

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.** . April 12, 2021
8 .
9 .

10 STATUS CONFERENCE (through Zoom)
11 BEFORE THE HONORABLE BRUCE REINHART
12 UNITED STATES MAGISTRATE JUDGE

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1 *THE MAGISTRATE JUDGE:* Good morning, everyone, sorry
2 for starting a few minutes late. The Court was derelict in not
3 telling the court reporter that we were having a hearing this
4 morning. I appreciate the court reporter scrambling and making
5 herself available for us this morning.

6 This is Case Number 20-md-2924, In Re: Zantac
7 (Ranitidine) Product Liability Litigation. We are on this
8 morning for a status conference relating to the production of
9 documents by GSK for which we had set a deadline for
10 substantial completion by May the 14th at the last hearing.

11 I indicated at that time I was going to have a series
12 of interim check-ins just so I can be satisfied and the Court
13 can be aware of how the process is going and make sure the
14 Court is responsive if the parties have a need for the Court to
15 get more involved.

16 It is my understanding that the parties have been
17 continuing to meet and confer, that documents are being
18 exchanged, that the special master is actively involved, as the
19 Court had asked her to be. So, I wanted to get a check-in
20 today with everyone.

21 With that, let me have the parties make their
22 appearances. Who will be representing the Plaintiffs here at
23 the hearing this morning?

24 *MS. FINKEN:* Good morning, your Honor, Tracey Finken
25 on behalf of the Plaintiffs.

1 *THE MAGISTRATE JUDGE:* Good morning. For the
2 Defendants, GSK?

3 *MR. SACHSE:* Good morning, your Honor, Will Sachse on
4 behalf of GSK.

5 *THE MAGISTRATE JUDGE:* We have the Philadelphia team
6 again. Very well.

7 So, I laid out my vision of what I would like to do
8 this morning. Let me start out, Ms. Finken, let me at least
9 confirm for you, at the last hearing you had just gotten a
10 substantial production, hadn't even had a chance to look at it
11 yet. I had directed GSK to make rolling productions each week.
12 There have been two Fridays since then, so I don't expect that
13 you have had a chance to exhaustively review everything that
14 you have been given, but have there been rolling productions
15 since the last time we met, and are you seeing any problematic
16 issues in the rolling productions that you are getting?

17 *MS. FINKEN:* Well, yes, your Honor, there have been
18 rolling productions since the last time we met. Between the
19 time frame of March 26th and April 7th, we have received over
20 100,000 noncustodial documents, and over 60,000 tranche one
21 custodial file documents during that time, and combined, those
22 productions total in excess of 1.5 million pages of documents.

23 So, we are trying to wrap our arms around what is
24 included in those productions. There were some technical
25 issues in the productions that caused a delay in our ability to

1 upload them, and we had to work through that with GSK to get
2 new production links to upload them.

3 In addition, one thing I can tell you, there are
4 almost 40,000 slip sheets in those productions that are
5 produced with the word "irrelevant" on them. So, we need to
6 weed through and see if we need to challenge those. In the
7 past, we have found that there have been some slip sheets
8 designated as irrelevant that were incorrect and we had to get
9 them reproduced.

10 So, the bottom line is, it is going to take some time
11 for us to wrap our arms around exactly what is in those
12 productions and whether or not there are items that are
13 missing, and where there might be gaps that we need to fill.

14 *THE MAGISTRATE JUDGE:* Thank you. Mr. Sachse, let me
15 turn to you and let you respond.

16 Also, I was reviewing the transcript this morning of
17 our last hearing, and toward the end of that hearing you and I
18 had a back and forth, and I am not sure we ever had a meeting
19 of the minds about what I was asking and you were telling me.

20 As we sit here today, are you satisfied you have
21 identified the full universe of documents that you agreed to
22 produce by the May 14th, and it is just a matter of going
23 through the production process, or is GSK still looking and
24 finding new things that we had never known about before? Maybe
25 that's the question to start with.

1 MR. SACHSE: Let's start there. Will Sachse for GSK.

2 From GSK's perspective, yes, we have identified the
3 universe, and I think it was -- talking about this May 14th
4 deadline, I think I previously reported we thought it was in
5 excess of 2300 items implicated by this database that we call
6 PIER, and I can report that we are now at a point where I think
7 there are 35 documents that are being uploaded for review now,
8 and the remainder of those documents have either been produced
9 or are in the review process as we speak. We think we have
10 that universe on our system.

11 I would like to just highlight one thing, though. The
12 Plaintiffs, we have been meeting and conferring, and as part of
13 that process there are some spreadsheets, helpful spreadsheets
14 that the Plaintiffs have given us asking us a series of
15 questions. One question is to identify whether we have
16 produced certain studies; and if so, where they are, and we
17 have gone ahead and done that.

18 And the other spreadsheets relate to items that the
19 Plaintiffs have identified on these PIER reports that they just
20 want more information about, or want to know whether they have
21 been produced or searched for, and we have provided that
22 information as well. I expect there will be a further dialogue
23 with the Plaintiffs about those.

24 Again, from our perspective, from GSK's perspective,
25 for purposes of May 14th, the documents, with the exception of

1 the 35 that I think are getting uploaded early this week,
2 everything is in the platform and in the pipeline.

3 *THE MAGISTRATE JUDGE:* Very well. I think you
4 actually anticipated my next question, so good for you.

5 My next question is: What are the parties doing so
6 that the parties and the special master can track what has been
7 turned over, what hasn't been turned over, what is in process,
8 if it has been turned over, where is it?

9 If we have millions and millions of pages of
10 documents, I don't think it is fair to turn to the Plaintiffs
11 and say, well, it is in there somewhere, go find it. I am not
12 suggesting you have done that, but I think it would be helpful
13 for them, and particularly for the special master, who the
14 Court has asked to be actively involved, if there was, and
15 maybe this spreadsheet or series of spreadsheets you are
16 talking about is that process.

17 Let me turn to Ms. Finken. Are you satisfied that
18 there is a productive dialogue there and you are able to get
19 the information you need from Mr. Sachse so that you are not
20 lost looking for things?

21 *MS. FINKEN:* I am glad you asked that, your Honor. We
22 have actually asked for some assistance in locating some of the
23 studies that have been identified in the spreadsheets that have
24 been produced, animal studies, as well as human studies. We
25 have asked for Bates ranges on where those are located in the

1 production because, as you might imagine, it is like searching
2 for a needle in a haystack to some degree.

3 We have received some limited information back in that
4 regard as to where we can locate those documents. We don't
5 have a complete spreadsheet of where the documents could be
6 found, though, and to the extent that GSK can provide that,
7 that would be very helpful.

8 I just want to address one other item, your Honor.

9 Mr. Sachse had mentioned the PIERS database index, and
10 that particular index was produced to us back in February. It
11 had over 23,000 lines of information in it that pertained to
12 Ranitidine and different types of documents that are located in
13 that database.

14 My understanding was at that point in time that Mr.
15 Sachse and GSK were pulling the responsive documents from the
16 PIERS database and reviewing them for production. As I
17 understand it from the -- as we have been going through those
18 as well and trying to assist in identifying information that we
19 were looking for, it has come to my attention that a large
20 amount of those animal studies were not produced or are not
21 going to be produced.

22 They are taking the position that if we want those
23 documents, we need to start from scratch in those meet and
24 confer discussions. So, that is something that is going to be
25 a bit problematic and we are going to have to address that as I

1 understand it.

2 Unless my understanding is incorrect, and maybe Mr.
3 Sachse can correct me if I am wrong, but my understanding is
4 their position is they are not going to collect those animal
5 studies and documents and produce them.

6 *THE MAGISTRATE JUDGE:* Let me turn to Mr. Sachse in a
7 second, but let me make sure I am using the same terminology
8 you all are using, because you have both referenced PIERS -- I
9 think that is P-I-E-R-S -- database. I assume that is GSK's
10 kind of archival system. Am I correct, Mr. Sachse?

11 *MR. SACHSE:* That is correct, your Honor, and it is
12 actually PIER, P-I-E-R.

13 *THE MAGISTRATE JUDGE:* Okay. If I understand what
14 Ms. Finken is saying, you produced an index of -- if I searched
15 the database and just said give me the list of all the
16 documents that respond to a particular set of terms or
17 something, I would get a list, and if I am understanding
18 Ms. Finken, some of those items on that list have been produced
19 and you are agreeing to produce, and presumably they deal with
20 human studies.

21 There are some items on that list that may not deal
22 with human studies or may deal with animal studies, or there is
23 some dispute as to whether those should be produced.

24 Again, I am not ruling on that. I am just trying to
25 understand what the state of the world is because I don't live

1 with these documents every day.

2 Could you just clarify for me your understanding of
3 what is on that 23,000 lines of text, and what your position is
4 on that?

5 *MR. SACHSE:* Sure. It will probably come as no
6 surprise to you, your Honor, I am not as doom and gloom on this
7 as Ms. Finken. I actually think we are pretty close here.

8 Let me try to walk us through what we are talking
9 about and what we're not talking about. I do this, too,
10 sometimes refer to this as the PIER index. This is not an
11 index in the true sense of the word, this is actually -- what
12 Ms. Finken has, and what we have as well, are the result of
13 queries of this archival system, and what we have done is,
14 we've queried the archival system using, essentially, words,
15 accession numbers that would relate to Ranitidine to try
16 to collect the universe of information that would be captured
17 in this PIER archive.

18 So, starting with the animal studies -- I am going to
19 just sort of take slight issue with Ms. Finken.

20 The information that we provided on the animal
21 studies, which is that first spreadsheet -- and I couldn't
22 right now tell you how many there are, but it was in excess of
23 a hundred, and I believe that, with one or two exceptions,
24 we've identified that those materials have been produced and
25 those are -- and we have identified the Bates ranges where

1 those are, so the Plaintiffs have that information.

2 This second set of information, which is the -- as the
3 Plaintiffs have gone through the various iterations of these
4 PIER reports -- and I should mention also that we have provided
5 the Plaintiffs already our kind of concatenated list from PIER
6 of all of the materials that we have pulled for review. So,
7 the Plaintiffs have that.

8 The Plaintiffs have these additional PIER reports, and
9 what they have done is, they have gone through and kind of
10 cross referenced and they have said, in essence, there are -- I
11 think the number is somewhere around a hundred total studies
12 that we have identified that don't appear to be on the list of
13 things that you are looking for and that you are reviewing for
14 production that we are interested in understanding what those
15 are in talking to you.

16 And so, as I said, we are willing to have those
17 conversations. I think Ms. Finken mentioned 23,000 lines. I
18 do not understand the Plaintiffs to be asking for information
19 about all 23,000 lines. I think if they were, we would be here
20 forever, but I do think the universe is actually much narrower,
21 and we are happy to work through that with them over the coming
22 weeks.

23 *THE MAGISTRATE JUDGE:* So, if I am understanding you,
24 it sets up this way, you have provided Ms. Finken with
25 information about what is in the archival database. Some of

1 the information that you have identified to the Plaintiffs you
2 are producing, you are in the process of producing, it is
3 loaded in your platform, it is just a matter of getting it out
4 the door.

5 Other things -- the Plaintiffs have now cross
6 referenced what you gave them and said, wait, there is
7 information on this archival information report that you are
8 not giving us, but we think we might be entitled to, or we
9 might be interested in knowing more about it so we can
10 determine if we are entitled to it, and your position is that
11 you are happy to have a dialogue about that, but that is not a
12 dialogue that has happened yet.

13 Am I understanding you correctly, Mr. Sachse?

14 *MR. SACHSE:* You got it exactly right, your Honor.

15 *THE MAGISTRATE JUDGE:* There may be a dispute about
16 how voluminous that universe of to-be-discussed items are, but
17 we agree there is a universe of those documents.

18 *MR. SACHSE:* That is exactly right.

19 *THE MAGISTRATE JUDGE:* Ms. Finken, let me let you
20 respond to that. Not making any judgments about who is right
21 or who is wrong, am I at least framing the issue correctly,
22 that you have identified, on information they have given you,
23 that there is information in GSK's archival database that
24 you -- whether it is producible or not, you are interested
25 enough to want to know more about it to determine whether you

1 think it is producible, and the question is just the process to
2 go through to determine whether you are going to get that
3 information and how quickly?

4 MS. FINKEN: Yes, your Honor. Just so we're clear,
5 the spreadsheet that was turned over with the index of PIER
6 documents was not produced as such. We found it in an
7 attachment to an email in a custodial file and happened to come
8 across it. It wasn't produced like here, Plaintiffs, here you
9 go, here is our spreadsheet, let's talk about it. We happened
10 to locate it as we were reviewing custodial files.

11 Our understanding was that they were still searching
12 through these indices and pulling responsive information and
13 material from the indices to collect, review, and produce.

14 It was the first time last week, on Thursday, and it
15 wasn't Mr. Sachse, it was a colleague of his who indicated to
16 me for the first time that they were not going to produce
17 additional material from PIER unless we request it, determine
18 its relevance, and then have a discussion about it.

19 So, despite the fact that they are clearly responsive
20 relevant documents to Zantac on their face in terms of studies
21 and testing, I guess the position of GSK is that they are not
22 going to pull them and review them at this point in time.

23 So, like I said, this just arose at the end of last
24 week, and it is something that we are going to have to work
25 through and address.

1 To be frank, Mr. Sachse and I have not had a
2 conversation about it other than the email exchange last week,
3 so I just want to make that clear as well.

4 *THE MAGISTRATE JUDGE:* I appreciate that. It seems to
5 me this is pretty common in this litigation where there is a
6 subset of documents which the Plaintiffs believe are
7 discoverable, the Defendants may not either believe they are
8 discoverable or the Defendants have some objection to even
9 determining if they are discoverable. I am not going to that.

10 If someone wants to tee up a PTO 32, and have me rule
11 on issues like that, I am happy to rule on issues like that,
12 but in the meantime, I -- again, I am not opining one way or
13 the other on what has happened in the past or how this
14 information came to anyone's attention.

15 You have the information now. I do think having
16 productive discussions with each other, as you have in the
17 past, and working with the special master to try to resolve the
18 issue would be the first step, and if you cannot resolve it
19 through the special master, I will certainly give you an
20 expedited PTO 32 hearing so that we can get this moving along.
21 I think that is all I should or could say about that issue.

22 Let me go back a step, Mr. Sachse, because Ms. Finken
23 had also raised the issue. I know you noted that on some
24 documents you have given them corresponding Bates numbers. Do
25 you have an objection to giving them the Bates numbers that

1 correspond to the studies that have been produced to date, them
2 and the special master, I should say? I would expect the
3 special master would get a copy of that.

4 MR. SACHSE: So, I guess I don't have an objection per
5 se, but I just want to make sure that we are talking -- like,
6 when we use the word studies, and I think we are all guilty of
7 this, frankly, your Honor, we should make sure we understand
8 what we are talking about.

9 So, obviously, we have already provided them -- for
10 the studies they were unable to find in our productions, we
11 have provided those Bates ranges and, you know, I think we
12 could do this that way.

13 I can tell you that we, GSK, do not have a
14 comprehensive kind of index of our production organized in that
15 way where it would just be push button and I could say, okay,
16 let's give Bates ranges for every study that we have produced,
17 and I push a button and provide that report to the Plaintiffs.

18 So, I think if we are talking about, quote, every
19 study, again, putting aside the definitional issue, that could
20 be some work on our end, and I think that we'd need to have a
21 discussion about what is the best, most efficient way to do
22 this, whether it is the Plaintiffs identifying what they are
23 missing, because I know that they are looking at our
24 productions, too, or whether it is us starting with here are
25 the studies, for example, that were submitted to the FDA, but I

1 am happy to have those discussions with the Plaintiffs.

2 *THE MAGISTRATE JUDGE:* Let me sort of be clear where
3 the Court is coming from and kind of expectations.

4 I think it is helpful to the whole process if
5 everybody, the Court and all the parties, have a sense of what
6 has been turned over, what is -- I think we talked about this
7 the last time, a couple of categories, what has been fully
8 produced, and when and where is it, what is in the pipeline, or
9 what has been partially produced and there's more coming, but
10 here is when it is going to get to you, and what has not yet
11 either been identified or been produced.

12 That has been an ongoing discussions we have had in a
13 number of these hearings, not just with GSK. I think that is a
14 logical series of questions that anybody would have in a
15 discovery process like this. What have you looked for? What
16 have you found? Have I gotten it all? If I haven't gotten it
17 all, where is it in the process and when am I going to get it?

18 Bilaterally, everyone would agree those are sort of
19 the logical questions you ask in a discovery process.

20 So, I think anything the parties can do, working with
21 the special master, to make sure everybody has the same
22 information along that line of questions, whether it's -- I am
23 not saying GSK has to go back and reconstruct its entire
24 production from Bates stamp 1 to Bates stamp 2.7 million, but
25 if the parties can get together and reach agreement, we all

1 agree studies A through X have all been produced, they have
2 been produced in full and the Plaintiffs have them; studies Y
3 through whatever, we got partial -- the Plaintiffs have partial
4 production, and the Defendants acknowledge that the Plaintiffs
5 have partial production, and the Defendants are going to
6 produce the balance by X and such a process.

7 Then there are the remaining documents which the
8 Plaintiffs think exist, and the Defendants either say we don't
9 know if they exist, or we don't think they exist, or they
10 exist, but we don't think you get them, and we have a process
11 to get to the end of that.

12 I think the more transparency and clarity we can have
13 on both sides, and with the special master, on that issue, it
14 is going to make these conversations easier because then
15 Ms. Finken will not be asking for the 30th time, okay, do I
16 have everything in study number seven, or when am I going to
17 get study number 14, and Mr. Sachse won't have to answer the
18 question for the 30th time, yes, we have already given you
19 that.

20 That is what I am trying to eliminate. I am not going
21 to micro manage that other than to say I ask you to work
22 carefully with the special master, and to the extent she can
23 know it, she can also be a resource and say, no, no, no,
24 Ms. Finken, this is on your list and maybe you missed it, Mr.
25 Sachse you agreed to give them this.

1 Again, I won't micro manage what should be on your
2 spreadsheet and how granular the exchange of information ought
3 to be. I suspect, although you can't push a button and print
4 things out by Bate numbers, I assume both sides have Relativity
5 or some other similar database management, discovery management
6 software which allows lots of different searching and the
7 ability possibly to reconstruct some of that information.

8 Again, I will just throw that out there. That would
9 be my expectation, the parties are working to answer those
10 questions in a way that both sides have the same information
11 and we can be transparent about that.

12 *MS. FINKEN:* Your Honor, can I raise one more issue in
13 that regard?

14 *THE MAGISTRATE JUDGE:* Of course, Ms. Finken, yes,
15 please.

16 *MS. FINKEN:* It came to light, I think right before
17 the last conference where we were in front of you on these
18 issues, that there was an additional clinical study database
19 that GSK has that they housed the information and data related
20 to the human clinical trials. Prior to that time, we were
21 unaware of that database, we just happened to find another
22 spreadsheet in the production and had questions about it, which
23 is how it came to light.

24 On that particular spreadsheet there were over 760
25 human clinical trials identified that were Zantac trials done

1 by GSK. So, it would be very helpful, two things; one, if GSK,
2 as a starting point, could identify on that database
3 spreadsheet of the 764 studies that are contained on it, what
4 of those studies have been produced, what reports have been
5 produced and which ones have not.

6 If you recall, your Honor, GSK identified in their
7 answer to requests for production and
8 interrogatories approximately 600 studies that included human
9 clinical trials and animal clinical trials, and now we have
10 uncovered this spreadsheet that has close to almost 800 human
11 clinical trials only. Clearly there is a wide area of
12 information that there is a disconnect here.

13 So, it would be helpful if in some regard GSK could
14 start with that spreadsheet and identify on there which human
15 clinical trials have, in fact, been produced and which have
16 not.

17 And then along those lines, Mr. Sachse had indicated
18 that they were going to provide us with an updated systems
19 disclosure regarding databases and sources of data that are
20 available within GSK currently and legacy databases so that
21 this doesn't happen again in terms of surprises in relation to
22 a database that comes to light that contains obviously highly
23 relevant clinical study science information.

24 So, to the extent that we can get that done as soon as
25 possible, that would be helpful as well.

1 *THE MAGISTRATE JUDGE:* It seems reasonable to me, but
2 I will hear from Mr. Sachse on that.

3 *MR. SACHSE:* Yes. Let me just correct the record, and
4 this is something that we have told Ms. Finken twice now.

5 This document, this list that Ms. Finken is talking
6 about is not a, quote, database that includes the data or the
7 study results for these studies. So, this is not something
8 where GSK has failed to search a relevant database, this is a
9 legacy system. It is like a dashboard that was used for
10 tracking submissions.

11 But putting that aside, the bigger issue, what I am
12 hearing from Ms. Finken is really two asks. One is updating --
13 really, in effect, updating our interrogatory answer to
14 identify the universe of studies that are responsive to that,
15 and I think that sort of side ask is identifying whether those
16 have been produced. That is something that is in process.

17 And the second ask that I heard from Ms. Finken was
18 the systems disclosure. That is somethings we told Ms. Finken
19 that we were working on. I think we actually expect to get
20 that out hopefully this week.

21 There are some -- actually, as we speak, your Honor,
22 there are some systems discussions happening because, as part
23 of our meet and confer on batch level records, we, the lawyers,
24 the outside lawyers are continuing to learn about some archived
25 or old systems that may be relevant to that discussion. So, I

1 was waiting to get that information before doing that systems
2 disclosure update, but it is like 99 percent of the way there.

3 *THE MAGISTRATE JUDGE:* Okay. Again, I am not going to
4 micro manage it, that is a good dialogue to have, it's a good
5 dialogue to work on with the special master.

6 Again, my feeling is, and I don't think I hear Mr.
7 Sachse opposing this too much, tell them where you have looked.
8 I am sure, Mr. Sachse, you have conversation with your clients
9 and asked them, where might this all be buried somewhere in all
10 the many, many, many files that are at GSK, so you'd kind of
11 know where you are looking. It is fair to share with the
12 Plaintiffs where you are looking. I guess that would be the
13 systems check in.

14 If there is duplication in lists somewhere such that
15 one list overlaps with another, it is helpful to just say, no,
16 you have this, you don't have that. I will leave it to you two
17 to work through those issues with the special master, but I
18 think that kind of exchange of information is going to make
19 this whole process a little smoother.

20 Mr. Sachse, I had one other question, and I somewhat
21 hesitate to ask this because I have a sense I know what your
22 answer is going to be, but I have to ask the question anyway.

23 Is there some reason why all these records in the U.K.
24 can't just be brought to the United States and made available
25 for inspection at a secure location? Is there some reason they

1 have to stay in the U.K. where we can't get to them?

2 MR. SACHSE: I can maybe partially answer that
3 question. I will confess at the outset, I do not know whether
4 there is sort of a U.K. law that is prohibiting that. I can
5 tell you that there is a GSK policy that requires -- this is
6 actually a physical archive that we are talking about in the
7 U.K., and as -- I have not actually been there, but as it has
8 been described to me, it is kind of like if you went to an old
9 reading library where you have to go in, you have to say this
10 is the piece that I would like to see, and then an archivist
11 will bring it out and sit with you in a reading room while you
12 look at it and then it gets back into the file.

13 So, it is a management system that is intended to sort
14 of preserve the integrity of the archive, and for that reason,
15 the company does not allow those kind of originals to leave its
16 custody, possession, or control for obvious reasons.

17 All of that said -- and I think what you are getting
18 at is, I know we have a dispute about one piece in particular.
19 I don't know how much of a dispute it is, it is really sort of
20 questions about one 1979 piece in particular that is somewhat
21 hard to read, and we have had discussions with Ms. Finken and
22 made it clear that if what we need to do here is, as public
23 health guidance allows and as restrictions loosen, if there
24 needs to be an on-site inspection, we can arrange that.

25 I should mention, by the way, that Ms. Finken's

1 colleague, Michael Watts, has been talking to me about setting
2 up a field trip, as it were, to the U.K. to do some depositions
3 of some witnesses over there in late June, and it is possible
4 we could kind of coordinate all of this.

5 *THE MAGISTRATE JUDGE:* I hear you and I appreciate
6 that.

7 I was reflecting on this because, in reviewing the
8 transcript, it indicated one of the bottlenecks here is the
9 inability to have more people with hands on these documents.

10 In another universe, in the U.S., you would have just
11 piled all of those in a big conference room at your lovely
12 offices there in Philadelphia and Ms. Finken and her team would
13 have come over and they would have sat there in the room with
14 somebody from your team observing them to make sure they didn't
15 shred anything, and they would inspect the documents, which is
16 what Rule 34 calls for.

17 I was just wondering why we couldn't do the same thing
18 with all of these documents.

19 I would be interested to know -- if it is a legal
20 prohibition under U.K. law, obviously I am not going to order
21 GSK to do something that U.K. law doesn't allow it to do. If
22 it is a matter of maintaining chain of custody of these
23 original documents, I will tell you I tried many, many cases
24 where I went to police offices, FBI offices, and places like
25 that, and looked at original evidence with an FBI agent sitting

1 next to me to make sure I didn't shred it, and they maintain
2 their possession, custody, and control and chain of custody for
3 archival and evidentiary purposes.

4 So, at some level, if the U.K. law won't allow it,
5 that is one thing. If GSK doesn't want to do it because they
6 don't want to do it, I think that is a different level analyses
7 and that might be germane to some decisions I may have to make
8 in the future.

9 So, I am sort of putting you on notice to -- I am not
10 asking you right now, but I think it might be helpful to know
11 the answer to that question going forward.

12 *MR. SACHSE:* Sure, your Honor. Let me just reflect on
13 that briefly. I think the bottleneck to which you are
14 referring, the good news there is, we are kind of past that.
15 Right? So, the 35 documents that I referenced earlier from
16 this PIER database, or from this PIER archive, I think that is
17 what remains and those are the documents that are getting
18 uploaded today, and then there may be some discussions, as we
19 talked about earlier, about perhaps another hundred or so
20 entries in PIER that the Plaintiffs are interested in, and we
21 need to kind of understand what that is, and whether we are
22 going to produce or not.

23 But I think, by and large, the real challenge that we
24 faced, the bottleneck that we faced, we are way past that. So,
25 from that perspective, I think that is the good news.

1 I will also note that I think -- at least I know pubs
2 are opening in Britain starting today, so maybe their public
3 health trajectory is moving in a good direction.

4 *THE MAGISTRATE JUDGE:* Are you volunteering to go over
5 there and take Ms. Finken for a drink and then go look at the
6 archives?

7 *MR. SACHSE:* Always.

8 *THE MAGISTRATE JUDGE:* Ms. Finken, I will let you
9 respond.

10 *MS. FINKEN:* Quickly, I just want to be clear about
11 one thing. Mr. Sachse said that we have identified a hundred
12 or so entries in the PIER index that we are interested in.
13 What we have done -- that is not the extent of it. What we
14 have done is, we have identified animal studies in the PIER
15 index that we have been unable to locate in the productions,
16 and that is all we have done.

17 We have not gone through -- because it is quite a
18 task. We have been going through and trying to determine what
19 in the PIER index has already been produced so that we can look
20 at it and what has not been produced. As we are doing it on a
21 rolling basis we are providing Mr. Sachse with a list of what
22 we have identified that we cannot find and asking him whether
23 or not it has been produced and to identify the Bates.

24 It is not like we have made a comprehensive list of
25 the PIER's index items and said this is what we are interested

1 in. We can do that. It is a task because it is a significant
2 index, but we can certainly do that. They are all entries
3 related to -- mostly to Zantac, for the most part, clinical
4 studies, pharmacovigilance documents and reports, analytical
5 testing, and some human clinical trials as well that are listed
6 on this index.

7 *THE MAGISTRATE JUDGE:* I will leave you to work with
8 the special master to come up with the best possible process.
9 I can hypothesize there are a lot of different ways to go about
10 winnowing down and identifying what is really still in dispute.

11 One would be what you just said, Ms. Finken, and just
12 go through it and say these are the things we don't think we
13 have, but we are interested in. Another would be to have Mr.
14 Sachse go through it and say this is everything you have, and
15 the rest of that stuff you don't need or you don't get, or
16 there are a lot of gradations in between that process.

17 You two have worked very well together in trying to
18 get through a lot of issues similar to this. I can't imagine
19 this is a process you can't work through.

20 Again, I think it is just a matter of coming to a
21 joint understanding of what is in dispute, like what do the
22 Plaintiffs think they are entitled to, and does it exist, has
23 it already been produced, is it going to be produced, and then,
24 when we know are we shooting at 20 things or 500 things, then
25 it gets a lot easier for us to resolve.

1 I think that first step, that kind of mutually
2 transparent let's just figure out what we are fighting about,
3 is very helpful. I will push you back to the special master in
4 the first instance for that. Again, you can always come to me
5 on a PTO 32 if you have a remedy that you want or you think you
6 have done everything you can do and you simply can't reach
7 further agreement.

8 With that, anything else specific -- I want to make a
9 couple of other comments since we have a lot of people on the
10 call not necessarily specific to the GSK situation.

11 Before I leave this, Ms. Finken, anything else you
12 wanted to raise this morning related to the ongoing GSK
13 productions?

14 *MS. FINKEN:* I don't believe so at this time, your
15 Honor. There may be additional issues the next time we are in
16 front of you once we have had some time to look through and
17 really wrap our arms around the productions so far.

18 *THE MAGISTRATE JUDGE:* Very well. I am going to
19 confer with the special master later this week, after she has
20 had a chance to work with both of you, and try to figure out
21 when the next time would be meaningful for us to get together.

22 I don't want to get together every Monday and have you
23 both say, look, we are working on the same things we were
24 working on last week. On the other hand, I don't want you to
25 feel like I have disappeared for three weeks and there are

1 issues that you need guidance on and I am not here for you.
2 So, I am going to use the special master as a filter to help me
3 get a feel for when you might need to see me, and feel free to
4 tell her it's time and we'll tee it. Thank you.

5 Let me turn to Mr. Sachse. Anything specific to the
6 GSK issues for today that you had wanted to raise?

7 *MR. SACHSE:* Nothing specific. I just did want to
8 make sure the record is clear. I know, Judge, you were just
9 throwing out a number from the air of what our production
10 volume was, but just so everybody is aware, we have now
11 produced about 4.8 million pages of documents, we have produced
12 about 340,000 documents total, so it is quite an
13 accomplishment, particularly at the end of last month complying
14 with that March 31st deadline, getting all those documents out.

15 I think both sides had technical issues because of the
16 size of those productions at the end of the month, getting them
17 uploaded, but we stand ready. We are obviously still working
18 hard, moving forward producing additional materials consistent
19 with the obligations here, and we will stand ready to talk to
20 the Plaintiffs about the issues we have raised today, and I am
21 sure they will uncover others as they root through our
22 documents, but we are happy to have those discussions.

23 *THE MAGISTRATE JUDGE:* I appreciate the efforts by
24 both sides. As I said before, sometimes it is helpful to step
25 back and look at where we have come from, not where we are

1 going. We have a ways to go in this case and certainly this
2 production by GSK is nowhere close to being fully completed,
3 but on the other hand, as Mr. Sachse points out, they have been
4 doing a lot and we have a lot produced.

5 Again, I am not casting any value judgments on either
6 side for the way this discovery process has rolled out, it is
7 what it is, and we just have to work through it.

8 I think I made these comments at the last hearing,
9 which I think was the Apotex hearing, but I wanted to repeat
10 them in case people are on the call today who were not on that
11 call.

12 We are getting into the heavy duty deposition season
13 now, and we talk in the abstract about production of documents
14 and how important production is, and the same thing is going to
15 hold true when the Plaintiffs start producing their documents
16 in the future. Documents are important, but it is also
17 important that they be useful. If we are going to have
18 meaningful depositions of custodians or meaningful depositions
19 based on noncustodial documents, those documents have to be
20 produced sufficiently in advance of the deposition so that the
21 party can make meaningful use in preparing for the deposition,
22 or can propound their next generation of discovery requests, et
23 cetera.

24 I want to encourage everyone, to the extent you have
25 objections, please lodge them as quickly as you can. Begin the

1 meet and conferral process as soon as you can. Don't wait
2 until the 29th day to lodge your objection and then wait
3 another 29 days to meet and confer. We really need to move
4 these things along. The Court is available to help you resolve
5 these issues, the special master is available to help you
6 resolve these issues.

7 But I really don't want to start to get into
8 situations where we have a deposition scheduled and all of a
9 sudden we get a dump of 100,000 documents three days before the
10 deposition. That is not proper, that is not going to advance
11 the efficient -- whatever Rule 1 requires, timely, efficient,
12 and inexpensive -- although it is hard to use the word
13 inexpensive in this case -- resolution of litigation.

14 I just want to encourage everyone again, we are all
15 professionals here, we are all grownups, you have all done this
16 before. I don't see any game playing that I am aware of in the
17 case, and I very much appreciate that. On the other hand,
18 let's continue to be considerate of each other and let's get
19 the objections in.

20 We should fight this case out on the merits, not with
21 gamesmanship or procedural gaming or holding back documents
22 until the last minute or surprises on either side. Let's
23 continue with the transparency and the cooperation and the
24 efforts that have been undertaken to date.

25 That is kind of the Court's expectations and I wanted

1 to encourage everyone to continue to do that.

2 MS. FINKEN: Thank you, your Honor. Can I just add
3 one point for your Honor's consideration?

4 THE MAGISTRATE JUDGE: Yes.

5 MS. FINKEN: I appreciate Mr. Sachse giving us the
6 rundown of his total production so far. I want to point out
7 that over 50 percent of that production was made between
8 March 26th and April 7th, so it is a significant dump that we
9 had in a two to three-week time span that we are trying to work
10 through. That does cause a backlog and really spreading the
11 resources thin on our end, and I just wanted the Court to be
12 aware of that.

13 THE MAGISTRATE JUDGE: I appreciate that, and I don't
14 think GSK has tried to hide the fact that they had some issues
15 early on in their production, but they are sprinting as fast as
16 they can sprint to get it done within the timeframes that the
17 parties have agreed to and that the Court has imposed.

18 As Judge Rosenberg has said before, Ms. Finken, and I
19 have said before and will say again, if it reaches a point
20 where the Plaintiffs believe they are entitled to a legal
21 remedy for whatever has occurred in the case, you are free to
22 file whatever motions you think you need to file with the Court
23 and they will be considered with an open mind. I think Judge
24 Rosenberg even put that into the most recent PTO.

25 I understand your concerns. You and Mr. McGlamry have

1 been very forceful in your concerns and the Court has heard
2 you, but again, the Court is putting it back on you. When you
3 feel that it really is ripe and conferrals have occurred, and
4 the parties can't agree on whatever modifications you may want
5 to propose, then you can file whatever you need to file.

6 I hear you. We understand the situation that you feel
7 that you are in. We also understand -- if I turned to Mr.
8 Sachse, he would say, come on, Judge, we have 40 years worth of
9 documents, we are doing the best we can. A lot of these
10 documents were generated before the lawyers in this case were
11 born, how are we supposed to go back and do that.

12 I understand. We are not blind to the pressures on
13 both sides. That doesn't mean that either side should be
14 prejudiced by the concerns of the other, but we are mindful of
15 that. Thank you, Ms. Finken and Mr. Sachse.

16 Last time, anything else you wanted to raise while we
17 are all together this morning?

18 *MS. FINKEN:* That is it for today, your Honor.

19 *THE MAGISTRATE JUDGE:* Thank you, Ms. Finken.

20 Mr. Sachse, anything else you wanted to raise while we
21 are here?

22 *MR. SACHSE:* Nothing here, your Honor. Thank you.

23 *THE MAGISTRATE JUDGE:* Thank you, everybody. We will
24 be in recess.

25 (Thereupon, the hearing concluded.)

* * *

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

Date: April 13, 2021

/s/ Pauline A. Stipes, Official Federal Reporter

Signature of Court Reporter

Pauline A. Stipes, Official Federal Reporter

MR. SACHSE: [13] 3/2 4/25 8/10 9/4 11/13 11/17 14/3 19/2 21/1 23/11 24/6 27/6 31/21 MS. FINKEN: [11] 2/23 3/16 6/20 12/3 17/11 17/15 24/9 26/13 30/1 30/4 31/17 THE MAGISTRATE JUDGE: [25] 1/20 2/25 3/4 4/13 6/2 8/5 8/12 10/22 11/14 11/18 13/3 15/1 17/13 18/25 20/2 22/4 24/3 24/7 25/6 26/17 27/22 30/3 30/12 31/18 31/22	500 [1] 25/24 6 60,000 [1] 3/20 600 [1] 18/8 7 760 [1] 17/24 764 [1] 18/3 772.467.2337 [1] 1/20 7th [2] 3/19 30/8 8 800 [1] 18/10 9 99 percent [1] 20/2 A ability [2] 3/25 17/7 able [1] 6/18 about [40] above [1] 32/3 abstract [1] 28/13 accession [1] 9/15 accomplishment [1] 27/13 acknowledge [1] 16/4 across [1] 12/8 actively [2] 2/18 6/14 actually [10] 6/4 6/22 8/12 9/7 9/11 10/20 19/19 19/21 21/6 21/7 add [1] 30/2 addition [1] 4/3 additional [5] 10/8 12/17 17/18 26/15 27/18 address [3] 7/8 7/25 12/25 advance [2] 28/20 29/10 after [1] 26/19 again [16] 3/6 5/24 8/24 13/12 14/19 17/1 17/8 18/21 20/3 20/6 25/20 26/4 28/5 29/14 30/19 31/2 agent [1] 22/25 agree [4] 11/17 15/18 16/1 31/4 agreed [3] 4/21 16/25 30/17 agreeing [1] 8/19 agreement [2] 15/25 26/7 ahead [1] 5/17 air [1] 27/9 all [26] 8/8 8/15 10/6 10/19 13/21 14/6 15/5 15/16 15/17 15/25 16/1 20/9 20/9 20/23 21/17 22/4 22/11 22/18 24/16 25/2 27/14 29/8 29/14 29/15 29/15 31/17 allow [3] 21/15 22/21 23/4 allows [2] 17/6 21/23 almost [2] 4/4 18/10 along [4] 13/20 15/22 18/17 29/4 already [5] 10/5 14/9 16/18 24/19 25/23 also [7] 4/16 10/4 13/23 16/23 24/1 28/16 31/7 although [2] 17/3 29/12 always [2] 24/7 26/4	am [35] amount [1] 7/20 analyses [1] 23/6 analytical [1] 25/4 Anapol [1] 1/11 animal [8] 6/24 7/20 8/4 8/22 9/18 9/20 18/9 24/14 another [6] 17/21 20/15 22/10 23/19 25/13 29/3 answer [7] 16/17 17/9 18/7 19/13 20/22 21/2 23/11 anticipated [1] 6/4 any [4] 3/15 11/20 28/5 29/16 anybody [1] 15/14 anyone's [1] 13/14 anything [7] 15/20 22/15 26/8 26/11 27/5 31/16 31/20 anyway [1] 20/22 Apotex [1] 28/9 appear [1] 10/12 appearances [1] 2/22 appreciate [7] 2/4 13/4 22/5 27/23 29/17 30/5 30/13 appreciate the [1] 27/23 approximately [1] 18/8 April [4] 1/5 3/19 30/8 32/5 April 7th [2] 3/19 30/8 Arch [1] 1/16 archival [7] 8/10 9/13 9/14 10/25 11/7 11/23 23/3 archive [4] 9/17 21/6 21/14 23/16 archived [1] 19/24 archives [1] 24/6 archivist [1] 21/10 are [125] area [1] 18/11 arms [3] 3/23 4/11 26/17 arose [1] 12/23 around [4] 3/23 4/11 10/11 26/17 arrange [1] 21/24 as [51] aside [2] 14/19 19/11 ask [6] 15/19 16/21 19/15 19/17 20/21 20/22 asked [6] 2/19 6/14 6/21 6/22 6/25 20/9 asking [6] 4/19 5/14 10/18 16/15 23/10 24/22 asks [1] 19/12 assist [1] 7/18 assistance [1] 6/22 assume [2] 8/9 17/4 attachment [1] 12/7 attention [2] 7/19 13/14 available [5] 2/5 18/20 20/24 29/4 29/5 aware [4] 2/13 27/10 29/16 30/12 B back [11] 4/18 7/3 7/10 13/22 15/23 21/12 26/3 27/25 29/21 31/2 31/11 backlog [1] 30/10 balance [1] 16/6
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