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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. . February 23, 2022

STATUS CONFERENCE (through Zoom)
BEFORE THE HONORABLE BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE

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

1 *THE COURT:* Good afternoon, everybody. This is case
2 number 20-2924, In Re: Zantac (Ranitidine) Product Liability
3 Litigation.

4 I called this hearing today because there were a
5 number of motions filed in the last couple of days, including
6 an expedited motion, and I know we are heading up on some
7 deadlines and I am going to be out of the office the next two
8 days, so I wanted to make sure I get a chance to hear from you
9 and give you whatever guidance you need from me before we move
10 forward.

11 Let me start with the Valisure issue. I may have
12 misunderstood what was filed and there may be nothing to do.
13 I saw a motion come in from Valisure and I started reading it
14 and to quote Yogi Berra, it was deja vu all over again. I was
15 reading it and I'm thinking, didn't I rule on this already?

16 The more I got into it, it became clear to me what you
17 were doing was simply following my prior order, which was to
18 file a redacted version of what had been submitted under seal
19 prior to the hearing. So, let me -- maybe I can dispose of
20 that aspect pretty quickly.

21 Mr. Egan, good afternoon.

22 *MR. EGAN:* Good afternoon, your Honor.

23 *THE COURT:* Is there any objection -- I think what you
24 filed was filed not under seal, it was filed in the public
25 record, so I assume there was no objection to whatever it is

1 that you filed, and to the extent anybody thought there ought
2 to be redactions, those redactions have been made.

3 *MR. EGAN:* Yes, your Honor. There are two sets of
4 papers. Our papers went in with agreed upon redactions. The
5 Defendants' papers went in with some agreed upon redactions and
6 some motions to seal from other entities other than Valisure.

7 *THE COURT:* I think it was Boehringer Ingelheim that
8 was handling the other side of that transaction. Is that
9 right?

10 *MR. EGAN:* I had been dealing with Mr. Oot primarily.
11 I don't know if there is somebody from BI that is handling it.

12 Your Honor, we have a -- there is separate counsel for
13 Valisure that handles direct specific BI matters. We primarily
14 have been acting as counsel for Valisure with brand Defendants'
15 issues, but to the extent there is any specific BI issue, or to
16 the extent BI needs to be addressed, Attorney Mike Glaser has
17 an appearance in this case and he addresses those issues.

18 *THE COURT:* Very well. Mr. Oot, I apologize, I think
19 you were on the other side of the Valisure hearing that I had.
20 Was Memorial Sloan Kettering injected into some of this, Mr.
21 Oot? Because I think they had a separate filing that I saw in
22 the record.

23 *MR. OOT:* Correct, your Honor. Patrick Oot for GSK.

24 At 5270 on the docket, that really explains all of
25 this and where it is, and it should give you a good perspective

1 of where the parties have agreed to some of the redactions and
2 where there are still outstanding disagreement related to MSK
3 and Emery Pharma.

4 *THE COURT:* Very good. Mr. Krasnoo, I understand you
5 represent Memorial Sloan Kettering and I saw you had a filing.
6 Has anyone filed a response to your filing, Mr. Krasnoo, or is
7 that something that you are waiting for?

8 *MR. KRASNOO:* No, your Honor, no response has come in.
9 We did file that I believe on -- just a couple days ago, so we
10 are awaiting a response.

11 *THE COURT:* But all of that -- Mr. Oot, you will be
12 the one responding, I suppose. All of that deals with past
13 documentation, and the only question is should it be sealed or
14 unsealed in the record going forward. Am I right, Mr. Krasnoo?

15 *MR. KRASNOO:* Correct, your Honor.

16 *THE COURT:* Very good. That is nothing I need to
17 prioritize today. That is not slowing down any aspect of
18 litigation.

19 *MR. EGAN:* Yes. One quick addition to that, if I may,
20 your Honor. Emery Pharma also, I believe, has objections to
21 documents that are being submitted as exhibits, but I don't
22 believe they have yet filed a motion to seal. I know that
23 Defense counsel has asked them if they are going to.

24 If the Court wants to order that they submit that by a
25 certain date, or however you would like to handle that, I think

1 they want to be heard, but I don't know the procedure by which
2 you would like to do that.

3 *THE COURT:* I appreciate that, Mr. Egan. Memorial
4 Sloan Kettering filed an objection, so I am not going to rule
5 until I get a response. There's a window of time in there.

6 Since you seem to be talking to Emery, let Emery know
7 don't sleep on your rights, if they want to file an objection,
8 they need to get that in. I am not going to set a specific
9 deadline, but I do intend to rule promptly once I get a
10 response from GSK. I may have a hearing or I may just rule on
11 the papers.

12 If you want to be kind to your friends, tell Emery to
13 file what they want to file pretty soon.

14 Thank you, Mr. Egan.

15 *MR. EGAN:* Thank you.

16 *THE COURT:* I think, from my perspective, I now have
17 clarity on the Valisure issues and the MSK issues -- I have to
18 be careful with MSK and GSK. Do any of the parties to that
19 matter, the Valisure, MSK matter, have anything else you need
20 to bring up today?

21 *MR. EGAN:* Not with what is before the Court right
22 now. Your Honor had offered the opportunity for Valisure to be
23 awarded the fees and costs and the other side to oppose. That
24 is a motion that will be filed, it is not before you today.

25 *THE COURT:* Very good. Thank you. Mr. Oot, anything

1 further on that matter?

2 *MR. OOT:* Your Honor, we will have our opposition on
3 Monday if that is okay with the Court.

4 *THE COURT:* That's fine. Like I said, I am taking off
5 the rest of this week, so if it comes in on Monday, I will read
6 it when it comes in. I will excuse the parties to that matter.
7 Thank you all for being here.

8 The next thing on my shopping list was -- I think it's
9 a similar thing, I think this is just historical. Sanofi filed
10 again some materials that related to a past hearing that I had
11 where I directed them to file something not under seal, or at
12 least redact it and -- good afternoon, Ms. Sharpe.

13 *MS. SHARPE:* Good afternoon, your Honor.

14 *THE COURT:* I saw in the pleadings that there is a
15 dispute as to what ought to be redacted, what ought not to be
16 redacted. I will rule on that. Am I correct, Ms. Sharpe, that
17 just needs to be briefed out and then I can just rule on it?

18 *MS. SHARPE:* Yes, your Honor, that is correct. We
19 filed motions to seal with respect to the PTO 32 submissions of
20 the parties' email preservation issues, and I presume
21 Plaintiffs will be responding to those in due time.

22 *THE COURT:* Thank you very much. Again, that is
23 something I need to deal with, but I don't need to deal with
24 today. Thank you, Ms. Sharpe, I will excuse you as well.

25 Let's turn to one that isn't non time sensitive.

1 That's the best way to phrase it.

2 Let's talk about Defense's motion -- I guess, Mr.
3 Sachse, this is you -- essentially saying that the Plaintiffs
4 haven't given you full expert disclosures relating to Dr.
5 Najafi. I understand you filed your pleading, obviously it
6 just came in, it asked for expedited treatment.

7 Ms. Finken, good afternoon. I am not expecting you to
8 respond on the merits at all today. We are just here for
9 scheduling. I wanted to get in quickly and hear from you about
10 a briefing schedule.

11 So, Ms. Finken, what is your ask in terms of how much
12 time you would like to respond to the motion?

13 *MS. FINKEN:* Thanks, Judge Reinhart. Tracy Finken on
14 behalf of Plaintiffs for Ms. Stipes' benefit.

15 We received the brief last night that was filed,
16 unbeknownst to us that it was going to be filed, and it is a
17 14-page brief, as your Honor is aware, not a PTO 32 memorandum.
18 We would request a full week to fully respond in opposition to
19 the brief and submit it next Wednesday.

20 We would be prepared to argue it that afternoon, or as
21 soon as your Honor is ready to argue the motion we would be
22 prepared to do that.

23 *THE COURT:* Okay. Let me ask -- I didn't read it
24 carefully, but I did glance at it. I am not sure how much
25 legal briefing I need. It seems that Defendants are saying

1 Rule 26 requires certain disclosures, give us what the rule
2 entitles us to.

3 Is there going to be a dispute over things that exist
4 that don't have to be turned over, or is the issue going to be
5 they just don't believe me when I tell them I have given them
6 everything that I have?

7 *MS. FINKEN:* No, it is a little bit more than that,
8 your Honor. First, we have complied with Rule 26. The
9 experts' reports were disclosed in accordance with the expert
10 report deadline.

11 After we served our expert reports on February 7th,
12 the Defendants sent us a list in an email of 17 items they
13 requested or information that they requested that's more akin
14 to expert discovery, things like lab notebooks and whatnot that
15 would typically be produced in advance of an expert deposition.

16 We had a meet and confer with them on February 14th,
17 some of the information of the 17 items had already been
18 provided in the reports, we pointed that out during the course
19 of the meeting. We asked for some clarity on some of the other
20 items that they were requesting, and we offered to produce
21 certain items to them in exchange for mutuality. When their
22 expert reports are disclosed, and to the extent that those
23 items exist, that they would produce them to us as well.

24 That is how we left it on Monday, February 14th,
25 Valentine's Day.

1 Several days later, we sent a confirming email that we
2 would provide those laboratory notebooks. We were in the
3 process of obtaining them and needed to review them for
4 privilege and whatnot and we would be producing them, again
5 asking for mutuality and asking for clarification on issues.
6 The next thing we heard was five days later, Monday evening, we
7 got an email from the Defendants that they now reduced their
8 list from 17 requested items to five requested items and that
9 they will be filing a Motion to Compel the next day.

10 We responded at 9:00 a.m. yesterday morning saying
11 that we had agreed to produce certain items. There were other
12 items that we were seeking clarity on, we had not heard from
13 them, and that we were available to meet and confer on these
14 issues, that we would be open to that, and we did not receive a
15 response at all. We got the motion that was filed after hours
16 yesterday.

17 So, putting the mutuality aside that we have
18 requested, we still intend to produce the items that we
19 indicated that we would produce. We don't believe that they
20 are Rule 26 disclosure items, but for the sake of transparency
21 and in the interest of expert disclosure, we are going to
22 produce them, and we intend to produce them this week, as soon
23 as we can get through the privilege review process and whatnot.

24 There are some additional items that were requested
25 that we also had intended to produce and we have been able to

1 discuss with Defendants if they had actually reached out to us
2 instead of filing a motion with a Rule 7.1 certification, which
3 was actually false.

4 The other items that we are seeking clarity on, we
5 just need clarity from Defendants on what exactly they are
6 looking for. That is something that, once we are able to
7 obtain, we would be able to work with them on getting the items
8 produced rather than spending the time briefing this.

9 Unfortunately, I think this is a brief and motion
10 practice that is a waste of the Court's time and,
11 unfortunately, you know, I think it is a delay tactic because
12 of the fact that the PTO 65 motion to limit their expert
13 disclosures was denied on Friday and now they are seeking to
14 delay the provision of their expert reports.

15 *THE COURT:* Okay. It sounds to me like you have gone
16 from 17 items to five, maybe you all are heading in a collision
17 course to zero, I am hopeful, but you are asking for a week to
18 respond.

19 Let me turn to Mr. Sachse. I am not asking either
20 side to argue the merits, but is -- maybe this is in your
21 papers, I haven't read them carefully. If it is, I apologize.

22 Is the issue here that you need this disclosure so
23 that your experts can use this information to prepare their own
24 reports, or is this information that you want to get because
25 you want to use it when you depose the Plaintiffs' experts, or

1 is it both?

2 MR. SACHE: Your Honor, for the record, Will Sachse
3 for the Defendants, and I appreciate the admonishment that we
4 are not here to argue the merits. I feel like we got a lot of
5 merits arguments from Ms. Finken.

6 The answer to your question is both, and to explain
7 that a little bit further, let me give you a little back story.

8 First of all, we disagree with all of the
9 characterizations that Ms. Finken just outlined about the
10 course of these negotiations. We have been asking for these
11 materials for a long time, since last year. I sent an email to
12 leadership, Plaintiffs' leadership, after we had what I thought
13 was a fairly fruitful meet and confer on the provision of
14 complete testing on the inventory of materials that were
15 samples, and that email went unanswered for a full month.

16 We never heard anything from them until we got their
17 expert reports. We looked at the expert reports, and when we
18 did and saw Dr. Najafi's report, it does include material that
19 he relied on, but it is our position that it does not include
20 all material that he considered.

21 We do not have the testing results still, we do not
22 have complete inventory. All of this is outlined in our brief.
23 We did have a meet and confer, as Ms. Finken mentioned, last
24 week. At that point the Plaintiffs' position was that they
25 demanded mutuality, which they interpreted to mean not only

1 mutuality of any testing our experts do turning it over to the
2 Plaintiffs, but also they wanted to reopen fact discovery to
3 get into historic testing that the companies had done in
4 connection with the cause analysis, which your Honor is
5 familiar with. That is a nonstarter.

6 So, sitting here today, I think the issues are
7 narrowing and maybe further discussions will be helpful and we
8 will be able to avoid a hearing, but I think what I am hearing
9 is that the Plaintiffs continue to have the position that they
10 will only produce testing that was, quote, "relied upon," which
11 we think is cherry picking. We want all testing, all testing
12 that was done, we want all the protocols, we don't want it in
13 summary form. I think the brief clearly lays out exactly what
14 we are looking for.

15 Now, getting back to the reason we are here today, I
16 think that we are fine with a schedule -- obviously, we want
17 this in advance of March 7th, because our experts deserve the
18 ability to look at the totality of Dr. Najafi's testing and
19 respond to that, criticize that, and that is something -- when
20 I say experts, I am really talking about the experts that
21 respond directly to Dr. Najafi.

22 This is not the causation experts per se, but that is
23 something I understand, if we need more time, that might not be
24 within the power of this Court to do, but whether it is a brief
25 extension for those chemistry experts to respond or leave to

1 file a supplemental response incorporating the evidence that we
2 receive, if we receive evidence, is something that we will be
3 looking to do down the road.

4 For purposes of this Court, I think if we are talking
5 about getting a brief Monday, Tuesday, and then having a
6 hearing as soon as practical after that, that would be ideal
7 for us.

8 *THE COURT:* Okay. Here is what I am going to do.

9 Ms. Finken, I will give you until five o'clock next
10 Tuesday, March 1st, to file your response brief, and I will set
11 a hearing for Wednesday, March 2nd, at 3:00 p.m. That will
12 give me the morning to read the brief and do whatever I need to
13 do, and we will go from there, and then I will rule. It will
14 give the Defendants a four-day window to do whatever they need
15 to do.

16 You all are walking on a razor's edge here because I
17 certainly don't have authority to extend the expert deadlines,
18 and I wouldn't hold my breath that Judge Rosenberg is going to
19 extend them. If it turns out that this is discovery that the
20 Plaintiffs should have given under Rule 26 and they don't give
21 it, they run the risk that Dr. Najafi is going to get struck as
22 an expert. So, I leave that to both of you.

23 So, we will memorialize those two things. So, five
24 o'clock next Tuesday, the 1st, for the Plaintiffs' response
25 brief, no reply brief, and we will set a hearing for the

1 following day at 3:00 p.m.

2 *(Discussion off the record.)*

3 *THE COURT:* We will make it 5:30 on the 2nd for the
4 hearing. That will give me a little more time to do the
5 research and give Defense a little more time to digest it.

6 In the meantime, you have always done well together,
7 perhaps you can narrow the issues even further.

8 *MS. FINKEN:* Your Honor, I just want to thank
9 Ms. Stipes for working overtime to help resolve this issue, as
10 she always does, but I suspect that the brief will be mooted by
11 then, to be honest with you. We don't have any intention of
12 withholding any information, so I am hopeful that we will have
13 mooted the issue by then and not waste the Court's time.

14 *THE COURT:* The Court will give you the time you need.
15 I am aware of the time sensitivity on both sides to get things
16 moving in this case and keep things moving in this case. I
17 wanted to get you in today and make sure we all had some
18 deadlines to work with.

19 Mr. Sachse, anything else you wanted to raise on these
20 issues today?

21 *MR. SACHE:* Nothing today, your Honor.

22 *THE COURT:* Ms. Finken?

23 *MS. FINKEN:* No, sir.

24 *THE COURT:* I promised the special master and
25 Ms. Stipes we would be done by one o'clock, so I am seven

1 minutes ahead of myself. Thank you, everybody. We will be in
2 recess.

3 MS. FINKEN: Thank you, your Honor.

4 MR. SACHE: Thank you.

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

6 * * *

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

9

10 Date: February 23,2022

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

12 Signature of Court Reporter

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