE COURT:* Okay. All right. Thank you.

4 *MR. BAYMAN:* Your Honor, I just wanted to highlight
5 for the Court an issue that recently came to our attention that
6 I think has some implications for the schedule.

7 As Ms. Zousmer said, the parties negotiated and agreed
8 to authorizations in November per pretrial order 69. Pretrial
9 order 69 also requires that the initial discovery pool
10 Plaintiffs submit authorizations and healthcare provider lists
11 by January 14, 2022.

12 As Ms. Zousmer mentioned, there are now 147 Plaintiffs
13 in the initial discovery pool for the five cancers. Of those
14 147 Plaintiffs, 61 Plaintiffs did not submit authorizations and
15 medical provider lists as required by PTO 69, and it wasn't
16 just -- Mr. Pulaski mentioned the issues with the deceased
17 Plaintiffs. It was not just deceased Plaintiffs, there were 44
18 deceased Plaintiffs, but 17 living Plaintiffs who did not
19 submit authorizations. That is 42 percent of the pool.

20 This was something that was agreed to in November, and
21 to be clear, this is not a deficiency, your Honor, in the
22 authorizations or the treater lists, that review is going on
23 right now; this is a failure to submit an authorization at all.

24 We were not made aware of that, Plaintiffs did not ask
25 us for an extension of the deadline, they didn't tell us they

1 had a problem meeting it until we inquired late last week of
2 Mr. Pulaski about whether everyone had gotten their
3 authorizations in. So, we went directly to LMI and to Marker
4 to find out this data.

5 This is an aggressive Bellwether schedule, your Honor.
6 As you said earlier, you want a trial in the summer of 2023.
7 In order for this to work the deadlines need to be met and this
8 is an aggressive schedule that the Plaintiffs wanted.

9 Collecting medical records and using them to vet
10 eligibility is essential to the process that cannot be
11 completed without the authorizations. Records collection takes
12 a lot of time, it takes more time now due to the COVID related
13 delays, and so this already tight schedule for collection has
14 been made tighter by -- Mr. Pulaski says they hope to have for
15 the deceased Plaintiffs the authorizations in ten days, but we
16 have already lost time on these 61 Bellwether Plaintiffs who
17 failed to provide even a signature for an authorization.

18 I am not here to argue a motion asking for relief. I
19 am certainly going to meet and confer with Mr. Pulaski about
20 what we do about this problem, but it is a concern that we
21 have, how it implicates the scheduling. We need to decide what
22 we do with these Plaintiffs, whether they continue to remain or
23 whether they be dismissed, but we will meet and confer with Mr.
24 Pulaski about that.

25 He also mentioned the multiple cancer types. These

1 are Plaintiffs who have not been able to identify a primary
2 cancer, whether they have multiple cancers which may have been
3 a metastasis, but they have not been able to identify a primary
4 cancer. We are meeting and conferring with Mr. Pulaski and Ms.
5 Boldt about what to do about those, but I just wanted to flag
6 those issues for the Court.

7 *MR. PULASKI:* Your Honor, if I may respond to that.

8 One, with respect to PTO 18, which was vital to be
9 able to order the medical records for the Defendants, because
10 of some issues, as the Court is well aware of, PTO 18 wasn't
11 finalized until December 23rd, right before the holidays, and
12 it wasn't until after the holidays that we actually took a look
13 at it.

14 When it came out on the Court's docket, it came out as
15 it usually has with forms attached, as it was before in PTO 15,
16 PTO 36, and other PTOs where the forms related to those were
17 attached. It was not attached, and so when people went to look
18 for the form, it wasn't there as they had been used to. We
19 didn't realize that until a little while after and got with,
20 through Special Master Dodge, the Court and corrected that.

21 Again, we had our webinar yesterday, after meeting and
22 conferring already, which Mr. Bayman failed to let you know
23 that we did meet and confer either yesterday or the day before
24 on this topic, discussed this topic. I thought we had resolved
25 this topic with Mr. Bayman and Ms. Zousmer.

1 If this is an attempt to somehow further delay a trial
2 setting, I find it distasteful. We are early on in this
3 process and we have done everything now we can to correct the
4 problem, at least as to Plaintiffs. We did not know they were
5 going to be Bellwether claimants and they just learned of that
6 in December.

7 There is a process in place, as Ms. Zousmer said. We
8 have already entered a PTO and your Honor has entered a PTO in
9 that regard, and in my mind, this very short delay in ordering
10 of medical records is not going to hinder this process at all.

11 I am happy to meet again with Ms. Zousmer and Mr.
12 Bayman to discuss this problem in great detail, in great
13 length, and I assure you, as always, I will make sure that when
14 discussing with them we will do everything possible to make
15 sure everything is done expeditiously and on time.

16 *THE COURT:* Thank you. I appreciate that and I don't
17 doubt that.

18 First of all, Docket Entry 4921 is where PTO 69 is
19 filed. One of the reason that we have a website is so that
20 none of us, let alone persons not -- I am sorry, let's see.

21 The amended PTO 18 is 4921, that is what I want to be
22 clear on. We have many docket entries, so we are well in
23 excess of that now.

24 One of the reasons that we have a website is so we can
25 find a more expeditious way to sometimes get our hands on a

1 PTO.

2 As we all know, and should be very clear on the record
3 for those here with us today -- and it says so right on the
4 website to be quite honest, it is not intended to take the
5 place of the -- of the docket. In fact, it says that the most
6 accurate source -- well, for scheduled hearings is Pacer, and I
7 think it also says somewhere -- but certainly the intent is
8 that the docket is always the most accurate place where orders
9 are and, for example, the Court's substantive orders don't
10 appear on the website, all of the orders on the Motions to
11 Dismiss, for example. These are intended to capture the
12 pretrial orders.

13 The actual amended PTO 18, which is at Docket Entry
14 4921, did have the attachment. No fault of anyone's if you
15 didn't think to look there, but I am using this as hopefully a
16 helpful reminder that if you see something that maybe doesn't
17 look right on the website, and we try to be very accurate, what
18 happened was, the attachments weren't uploaded to the website.
19 We do that manually ourselves, believe it or not, right in
20 house to try to make it helpful for everybody.

21 You wouldn't have necessarily known, because you have
22 every reason to be reliant upon the website as being accurate,
23 but I just want to remind everyone that nothing replaces the
24 actual Docket Entry itself. Should something like that happen
25 again, you did exactly the right thing by reaching out to the

1 special master, but if you want even a more expedited response,
2 you could go to the DE, the Docket Entry, to see if it was
3 there, and it was there.

4 Not a big deal, but I want to remind you and everyone
5 else that nothing really replaces the actual record, the docket
6 in this case, not even the very well designed website that we
7 put together, but we are not web designers or techies, so to
8 speak, we are just trying to do the best we can.

9 The other thing I wanted to comment on is that it is
10 important that we keep on the schedule. I trust that you all
11 will arrive at the right balance between the need to plan for
12 and accommodate certain unexpected things that can occur. So,
13 right now we are talking about medical authorizations and some
14 things that didn't necessarily go as planned, and how things
15 were working with the deceased and having to amend PTO 18, but
16 the order does say what it says. Every order has to say
17 something, it has to usually have a deadline and is there for a
18 reason.

19 As you know, almost every PTO I enter is jointly
20 agreed to by all the parties, this one is no different. I
21 might have amended it slightly, but in essence, it conveys what
22 you wanted it to convey. I believe that that is the best way
23 to proceed because you know the case best and you are really
24 invested in picking the right date, so I trust you.

25 So, the date for the authorization was, rolling basis,

1 December 15th to January 14th, and then things start happening
2 after that, including the, you know, CPF Bellwether supplement
3 from February 1 to April 30. There is a process in place for
4 correcting deficiencies. We even built in Defendants give
5 Plaintiffs notice, within five days the Plaintiff -- the notice
6 within five days of the deficiency, and the Plaintiffs can
7 correct the deficiencies within two weeks.

8 I think we are still within that two-week period, but
9 ultimately the Defendants can move to dismiss the case of any
10 Plaintiff who has not timely served non-deficiency signed
11 authorizations and a non-deficient list of medical providers.

12 Those deadlines are there for a reason. It is not to
13 just be unreasonable. I think everyone was staging those
14 deadlines to get to the ultimate goal of the Bellwether trials.

15 In your negotiations, in your discussions everyone
16 should be mindful of what the vision was, what the purpose was,
17 and we don't want to be scrambling at the end. The last thing
18 we want to find ourselves in is a position where we are ready
19 to set schedules for Bellwether trials and we don't have any
20 Bellwether trials because everything fell apart, we didn't
21 catch it in time.

22 So, let's catch these things early, and if you need to
23 come back to the Court because the Court has to fix something,
24 not changing deadlines -- I am committed to these deadlines
25 because you were committed to these deadlines -- then bring it

1 to the Court's attention sooner rather than later. Just like
2 we were talking about with PTO 65 and not wanting anything to
3 impact those expert deadlines and Daubert deadlines, I feel the
4 same way about Bellwether.

5 That is all I will say on it, but I think you all
6 agree, but I want to impress upon you how important I view
7 those deadlines as being integral to making the whole process
8 work.

9 *MR. PULASKI:* I appreciate it, Judge, and your website
10 is so good that our illustrious liaison, Francisco Maderal,
11 attaches a copy to that link at the bottom of every email we
12 send out to the Plaintiffs' Bar. We will correct that in the
13 future.

14 *MS. ZOUSMER:* I just want to clarify one thing. I
15 know that Mr. Bayman already said that we planned to meet and
16 confer with Mr. Pulaski about these cases that missed the
17 deadline, but from our perspective, the two-week period that
18 you mentioned for the deficiency review and then notification
19 to Plaintiffs and having them correct the deficiencies, that
20 contemplates a different situation than just not submitting
21 anything at all.

22 Marker, right now -- Marker Group, the vendor who is
23 undertaking that deficiency review, hasn't completed that
24 process yet for the Plaintiffs who did submit their medical
25 record authorizations. That is happening now and we will

1 notify the Plaintiffs within five days, as required, and we
2 expect that they will correct their deficiencies within two
3 weeks. This is a separate sort of unanticipated situation by
4 the order where Plaintiffs have not submitted anything for the
5 61 cases that Mr. Bayman referenced.

6 Like you said, we are going to meet and confer about
7 those, but I wanted to clarify that it is a different process
8 or discussion that we need to have about these cases.

9 *THE COURT:* Got it. I appreciate that. If, after
10 meet and conferral, for whatever reason you can't come to an
11 agreement, I think you should raise it to the Court sooner
12 rather than later so I can be helpful in bringing clarity so we
13 could just move on.

14 *MR. BAYMAN:* We will do that, your Honor. One point
15 of further clarification, Mr. Pulaski, we did talk to him last
16 week, but what we talked about was the deceased Plaintiffs. We
17 didn't find out until this week through our own efforts that
18 there are 17 living Plaintiffs who never submitted
19 authorizations.

20 I understand the issues, the complexity caused with
21 the deceased Plaintiffs, but this is not just an issue of
22 deceased Plaintiffs, this is an issue of the living Plaintiffs
23 and we need to meet and confer about that.

24 *MR. PULASKI:* Real quick, I will let you know, Andy,
25 because some of those people have passed away along the way, so

1 they are now deceased, which is what part of the problem is.
2 Unfortunately, our clients are passing away daily and it
3 becomes comes an issue, but thank you.

4 *THE COURT:* Okay. Is that everything that everyone
5 wanted to say on Bellwether process?

6 *MS. ZOUSMER:* Yes.

7 *MR. PULASKI:* Yes, your Honor.

8 *MR. BAYMAN:* Thank you, yes.

9 *THE COURT:* Okay, thank you so much for all your work
10 on this and for the update. I appreciate it.

11 The next topic is the registry because we will never
12 have a CMC without talking about the registry. Mr. Pulaski can
13 stay on, and Mr. Petrosinelli will come on, and let's get an
14 update on the registry.

15 *MR. PULASKI:* Thank you, Judge. As you know, and this
16 has been discussed several times over the course of this CMC
17 already, we have de-designated a few cancers, and we continue
18 to have additional claimants enter the registry that were both
19 for designated and non-designated cancers, with 160,000ish
20 claimants in the registry.

21 I think maybe Mr. Cheffo's numbers were a little bit
22 off, but they were close. Let's say somewhere around 50,000
23 claimants in the registry are ones that allege an injury that
24 is one of the designated cancers. I think it's a little bit
25 over 30 percent, 32 percent or something at this point.

1 The registry is being used in great detail and is used
2 often now as we get into the Bellwether process for a number of
3 issues related to where clients live, or how long they used the
4 product both by the Defense and by the Plaintiffs' Bar. I
5 think it is working out very well for us.

6 I know right now we are discussing certain items
7 between ourselves and the Defense and with this Court with
8 respect to a process of updating and the timing of updates for
9 the CPFs and, you know, it has been a great tool. I continue
10 to work with LMI, who is our vendor in that regard, often with
11 respect to that, and it has also allowed us, both the
12 Plaintiffs and Defense Bar, to resolve matters by getting some
13 questions answered through the registry process that we
14 wouldn't otherwise have. It allowed us to resolve some
15 differences we have had with each other along the way.

16 Other than that, there is not a lot to update with
17 respect to the registry process that I can think of off the top
18 of my head, but Mr. Petrosinelli may have some of his own.

19 *THE COURT:* Thank you.

20 *MR. PETROSINELLI:* Good afternoon, your Honor, Joe
21 Petrosinelli for the Defendants. It is 20 degrees in
22 Washington today, so we are despondent that we are not in Palm
23 Beach. For Judge Reinhart's benefit, it is probably colder in
24 Philadelphia.

25 I think that Mr. Pulaski is right, we are entering now

1 a new phase with the registry because with the designated
2 cancers having been designated, as Mr. Pulaski said, we sort of
3 instantaneously were able to figure out how many are in the
4 registry and what is the breakdown of those cases in terms of
5 geographic or other things which are useful.

6 I do think, as Mr. Pulaski said, and as the Court
7 knows, because we are entering this new phase that we now know
8 which of the designated cancers are being pursued in the MDL
9 and which are not, will have -- we will be talking about and
10 probably submitting to the Court proposed orders for how to
11 deal with that situation going forward.

12 As Mr. Pulaski said, one of the things that always was
13 contemplated, particularly as we get to this stage, is sort of
14 trueing up the forms, ensuring accuracy going forward, and
15 trying to figure out how different claims are treated depending
16 on whether they are designated or non-designated cancers.

17 So, I would expect that surely by the time of the next
18 conference, but I am hoping well before that, we will have
19 other orders to propose to the Court to address those things.

20 I think other than that, as Mr. Pulaski says, it is
21 going along well and as planned, and we'll obviously have more
22 to report by the time of the next conference.

23 *THE COURT:* Thank you. Well, I want to continue to
24 applaud the efforts not only of lead counsel here on the Zoom,
25 but all counsel who have committed to the registry.

1 The registry is a unique feature of this MDL. There
2 are a couple of other MDLs that have used a registry in a
3 slightly similar, but also slightly different, perhaps not as
4 robust a way as in this case, so in many ways it has been learn
5 as you go. With any process where you are learning as you go
6 along, no one has paved the way for you, so there has been a
7 lot of hard work on everyone's part to figure this thing out,
8 and to make it work.

9 I continue to believe in the wisdom that the parties
10 had in setting it up. I recognize it has created some
11 unexpected difficulties and hurdles, and at times maybe you
12 wish you could throw your hands up and say, why did we do this
13 to begin with, but just in this one CMC -- and this happens in
14 every CMC -- in the topics that we have covered, for example in
15 Bellwether, with designated cancers, in what other world would
16 you be able to put a Bellwether process together in the way
17 that you have been able put it together?

18 In what other world would you be able -- the
19 designated cancers just came out two days ago, and be able to
20 immediately say, okay, of the 160, 50,000 fall within the five,
21 and of the 50,000, about 80 percent are likely Federal claims.
22 That is just sort of the surface information, the value of
23 information at the very surface that both the Plaintiffs and
24 the Defense have been able to glean from this registry.

25 So, I -- the fact that you are able to keep things

1 somewhat contained within the MDL and the registry, I
2 understand and it is probably a nice segue into the last topic
3 for today, which is State, Federal, but of course there are
4 other cases going on, but I believe most of your energies can
5 be and are focused on the MDL where most of the cases are filed
6 or unfiled, so you are not expending energy, you are not
7 expending inordinate resources running around the country
8 litigating.

9 You're empowered with knowledge about your filed and
10 unfiled claims and you've -- each side has had to make
11 concessions and you continue to have to make concessions, but
12 the concessions, in my view, have benefits for both sides.
13 Only you can make the concessions, you are doing the work. The
14 Court can't order you to make concessions, you can do it, and
15 you can do it because it is in the best interest of your
16 clients from a cost standpoint if for no other reason.

17 So, I applaud the parties for continuing to stick with
18 it, to make it work, to make the concessions, which I know you
19 know are in your client's best interest, and you have spent
20 many, many hours trying to perfect a model that continues to
21 serve us throughout the duration of the litigation, so I thank
22 you for your efforts.

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

24 *THE COURT:* Okay. So, State, Federal, speaking of
25 other litigation, Mr. Gilbert, Mr. Pulaski, and Mr. Agneshwar.

1 Yes, that is who I had as the speakers list.

2 *MR. AGNESHWAR:* Good afternoon, your Honor. Typically
3 I go first, Defense goes first. Bobby, if you want to go, that
4 is fine.

5 *MR. GILBERT:* I am going to turn it over to Mr.
6 Pulaski, and he will be happy to make the presentation now.

7 *MR. PULASKI:* Anand, please go ahead and we will
8 follow up, as we discussed.

9 *THE COURT:* Wow, you all are being so amenable here.
10 We'll just freeze this moment in time here. You always are.

11 Mr. Agneshwar, you can take the lead.

12 *MR. AGNESHWAR:* First I want to echo Mr.
13 Petrosinelli's comment. I walked out this morning and the wind
14 chill made it like minus 5 degrees, and I thought to myself,
15 aren't I supposed to be in West Palm Beach right now.

16 *THE COURT:* Well, I won't tell you what the
17 temperature is because it is significantly warmer than where
18 you are, but when I came to work this morning, and I don't have
19 any windows in the courtroom, it was raining, so it was a
20 miserable -- it is a warm day, but it's a rainy day. It is not
21 like you could head to the beach after the CMC or anything like
22 that.

23 *MR. AGNESHWAR:* I am sure it will be nice tomorrow.

24 I was going to present a deck, but I feel like
25 everything has been going so smoothly, I will just talk through

1 it, and as I have been doing, I will be happy to provide the
2 deck and the updated chart to your Honor and to Plaintiffs'
3 counsel when this is over.

4 *THE COURT:* Yes, I would like that, I like that deck.

5 *MR. AGNESHWAR:* No problem at all.

6 The big things going on are in California and in
7 Madison County, Illinois.

8 In California, we have a trial date of October 2003,
9 (sic) and we expect to go through Sargon hearings in the summer
10 and fall of 2022, really kind of right on the heels as the
11 Daubert hearings are going to be going on here, so I do think
12 there is an opportunity for some coordination that -- we are
13 doing general causation here, that will be both general and
14 specific causation.

15 The Court knows that the Cal JCCP cases are pending in
16 Alameda County and have been assigned to Judge Grillo. I think
17 your Honor might have mentioned that you have spoken to Judge
18 Grillo.

19 *THE COURT:* I have. I have.

20 *MR. AGNESHWAR:* We are having a Science Day on
21 February 28, 2022. There was a dispute between us and the
22 Plaintiffs about whether to coordinate with the MDL. We ended
23 up -- the Judge ended up scheduling his own day, and that is
24 going to be in a few weeks, but it is going to follow a similar
25 format, two and a half hours for the Defendants and two and a

1 half hours for the Plaintiffs.

2 We are getting ready for that now, we are in the midst
3 of discovery, and we are talking with Plaintiffs' counsel about
4 coordination and those discussions are going on, so nothing to
5 raise with your Honor just yet, but we will keep you posted as
6 things go forward in that litigation.

7 The other big litigation that is going on that is on
8 our radar is in Madison County, Illinois. This particular case
9 was filed by Mr. Keller, and it's a two-Plaintiff case filed in
10 Madison County. It has been assigned to Judge Sarah Smith, I
11 believe we provided your Honor her contact information as well.

12 We are going through Motions to Dismiss in that case
13 right now, and there are going to be hearings on January 28,
14 just a few days from now, it will be hearings on Motions to
15 Dismiss, and that case actually has an August 22nd trial.

16 There is a motion that we filed to sever or transfer
17 one of the Plaintiffs who we don't think belongs in Madison
18 County, and that is going to be adjudicated at some point, I
19 don't believe on January 28th.

20 We are now in negotiations with Mr. Keller on the
21 scope of discovery in that litigation, but it is headed for
22 trial right around the same time as the Daubert hearing is
23 going on, at least as things stand right now.

24 *THE COURT:* Well, I guess on that point, sometimes
25 there are trial dates and then they get moved or whatnot, but I

1 think it is fair to say that as you get closer to that date and
2 you have a level of certainty, this would be for the Plaintiffs
3 as well, as to another trial date that would involve counsel
4 who would otherwise be involved in arguing Daubert motions, to
5 the extent the Court sets hearings, I would want to know as
6 soon as you know by way of a notice so that I can schedule
7 hearings in a way that doesn't put anybody in a position where
8 they have to be in two places at the same time.

9 MR. AGNESHWAR: Yes, absolutely, will do, your Honor.

10 There is also a number of cases that Mr. Keller has
11 filed in Pennsylvania, some of those remain in State Court,
12 some of those have been removed to Federal Court, and I believe
13 most of the ones that have been removed are now before your
14 Honor. We are in discussion with Plaintiffs' counsel about
15 that, some of that is tied into the PTO 15 issue.

16 So far, the cases that have received scheduling
17 orders, those are into the end of 2023, so nothing that is
18 imminent on the horizon in that litigation.

19 Also, we have Tennessee that I have reported on
20 before. There is not a whole lot new. There is Hamilton
21 County and Shelby County, which is Chattanooga and Memphis
22 respectively. In both of those cases the Court's are generally
23 following along the MDL schedule. We have expert interrogatory
24 responses from the Plaintiffs due in both litigations at the
25 end of February, and that triggers reports from us, and we are

1 going through discovery right now in those litigations.

2 Other than that, there is like a handful of other
3 cases around the country, New York, Maryland, new Mexico, and
4 in Cook County, Illinois, but nothing that -- no updates,
5 really, since last time I spoke, and we can provide those on --
6 the updates on the charts that we provide your Honor.

7 *THE COURT:* Yes, thank you. I do find those charts
8 helpful just to get the big picture of what is going on where
9 and in front of whom. Whenever I have had communications with
10 other judges, it is really productive, and I can say that they
11 always appreciate knowing what is going on in the MDL.

12 I try to just tell them what is happening and let them
13 know about the website and things of that nature so that they
14 are informed, and I know they really appreciate it. I really
15 would not be able to do that easily without getting these
16 regular updates to know who the other judges are and the nature
17 of the cases they are presiding over, so I appreciate that.

18 *MR. AGNESHWAR:* Absolutely, your Honor. That is all I
19 have. I will turn it over to Mr. Pulaski or Mr. Gilbert.

20 *MR. PULASKI:* Thank you, Mr. Agneshwar. Adam Pulaski
21 for the Plaintiffs.

22 While most of what Mr. Agneshwar said I am in
23 agreement with, as it relates to the California JCCP, they have
24 different experts. We are not officially coordinating with
25 them in any effort because of the differences we have in our

1 litigations, and certainly right now there is no coordinated
2 effort for serious work together at this point because of all
3 the differences.

4 So, they are moving forward on their own schedule, we
5 are moving forward on our own schedule, and everybody on our
6 side seems perfectly okay with that at this time.

7 As it relates to the cases filed in Madison County,
8 and elsewhere in Illinois, and in Pennsylvania, I know Mr.
9 Agneshwar continued to bring up Mr. Keller's filing in the
10 Southern District of Illinois and also in Pennsylvania. There
11 are a number of other claims filed in Pennsylvania by other
12 attorneys besides Mr. Keller, and I know some of those are
13 going to be asking for expedited trial settings.

14 They may not have done that yet, or that may not be on
15 the docket yet, but I know that is upcoming, and we will notify
16 the Court as soon as we find out when that may be, and if those
17 expedited trial settings are granted.

18 Again, as Mr. Agneshwar stated, there are cases in New
19 York, I know there are going to be a few more cases filed in
20 New York by some parties that have called us, and I will notify
21 the Court, or we will notify the Court as soon as we find out.

22 Finally, in a little bit more of a detailed
23 discussion, as we are coordinating with those in Philadelphia
24 and the Southern District of Illinois and in New York, there
25 has been a question, and not to put the Court on the spot or

1 suggest I need an answer right now, but there have been
2 questions asked by all four lead counsel on our side as to the
3 remand motions that are pending, and everybody is anxiously
4 awaiting rulings on those.

5 I don't know what the Court's time frame is on that,
6 but certainly I know that we would be more than happy to deal
7 with that sooner rather than later, and that would be the last
8 thing I have on State and Federal, if your Honor has any
9 insight into the Court's position there.

10 *THE COURT:* Yes. No, the orders will go out very,
11 very soon.

12 As you know, two of them have been held up -- one of
13 them only just became ripe, and I don't rule on motions until
14 they are ripe, and the one that just became ripe, the order
15 will go out very shortly.

16 There were two where issues were raised that were
17 related to matters that the parties had been discussing, and I
18 actually was waiting to, quite frankly, hear what -- so there
19 are three of them, and so one just became ripe, doesn't relate
20 to issues the parties have been working on, and that order
21 should go out shortly, and that just became ripe.

22 The other two have been very much intertwined with
23 some ongoing discussions that the parties have been having, and
24 so I have really been deferential to not stepping on the toes
25 of the parties on those issues.

1 And I guess to be clear, three of the remand motions
2 deal with that issue, and one doesn't. The one that doesn't
3 just became ripe, the order will be forthcoming, but those
4 other three --

5 *MR. PULASKI:* Your Honor, that is correct, it has been
6 a long 48 hours, and I was receiving emails about the remand
7 motions and forgot about that issue. I understand about the
8 other three.

9 *THE COURT:* Yes, but the other one should come out
10 shortly.

11 *MR. PULASKI:* Thank you, your Honor.

12 *THE COURT:* Yes.

13 *MR. AGNESHWAR:* Your Honor, just one point of
14 clarification on California. I think Mr. Pulaski's comments
15 were really directed at the cancers that the parties are
16 pursuing and the like, and I get that difference.

17 I will say there is a PTO in California, PTO 4, that
18 is about coordination of discovery, and I believe it expressly
19 says that the parties will use their best efforts to avoid
20 duplicative and unnecessary discovery beyond what is provided
21 with the MDL.

22 At least for Sanofi, I can't speak for the other
23 Defendants, we have been actively engaged with Mr. Wisner on
24 coordinating discovery and depositions and the like and cross
25 notices.

1 MR. PULASKI: There have been cross notices of
2 depositions and depositions have already been taken where there
3 was a cross notice and they participated.

4 THE COURT: Okay. Is that the State, Federal update?

5 MR. PULASKI: That is it, your Honor.

6 THE COURT: All right. Okay. Well, that is all that
7 I have listed for the agenda, and Judge Reinhart, was there
8 anything else?

9 THE MAGISTRATE JUDGE: No, thank you. I appreciate
10 your kind words at the beginning of the hearing, and I thank
11 everyone for all their efforts.

12 THE COURT: Thanks so much. Well, not to keep you
13 longer than you have already devoted, which is about an hour
14 and 40 minutes, give or take, that will conclude our status
15 conference.

16 I want to thank all of those who have attended to keep
17 apprized, those who have presented to educate the Court, and
18 all of those who continue to work very hard on this case. I
19 continue to be impressed and grateful for your hard work. It
20 is a pleasure to preside over this case.

21 I wish everybody well, and that will conclude the CMC
22 at this time, so, thank you.

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

24 * * *

25

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

3
4 Date: January 26, 2021

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

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

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