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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE: )  
)  
CONAGRA PEANUT BUTTER PRODUCTS ) Docket No. 1:07-MD-1845-TWT  
LIABILITY LITIGATION )  
) April 1, 2011  
) 11:40 a.m.  
) Atlanta, Georgia

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TRANSCRIPT OF THE STATUS CONFERENCE PROCEEDINGS  
BEFORE THE HONORABLE THOMAS W. THRASH, JR.,  
U.S. DISTRICT COURT JUDGE

APPEARANCES OF COUNSEL:

On behalf of the Plaintiffs: Robert Smalley  
McCamy Phillips  
  
On behalf of the Defendant: James Neale  
McGuire Woods

*Proceedings recorded by mechanical stenography  
and computer-aided transcript produced by*

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1                   (Proceedings held April 1, 2011, Atlanta, Georgia,  
2 11:40 a.m., in chambers.)

3                   THE COURT: All right. This is the case of In Re:  
4 ConAgra Peanut Butter Products Liability Litigation, Case  
5 Number 07-MD-1845.

6                   First let me ask counsel for the parties that are  
7 here in my chambers to identify yourselves for the record and  
8 the parties you represent.

9                   MR. SMALLEY: Good morning, Your Honor. Robert  
10 Smalley for the Plaintiffs.

11                   THE COURT: Good morning, Mr. Smalley.

12                   MR. NEALE: And, Your Honor, I'm Jim Neale. I  
13 represent ConAgra.

14                   THE COURT: Morning, Mr. Neale.

15                   MR. NEALE: Good morning.

16                   THE COURT: For those who are monitoring the status  
17 conference on the telephone, it's not necessary that you  
18 identify yourself at this time. If you later participate in  
19 the status conference, you can identify yourself at that time.

20                   For those of you who are on the phone, each time that  
21 you speak state your name so my court reporter can get an  
22 accurate record of this proceeding. Also, because of the way  
23 my speakerphone works, if you are talking I'm cut off and I  
24 can't interrupt you, I can't ask a question, I can't stop you  
25 from talking. So if you do begin speaking, stop every minute

1 or so and ask for permission to continue speaking.

2 Having said that, is there anybody that's on the  
3 phone wants to identify yourself at this time?

4 MR. MITCHELL: Tim Mitchell for the Mitchell  
5 Plaintiffs.

6 MR. KOUFFMAN: Dominic Kouffman for Deidra Proveaux  
7 Cox.

8 MR. GOERKE: Joe Goerke for Thomas Pierce.

9 MS. ANDERSON: This is Jordan Anderson for Brecka  
10 Ticken.

11 MR. STEVENSON: Howard Stevenson for Mildred Turner.

12 THE COURT: All right. As I said --

13 MR. ROBINETT: Mike Robinett standing in for Thomas  
14 Simeone on behalf of James Davis.

15 MS. MALIN: Cathy Malin for Christopher Hastings for  
16 Plaintiffs Greening and Brown.

17 MR. STANLEY: Al Stanley on behalf of Barbara  
18 Tackett.

19 THE COURT: All right. As I said, this is a status  
20 conference in this case. I have received the joint proposed  
21 agenda for this status conference, and my intention is simply  
22 to go through the agenda as proposed.

23 The first item is the MDL **census** and demographics.

24 Mr. Neale, you want to address that?

25 MR. NEALE: Yes, sir.

1           As the notes indicate, Your Honor, this month -- I'm  
2 sorry. Since the last status conference two months ago, ten  
3 cases were closed and the claims of 102 Plaintiffs were  
4 resolved either by settlement or judgment. Collectively, that  
5 means we reduced the inventory at least in gross by 20 percent  
6 in terms of cases, 21 percent, and almost 28 percent in terms  
7 of the number of Plaintiffs.

8           Since the last status conference, Judge, we had the  
9 four-year anniversary of the recall which occurred on  
10 Valentine's Day in '07. That meant that the statute of  
11 limitations in a few states ran, and that resulted in not an  
12 enormous spike but in a number of new cases coming into the  
13 system. We acquired eight new cases involving thirteen  
14 Plaintiffs on two different conditional transfer orders.

15           So the net numbers in terms of number of cases don't  
16 look that -- doesn't look that impressive. I think we continue  
17 to make good progress, however, Your Honor. And I think that  
18 the number of new cases ought to be absolutely minimal if not  
19 nonexistent from here out. There are -- I don't recall the  
20 exact count, but there are only a few states that have longer  
21 than four-year statutes of limitations; and those are not  
22 states in which we have seen any significant claims activity to  
23 date.

24           I think there are two cases that remain in the system  
25 and not yet transferred. Those are coming in from Florida.

1 But other than those two, Your Honor, we don't anticipate any  
2 increase in the number of cases or Plaintiffs the Court has.  
3 And the progress we make from here on out ought to be more  
4 directly reflected in the net numbers each time we come in.

5 THE COURT: Mr. Smalley, you want to --

6 MR. SMALLEY: Nothing to add, Your Honor.

7 THE COURT: -- say anything about that?

8 MR. SMALLEY: No thank you, Your Honor.

9 THE COURT: Well, I'm certainly pleased that you are  
10 continuing to make progress resolving the cases, Mr. Neale.  
11 However, I'm wondering if the time has come to suggest to the  
12 panel remand of the cases that have been pending for sometime,  
13 not the cases covered by CTO 56 and 57 but the others that in  
14 the case of the Andrews case, the Ahrens case, those cases have  
15 been pending for four years. The two Anderson cases, the  
16 Abraham case, those cases have been pending since 2009. I'm  
17 wondering if the time has come simply to -- particularly the  
18 mass-filed cases, those that were filed in other districts --  
19 to suggest to the MDL panel to remand those to the districts  
20 that they were originally filed in.

21 MR. NEALE: Your Honor, I won't speak for those  
22 attorneys handling those cases. The claims process remains  
23 open for them, and each day we continue to make progress there.  
24 But you are right, it's slow. And I know that the Court has  
25 long expressed its desire to do something with those cases.

1           So I would hope, Your Honor, that any case in which  
2 the Plaintiff's counsel believed remand was appropriate there  
3 might be a suggestion made and that we'd have an opportunity to  
4 at least identify to the Court reasons we thought we ought to  
5 join in that suggestion or perhaps motions or other things we  
6 thought the Court ought to resolve before the case were  
7 remanded. But with the mass-filed cases, Your Honor, I don't  
8 know that there are any impediments to moving those in the  
9 short -- in the upcoming months.

10           MR. SMALLEY: Your Honor, if I may, I have had  
11 contact with a number of the attorneys in the single-filed  
12 cases, the one-off cases, the more traditional-type cases; and  
13 a number of them are very interested in remand, particularly  
14 the ones as you identified that have been around for a while  
15 where some discovery has been done and it's simply a matter of  
16 the parties having different valuations on the cases and  
17 different opinions about those. So from the Plaintiffs'  
18 perspective, I think we would definitely like to see the  
19 ability of those cases to get back to their home districts and  
20 get on a calendar as quickly as possible.

21           As far as the mass-filed cases, I know that those  
22 have been a source of some frustration. They have also been a  
23 vehicle for the settlement process. And one suggestion may be  
24 to set a deadline out that would allow those lawyers in those  
25 mass-filed cases either to get their claims activity finalized

1 with Mr. Neale or understand that they will be remanded in the  
2 near term or that suggestion would be made.

3 THE COURT: Well, I think that's a good suggestion,  
4 Mr. Smalley.

5 For those attorneys who are on the phone who are  
6 handling either the mass-filed cases or who have individual  
7 cases who would like to have your case remanded as quickly as  
8 possible, please identify yourself by name and your Plaintiff  
9 and case number if you've got it in front of you.

10 MS. ANDERSON: This is Jordan Anderson on behalf of  
11 Brecka Ticken. I don't have my case number in front of me. I  
12 apologize. Regarding the remand, is this something that we as  
13 Plaintiffs need to file a motion for; or is this something the  
14 Court is going to do on its own accord?

15 As far as timing, I think -- I know I speak for  
16 myself, and I have been speaking to some other lawyers that  
17 represent single Plaintiffs; and we have some expert witness  
18 issues that I think need to be fleshed out before Judge Thrash  
19 before we get remanded. So I kind of just want some guidance  
20 as to how the process is going to work.

21 THE COURT: Well, the way the process will work is  
22 that I will suggest to the MDL panel that a set number of cases  
23 that'll be identified in my order be remanded. That usually  
24 takes about a month to get that process accomplished. But I  
25 intend to do that on my own whether there's a motion made or

1 not. It's simply a question of when that's going to be done.

2 Anybody else want to be heard on the remand issue?

3 MR. MITCHELL: Yes. Tim Mitchell for the Mitchell  
4 Plaintiffs, Case Number 1:08-CV-03701; and it's Docket 2026.  
5 We have got a pending motion to reinstate that we weren't  
6 served with the motion for summary judgment that's been pending  
7 since November 1st. Yes, we would like a resolution on that  
8 and remand.

9 THE COURT: Anybody else want to be heard?

10 MR. STANLEY: Yes, Your Honor. My name is Al  
11 Stanley. I represent Barbara Tackett. I do not have the file  
12 number in front of me, but we would also be interested and  
13 request remand.

14 MR. NEALE: Mr. Stanley, this is Jim Neale speaking.  
15 Ms. Tackett's case, am I correct that that was recently  
16 transferred in?

17 MR. STANLEY: Yes, relatively recently.

18 THE COURT: Anybody else want to be heard on the  
19 remand issue?

20 MR. BRODE: Yes, Your Honor. My name's George Brode.  
21 I represent Paige Lemonia, and we would certainly be interested  
22 in remand. We have been in the MDL the whole time, I believe.

23 THE COURT: Anybody else want to be heard?

24 MR. WILLIAMS: Yes, Your Honor. This is Michael  
25 Williams representing Rachel Dales, Case Number 1:08-CV-01352;



1 and we'd also request remand.

2 THE COURT: Well, let me put it this way. Is anybody  
3 on the phone who has a case pending that does not want your  
4 case remanded within the next 30 days?

5 MR. CARTER: Your Honor, this is Vincent Carter. I  
6 represent the Andrews, Ahrens and Lamont Anderson cases, case  
7 numbers respectively 3058, 3693 and 09-01545. I believe that  
8 my cases we are making a lot of progress on the settlement, and  
9 I think that where we are now is a good place to resolve many  
10 of our cases, and we are trying to move them forward as quickly  
11 as possible. There may be some cases at the end of the day  
12 that we will need remanded, but I think for now we believe that  
13 we are in a good place to resolve the majority of our remaining  
14 cases.

15 THE COURT: What do you say to that, Mr. Neale?

16 MR. NEALE: We'd welcome the opportunity --  
17 Mr. Carter and I are speaking regularly, Your Honor. I agree  
18 the pace of the claims process has picked up there. If the  
19 Court is willing to continue to maintain those cases on its  
20 docket, we have no objection.

21 THE COURT: All right. That's Andrews, 07-CV --

22 MR. CARTER: Lamont Anderson.

23 MR. NEALE: It's those first three there, Your Honor,  
24 the Girardi & Keese.

25 THE COURT: All right. Well, I will hold onto those

1 for a while. I am not going to do it indefinitely, Mr. Carter.  
2 But I anticipate submitting to the panel a suggestion for  
3 remand, but I will not include your three cases for now.

4 MR. CARTER: Thank you, Your Honor.

5 THE COURT: Anybody else that doesn't want their case  
6 remanded?

7 MR. AYERS: Michael Ayers, 1:10-CV-002257. I'd like  
8 it --

9 THE COURT: I am having a hard time hearing you, sir.

10 MR. AYERS: Can you hear? Did you get any of it?

11 THE COURT: Not really.

12 MR. AYERS: My name is Michael Thomas Ayers, Case  
13 Number 1:10-CV-02257. I'm representing myself. I have counsel  
14 down there in Atlanta, so I need to get transferred.

15 THE COURT: Do you know what case that is, Mr. Neale?

16 MR. NEALE: Yes, sir, I do. I believe it's  
17 1:10-CV-02257.

18 MR. AYERS: Yes.

19 MR. NEALE: And, Mr. Ayers, I will make sure if you  
20 haven't spoken to Mr. Woody from my office yet I will make sure  
21 that he contacts you in the next several business days.

22 MR. AYERS: That's great.

23 MR. NEALE: We will put that case near the top of his  
24 list.

25 MR. AYERS: Thank you, sir.

1 THE COURT: Anybody else that's on the phone that  
2 does not want to be remanded?

3 MR. WHALEY: Your Honor, this is J.R. Whaley. I just  
4 wanted to speak up. I have just one recent case that was  
5 transferred under CTO 55. It's Baumgartner. The case number  
6 is 11-00029. That is a case that is literally one of hundreds  
7 and hundreds that we were not able to resolve with Mr. Neale  
8 and Mr. McKernan in ConAgra frankly because of some individual  
9 causation issues. I certainly don't want to jump to the front  
10 of the line. That case was just transferred under CTO 55. And  
11 so I understand that there's some work that needs to be done in  
12 front of you, and I think that Mr. Neale and I can probably get  
13 all of that work done.

14 But I did want to bring that one to your attention  
15 and ask if there is some protocol that we could propose in  
16 regard to a timeline of getting, you know, whatever needs to be  
17 done in front of you done. I think ConAgra and we both know  
18 kind of what the issues are and what the sticking points in  
19 settlement were, and there may be an efficient way to handle  
20 those either in front of you or in front of the panel.

21 THE COURT: You want to comment on that, Mr. Neale?

22 MR. NEALE: We know that case, Your Honor.  
23 Mr. Whaley's correct that there's been a lot of exchange of  
24 information. That's not true with every case we have heard  
25 about. But when and if Mr. Whaley desires remand, I think

1 that's a case that we will be prepared to see go to its  
2 transferor court.

3 MR. WHALEY: Okay. Thank you.

4 Thank you, Your Honor.

5 THE COURT: You want me to hold onto that one for the  
6 time being, Mr. Neale?

7 MR. NEALE: Your Honor, I don't think that we have a  
8 fact sheet on that one or several of the other basic, standard  
9 discovery items yet. I think it would be premature to move it.

10 MR. WHALEY: And I agree with that, Your Honor. I  
11 just kind of wanted to cue that one up. I am not asking to  
12 jump at the front of the line right now. I think Mr. Neale is  
13 right. We do owe some basic information to him under the terms  
14 of your orders, and we'll get that. And perhaps at the next  
15 status conference beforehand Jim and I can speak and see if we  
16 have agreement on what to do with that. And if not, we could  
17 discuss it with Your Honor then.

18 MR. NEALE: And it raises the issue, Judge -- this is  
19 Jim Neale for folks on the phone -- I think we'd just like the  
20 opportunity if we could, Your Honor, to when a case is  
21 identified before the panel is made aware of the Court's  
22 suggestion of remand we'd just like the opportunity to inform  
23 the Court of any issues that we believe need to be resolved  
24 here before the remand. So if there's a way that liaison  
25 counsel could get the Court's list or tentative suggestion

1 first and allow us to comment on it or allow counsel for the  
2 individual Plaintiffs to comment on it, I think that would be a  
3 welcome opportunity. Several of the attorneys who spoke up I  
4 agree have cases that are ripe for remand, and others have  
5 pending motions that I think need to be resolved before the  
6 case leaves this Court.

7 THE COURT: All right. Well, what I intend to do  
8 then is to prepare an order remanding -- or suggesting remand  
9 of all of the cases that are still pending other than the cases  
10 in CTO 55, 56 and 57 and Mr. Carter's three mass-filed cases.  
11 I'll follow your suggestion, Mr. Neale, and I'll submit the  
12 order to you and Mr. Smalley and certainly would welcome your  
13 comments that you can put in writing and file on CM/ECF or you  
14 can request a telephone status conference call and I'll listen  
15 to your comments at that time.

16 MS. ANDERSON: Your Honor, this is Jordan Anderson on  
17 behalf of Brecka Ticken. Would you -- would the Plaintiff also  
18 be welcomed to call you and ask for some sort of status hearing  
19 when the list comes out, or we would just communicate with  
20 Mr. Neale in order to set that up with you?

21 THE COURT: I'm not going to hear from every  
22 individual Plaintiff on this matter. If you've got something  
23 you want to say, you need to say it now.

24 MS. ANDERSON: I guess I don't know what it is I  
25 would need to say. I mean, Mr. Neale indicated that there

1 would be some cases that have issues that need to be resolved  
2 prior to remand. And unless this happens to be one of those, I  
3 mean, it won't be -- I guess we need to discuss those issues  
4 with Mr. Neale and the Court if that circumstance arises. I  
5 mean, I don't even know if it's going to yet; but I just want  
6 to know what that process is going to be.

7 THE COURT: I'm sure Mr. Neale or Mr. Smalley either  
8 one would be happy to talk with you.

9 MR. KOUFFMAN: Your Honor, this is Dominic Kouffman  
10 on behalf of Deidra Proveaux Cox, Case Number 1:08-CV-3184. We  
11 would welcome remand.

12 There are two issues that I think Ms. Anderson is  
13 probably also thinking of in the Ticken case. There are two  
14 issues relating to experts in our case that may prevent remand  
15 or may be able to be resolved in the transferor court. One is  
16 there's still a pending motion in limine filed by ConAgra  
17 against one of our medical experts, and we've been of the  
18 position that that could probably be resolved at the original  
19 -- in the original court that we filed in.

20 However, there's another issue regarding the two  
21 causation Plaintiffs -- or I'm sorry -- two causation experts  
22 that had originally been designated by the Plaintiffs'  
23 committee who we have heard may now be unavailable in our  
24 individual cases other than to the extent that testimony is  
25 currently on the record. And I know this is an issue in the

1 Ticken case, and we have a similar issue where we would desire  
2 to designate a new causation expert who can be available to us  
3 once we return back to our home court. And that is an issue  
4 that we are not clear as to whether it needs to be resolved  
5 with you before we are transferred back or if that is an issue  
6 that can be resolved after transfer.

7 MS. ANDERSON: And this is Jordan Anderson. I would  
8 agree with what Mr. Kouffman just set forth. You know, we also  
9 have a pending summary judgment that has not been ruled on  
10 which we also think could be agreed on by our district court in  
11 Texas after remand and also the issues with the experts that  
12 Mr. Kouffman just described.

13 THE COURT: Well, feel free to comment on this,  
14 Mr. Neale, if you wish to. But I have taken the position, I  
15 think, fairly consistently that individual issues of causation  
16 and individual experts' designations are matters to be  
17 addressed in the transferor court after remand, that the only  
18 deadline for designation of experts in the MDL case was for  
19 national experts addressing global issues and not individual  
20 issues of causation.

21 Have I said that correctly, Mr. Smalley, Mr. Neale?

22 MR. SMALLEY: I think that's right, Your Honor. I  
23 think one of the things Ms. Anderson may be talking about is  
24 that one of the two FDA experts the Plaintiffs have proposed  
25 and about which there's currently a pending Daubert motion due

1 to health reasons is no longer able to serve. And I think she  
2 is wanting assurance that when she gets back to her transferor  
3 court that she would be able to retain her own expert about  
4 those type of causation issues I think is what I am hearing;  
5 although, she may correct me.

6 MS. ANDERSON: That's correct, Mr. Smalley.

7 MR. KOUFFMAN: That's correct for our case as well.

8 MR. NEALE: Your Honor, these are -- this is Jim  
9 Neale speaking. These are not as I understand it individual  
10 experts speaking about medical -- specific medical causation.  
11 These are plant food-safety experts, manufacturing experts.  
12 There were two designated by the Plaintiffs' committee. Those  
13 depositions were taken. There are pending Daubert motions on  
14 them.

15 If they are unavailable, I'm not aware of that. But  
16 those are global experts, and that is as I understand it the  
17 reason for the MDL. They were disclosed for every case. They  
18 were deposed for every case.

19 To the extent that a substitution needs to be made  
20 for health reasons, that's obviously a very reasonable reason.  
21 But that ought to be done globally, and it ought to be done  
22 before these cases are remanded. To do otherwise would defeat  
23 the whole purpose of the MDL.

24 Ms. Anderson as I recall moved for leave of Court to  
25 designate in this court a third manufacturing expert. We



1 responded to that motion. And Ms. Anderson will correct me if  
2 I'm wrong, but I believe that the Plaintiff withdrew that  
3 motion in reply.

4 MS. ANDERSON: We did. We did. And we withdrew it  
5 for a technical reason in that we did not ask for leave of  
6 Court, and so we withdrew the motion to -- you know, we were  
7 going to file the proper motion for leave. But, I mean, if the  
8 Judge is telling us on this status conference that we will be  
9 able to designate one when we get back to our home court, I'm  
10 fine with that as well.

11 And our issue regarding this particular case that was  
12 designated by the steering committee, while one of them was  
13 deposed by cross-examination, there's no direct testimony to  
14 confirm those. So that's another issue that we have. And then  
15 with the other gentleman who has become unavailable for medical  
16 reasons, these are several issues with the Court that give us  
17 concern about these experts and what our situation would be  
18 when we get back to our home court.

19 THE COURT: All right. You can be in touch with  
20 Mr. Neale and Mr. Smalley, Ms. Anderson.

21 Next item is the update on the cases on our Civil  
22 Justice Reform Act Report.

23 Mr. Neale?

24 MR. NEALE: Your Honor, I don't know that it bears  
25 much specific mention. It remains a good exercise. When

1 Ms. Sewell provides this, we inevitably find three or four that  
2 have been dismissed, and for whatever reason we failed to  
3 complete the paperwork or the court system failed to pick up on  
4 it. But in any event, the numbers have remained fairly steady.  
5 There are typically about 20 cases on that report. These cases  
6 are the ones that will be published on the September 2011  
7 report, and that's where we are focusing the effort. But that  
8 shows the longest standing cases here, the first ones in, so to  
9 speak.

10 And I will just point out, Your Honor, I think at the  
11 top of the list is the Kidd case. And Mr. Smalley will correct  
12 me if I'm wrong, but I believe that's an originally filed case  
13 in the Northern District.

14 MR. SMALLEY: It is.

15 MR. NEALE: Mr. Koski's case. And it may be one of,  
16 if not the only, remaining bellwether candidate once the  
17 pending motions are resolved.

18 MR. SMALLEY: I believe that's the only other than  
19 the mass-filed cases.

20 MR. NEALE: Other than the mass-filed cases or a case  
21 in which jurisdiction was conveyed for trial by consent of the  
22 parties which I am happy to speak about with anybody who would  
23 like that opportunity.

24 THE COURT: Is Mr. Koski on the phone?

25 (No response.)

1 THE COURT: Well, Mr. Smalley, my thought would be  
2 then to put the Kidd case on the next trial calendar and remand  
3 the other cases on this list other than, as I said, the Andrews  
4 case.

5 All right. Next item is pending motions.

6 Mr. Neale?

7 MR. NEALE: Judge, segueing into the remand  
8 discussion, there are several on here that I'd highlight for  
9 the Court that the Defendant believes should be resolved before  
10 remand; and those are 1205 through 1207. That's the MDL docket  
11 number. Those are Defendant's Daubert motions regarding  
12 Plaintiffs' experts. The Court has ruled on the Plaintiffs'  
13 Daubert motions regarding Defendant's expert, but that's the  
14 other bookend of that same pretrial proceeding.

15 The next two, Your Honor, are individual summary  
16 judgment motions that I would hope the Court would rule on  
17 before remanding either of those two individual cases. Those  
18 are Dockets Number 1911 -- that's the Ticken case, Ms. Anderson  
19 -- and 1934 which is Mr. Koski's Kidd case about which we just  
20 spoke.

21 And then there's a group of cases. I know  
22 Mr. Mitchell is on the phone and Mr. Brown -- excuse me --  
23 several of the attorneys for Brown and Greening. Those, Your  
24 Honor, from 1964 through 2074 are different variants of motions  
25 to reconsider filed by individual Plaintiffs for dismissals for

1 one reason or another. Those cases --

2 THE COURT: Well, let me interrupt you a minute,  
3 Mr. Neale. I'm going to take back what I said about the Kidd  
4 case. I am going to rule on the motion for summary judgment  
5 before putting that on a trial calendar. So we'll address that  
6 motion for sure, Mr. Neale.

7 MR. NEALE: All right.

8 THE COURT: Go ahead.

9 MR. NEALE: Your Honor, 2115 is a Daubert motion.  
10 That is Mr. Kouffman's case, the Proveaux Cox case out of  
11 Florida. And that's in the -- it does concern a medical expert  
12 addressing individual issues of specific causation, Your Honor.  
13 That expert is not a treating physician. He is one of the  
14 national experts whom the Plaintiffs retained in that case. So  
15 the parties, I think, aren't certain of whether that's a motion  
16 to be heard by this Court or by the transferor court after  
17 remand. But it's pending, and we will abide by the Court's  
18 ruling in either event. One of the two, I assume, will address  
19 it prior to any trial.

20 MR. SMALLEY: If I may, Your Honor, our position  
21 certainly is that those types of motions should be dealt with  
22 with the transferor court. Those are individual medical  
23 causation issues.

24 MR. NEALE: We have not -- and, Your Honor, ConAgra's  
25 distinction there is this. Dr. Stratton is a Vanderbilt

1 physician. He was designated globally by the Plaintiffs to  
2 address issues of general causation. And then in addition to  
3 that, several Plaintiffs, none of whom had Dr. Stratton as a  
4 treating physician, also designated him specifically.

5 We have deposed Dr. Stratton in those cases. Those  
6 that haven't been resolved are submitted for motions. He has  
7 testified in -- or excuse me -- been disclosed in the Proveaux  
8 Cox case and in the Ticken case and in several others that have  
9 been resolved, I believe. But it is a recurring theme, Your  
10 Honor. He is a recurring witness. Many of the issues will be  
11 addressed by the Court in the global Daubert motion.

12 I understand Mr. Smalley's position, but ConAgra's is  
13 the opposite. And we would ask the Court to consider ruling on  
14 the Daubert motion even when Dr. Stratton opines as to issues  
15 of individual causation.

16 THE COURT: All right. I will look at the motion  
17 before I decide what to do with that.

18 MR. NEALE: Your Honor, the remaining four, I think,  
19 are individual, case-specific motions that are  
20 self-explanatory. 2151 goes with the other Plaintiffs' motions  
21 to reconsider. 2174, Your Honor, is a motion to withdraw. I  
22 haven't spoken to Mr. -- I will mispronounce it; forgive me --  
23 Mr. Bonyngelately. But, again, as I understand the Court's  
24 position there, rather than withdrawing and leaving a pro se  
25 Plaintiff here, the Court's preference when possible is to have

1 a stipulation of dismissal without prejudice and an agreed-to  
2 tolling period of six months where that Plaintiff can find new  
3 counsel to re-file in another forum. And we believe that's the  
4 appropriate procedure in the Wise case.

5 THE COURT: Is Mr. Bonynge or Mr. Wise on the phone?  
6 (No response.)

7 THE COURT: All right. I'm going to grant the motion  
8 to withdraw by Bradley Bonynge. It's Docket Number 2174. And  
9 I will dismiss the Wise action without prejudice with leave to  
10 re-file within six months if Mr. Wise retains counsel.

11 MR. NEALE: We will prepare that order, Your Honor,  
12 and submit it.

13 THE COURT: Thank you.

14 MR. NEALE: 2227, Your Honor, is an individual issue  
15 involving the lid code and illness date. That's the Arko case.  
16 And we have granted an extension for Plaintiff's counsel to  
17 respond there.

18 And then 2251, Your Honor, has been mooted. That  
19 case if it hasn't already will be dismissed by stipulation in  
20 the next couple of days.

21 And I believe that's the roll of currently pending  
22 positions of which ConAgra's aware.

23 THE COURT: You want to comment on any of those,  
24 Mr. Smalley?

25 MR. SMALLEY: No, Your Honor. Thank you.

1 THE COURT: Anybody on the phone want to say anything  
2 else about the pending motions?

3 MR. KERLEY: Yes, Your Honor. John Kerley on behalf  
4 of Plaintiff Sheila Riley. I believe there's a motion for  
5 summary judgment pending on her case, but I do not see that on  
6 the agenda. And so I just want to make a clarification.

7 MR. NEALE: There was one, Mr. Kerley. And I believe  
8 the Court ruled on it and denied it without prejudice. That  
9 was for a negative culture as I recall, sir.

10 MR. KERLEY: Yes, that's right. That's right.

11 MR. NEALE: There's been a ruling. And if you will  
12 contact me this afternoon or Monday, I will provide you a copy  
13 of it.

14 MR. KERLEY: Thank you.

15 MR. NEALE: Her case is still pending.

16 MR. KERLEY: Thank you.

17 THE COURT: All right. Any other matters to be  
18 addressed?

19 Should we schedule another status conference?

20 MR. NEALE: Yes, sir.

21 MR. SMALLEY: We should, Your Honor.

22 MS. MALIN: Your Honor?

23 THE COURT: Yes.

24 MS. MALIN: This is Cathy Malin from the Hastings Law  
25 Firm. Is there any clarification on when one might expect

1 rulings on the motions for reconsideration?

2 THE COURT: I can't do that.

3 MS. MALIN: Thank you.

4 THE COURT: One month, two months?

5 MR. SMALLEY: Why don't we -- yes, Your Honor, I  
6 think we've let it go a little longer but maybe a little sooner  
7 this time so that we can deal with any issues surrounding the  
8 remands that we talked about today and we can perhaps bring  
9 back to Your Honor any proposals or suggestions about those  
10 details.

11 THE COURT: I think that's a good idea, Mr. Smalley.  
12 Let's try to schedule something first week in May, and y'all  
13 just get with Ms. Sewell after the status conference and see  
14 what looks the most convenient for y'all.

15 MR. SMALLEY: Thank you.

16 MR. NEALE: Yes, sir.

17 THE COURT: All right. I believe that is everything,  
18 and that concludes the status conference. Thank you very much.

19 (Proceedings adjourned at 12:18 p.m.)  
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C E R T I F I C A T E

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2  
3 UNITED STATES DISTRICT COURT:

4 NORTHERN DISTRICT OF GEORGIA:

5  
6 I hereby certify that the foregoing pages, 1 through  
7 24, are a true and correct copy of the proceedings in the case  
8 aforesaid.

9 This the 11th day of August, 2011.

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15 Susan C. Baker, RMR, CRR  
16 Official Court Reporter  
17 United States District Court  
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