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IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: GADOLINIUM-BASED  
CONTRAST AGENTS PRODUCTS                      Case Number 1:08-gd-50000  
LIABILITY LITIGATION                              Tuesday, March 8, 2011  
(MDL Number 1909)                                  3:35 p.m.

TRANSCRIPT OF TELEPHONIC PRETRIAL PROCEEDINGS  
BEFORE THE HONORABLE DAN AARON POLSTER  
UNITED STATES DISTRICT JUDGE

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APPEARANCES:

For the Plaintiffs: Peter W. Burg, Esq.  
Troy Alan Rafferty, Esq.  
Pete Weinberger, Esq.  
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Russell S. Briggs, Esq.  
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John Suthers, Esq.  
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Michael Williams, Esq.

1 APPEARANCES: (CONTINUED)

2 For the Defendants Mr. Tarek Ismail, Esq.  
3 Bayer Corporation,  
4 Bayer Healthcare LLC,  
5 Bayer Healthcare  
6 Pharmaceuticals, Inc.:

7 For the Defendants Heidi L. Levine, Esq.  
8 GE Healthcare Bio- Ms. Charna E. Sherman, Esq.  
9 Sciences Corp., GE J. Philip Calabrese, Esq.  
10 Healthcare, Inc.: Christopher M. Strongosky, Esq.

11 For the Defendants Deborah A. Moeller, Esq.  
12 Mallinckrodt, Inc.,  
13 Covidien Ltd., Tyco  
14 Healthcare, Tyco  
15 Healthcare Group LP,  
16 Tyco Healthcare, Ltd.,  
17 Tyco Holdings, Tyco  
18 International Ltd.:

19 For the Defendant Thomas N. Sterchi, Esq.  
20 Bracco Research USA, Patrick Lysaught, Esq.  
21 Inc.:

22 Official Court Reporter: Susan K. Trischan, RMR, CRR, FCRR  
23 7-189 U.S. Court House  
24 801 West Superior Avenue  
25 Cleveland, Ohio 44113  
216/357-7087

22 Proceedings recorded by mechanical stenography; transcript  
23 produced by computer-aided transcription.

24 THE CLERK: Hi, this is Mary Hughes and I just  
25 want to repeat, those people who are not speaking, please,  
please hit their mute button. That's the first thing.

1                   The second thing is that the court reporter is  
2 Sue Trischan.

15:36:54

3                   And then the final thing is that anybody who  
4 speaks, please introduce yourself right before you speak so  
5 the court reporter can catch the name.

6                   And finally, Chris Strongosky, if you could  
7 give us the name of all the attorneys who are participating  
8 in this call. And do it slowly, please, because Sue  
9 Trischan has to write this down.

15:37:12

10                   MR. STRONGOSKY: This is Chris Strongosky.

11                   Thank you, Mary. I'll be happy to read off  
12 the names as I see them now on the Global Crossing website.  
13 And before I get started, I'll just state that I hear some  
14 errand static already so if anyone is not on mute, please go  
15 on mute.

15:37:28

16                   Here are the names. David Maglio from  
17 Maglio & Associates; John Suthers from Suthers & Thompson;  
18 Gil Gainer from Toliver and Gainer; Lauri Restaino.

15:38:12

19                   THE CLERK: Chris, sorry to interrupt for a  
20 second. This is Prashant Tamaskar.

21                   Would you also be able to e-mail the list to  
22 us after the call?

23                   MR. STRONGOSKY: Yes.

24                   THE CLERK: Okay. Thank you.

15:38:22

25                   Sorry, please continue.

1 MR. STRONGOSKY: Salman Elmi from Ashcraft  
2 Gerel; Peter Burg from Burg Simpson; Cyndi Rusnak from  
3 Williamson & Rusnak; Beth Klein from Klein & Frank; John  
4 Restaino from Restaino Law Firm; Claudine Homolash from  
15:39:04 5 Sheller PC; Mark, Mark Mueller from Mueller Law Firm;  
6 Michelle Tiger from Kline & Specter; Steve Skikos from  
7 Skikos Crawford; Peter Keith from Kelly Finan; Craig Currie  
8 from J. Craig Currie & Associates; Bill Hawal from  
9 Spangenberg; Sejal Brahmhatt from Williams Kherkher; Troy  
15:40:04 10 Rafferty from Levin Papantonio; Larry Gornick from Levin  
11 Simes; Lezzlie Hornsby from Mathews & Associates; Matthew  
12 McCauley from Parker Waichman; Michelle Parfitt from  
13 Ashcraft & Parfitt; Mike Johnson from Goldenberg & Johnson;  
14 Tom Sterchi from Baker Sterchi; Tarek Ismail from Goldman  
15:40:58 15 Ismail; Sofia Bruera from Blizzard McCarthy; Lesley Stewart  
16 from Sanford Law Firm; Elizabeth Dudley from Phillips Law  
17 Group; Howard Nations from the Law Office of Howard Nations;  
18 Chris Tisi from Ashcraft & Gerel; Russell Briggs from Fibich  
19 Hampton; Mike Williams from Cellino & Barnes; Debbie Moeller  
15:41:42 20 from Shook Hardy & Bacon; Debra DeCarli from DeCarli Law;  
21 Lea Morris from Levin Papantonio; Lowell Finson from  
22 Phillips Law Group; Phil Calabrese from Squire Sanders;  
23 Charna Sherman from the Law Office of Charna Sherman; Heidi  
24 Levine from DLA Piper; and again this is Chris Strongosky  
15:42:22 25 from DLA Piper.

1                   And the only other instruction we received  
2                   from Global Crossing, a reminder if you need to go on mute  
3                   and you do not have a mute button on your phone, or if you  
4                   use a mute button and music will play, use 6-3 and Global  
15:42:42 5                   Crossing will mute your line. 6-6 will unmute it.

6                   Thank you.

7                   MR. WEINBERGER: Judge, this is Peter  
8                   Weinberger. I was not on the list that Chris just read off,  
9                   so I'm on the phone.

15:42:58 10                  MR. LYSAUGHT: Yes, also this is Pat Lysaught  
11                  and I also was not on the list that was read.

12                  MR. BOOTH: Your Honor, this is Roger Booth at  
13                  Booth and Koskoff, and I was also not on that list.

14                  THE COURT: Is there anyone else who wasn't on  
15:43:14 15                  the list? If so, please identify yourself.

16                  MR. McCORMICK: Ryan McCormick of Seller Law  
17                  Offices, too.

18                  THE COURT: All right. Well, thank you,  
19                  everyone, for being available.

15:43:30 20                  I apologize for the delay. I had a special  
21                  Judges meeting which sort of pushed things back, and I know  
22                  we had planned to have this about ten days ago and  
23                  technology intervened and it had to be rescheduled for the  
24                  next day. It would have been blizzarded out, so we're doing  
15:43:48 25                  it now.

1 I have -- I've reviewed all these documents  
2 and I've decided to do the following: I'm going to deny  
3 GE's motion to compel and for sanctions.

4 What I wanted in GE's reply was to -- for GE  
15:44:16 5 to identify any specific case where the plaintiff's fact  
6 sheet was inadequate for them to fairly evaluate the case.  
7 I didn't get any.

8 So from now on, if there -- if anyone has a  
9 problem, we're going to follow the local rules, and the  
15:44:36 10 procedure in the local rules are you meet and confer, and if  
11 you can't work it out, then someone faxes a letter to the  
12 Court. I get a response. Then I do it on the phone.

13 So that's what I'll do.

14 That wasn't followed here.

15:44:56 15 And also that GE didn't -- had failed to  
16 acknowledge a lot of updates that were made prior to the  
17 filing of their motion, and they raised a lot of technical  
18 defects that had no substantial impact on this case.

19 It's important, though, that everyone do  
15:45:12 20 essentially what they have to do, so I'm going to issue a  
21 new directive and that is that every six months starting  
22 March 31st any plaintiff who still has a case going against  
23 at least one of the defendants, in other words a case that  
24 hasn't been settled or dismissed as to all, is to update  
15:45:36 25 that plaintiff's fact sheet. And if the update simply says

1 "There's nothing new to report," that's all you have to say,  
2 but this way every plaintiff's fact sheet is going to be  
3 current.

4 So it will be March 31st, September 30th. You  
15:45:52 5 know, if those dates are on a Saturday or Sunday, it will be  
6 the last business day of March, the last business day of  
7 September, and so on until we end this MDL.

8 And again if GE believes that any plaintiff's  
9 fact sheet is inadequate for it to fairly evaluate the case,  
15:46:12 10 you contact that individual plaintiff's lawyer about that  
11 case, you meet and confer, you try and work it out. If you  
12 can't, fax me something. I'll get a quick response from  
13 that plaintiff's lawyer, I'll have a conference, and it will  
14 be dealt with quickly.

15 I'm also going to order GE to file Part 1 of  
16 the defendant fact sheet in any case in which it hasn't  
17 filed Part 1.

18 MS. LEVINE: Your Honor, this is Heidi Levine  
19 on behalf of GE. I have a couple of things to say in  
15:46:52 20 response to that, and I think it's very important --

21 THE COURT: All right.

22 MS. LEVINE: -- to discuss this.

23 THE COURT: Well, you can say it, but I'm not  
24 going to -- I'm not going to change what I'm ruling, but go  
15:47:04 25 ahead.



1 MS. LEVINE: So be it, Your Honor, but, Your  
2 Honor, GE is still here today on a call about a motion to  
3 compel regarding deficiencies in fact sheets because there  
4 are still remaining material, not insubstantial, but  
15:47:22 5 material deficiencies in all but one of the plaintiff fact  
6 sheets that we asked to be supplemented.

7 And we received thousands of pages, mounds of  
8 paper over the last two weeks that we are reviewing. We are  
9 still getting supplements even today. Your Honor, this is  
15:47:42 10 not insubstantial, and it is -- the plaintiffs who have  
11 responded in opposition stating that GE's motion implies  
12 that or that our cited deficiencies are insubstantial or  
13 immaterial, make a mockery of this MDL.

14 We have several examples to give you. Let me  
15:48:06 15 tell you that there are --

16 THE COURT: No, I'm not doing this this way.

17 MS. LEVINE: We learned today that -- one of  
18 the plaintiffs supplemented their fact sheet on  
19 February 18th. It was not verified. We learned today that  
15:48:20 20 that plaintiff died on January 2nd and never supplemented  
21 its fact sheet, and replied to the clerk that GE is making a  
22 big deal out of a lot of nothing.

23 And we have to, have to say something about  
24 this, Your Honor. That's just one example.

15:48:40 25 Another example, we learned that another

1 plaintiff died eight months ago and we didn't learn it until  
2 we moved to compel.

3 THE COURT: All right. I will order --

4 MS. LEVINE: The majority of plaintiffs'  
15:48:52 5 discovery is still incomplete. Many remain unverified.  
6 Only 13 plaintiffs verified their fact sheets. Twenty  
7 plaintiffs sent letters listing additions to the fact sheets  
8 rather than actually, actually supplementing the fact sheet  
9 itself. Eleven plaintiffs said they will supplement but  
15:49:14 10 still have not, two weeks after we moved to compel. And 26  
11 plaintiffs still owe us authorizations.

12 To date, Your Honor, we are still waiting for  
13 this information. And either the plaintiffs have withheld  
14 this information from GE, or they themselves do not know the  
15:49:32 15 information about their own clients. And it is causing us  
16 material prejudice, and we are not getting GE's due process.

17 Every plaintiff that we've listed, except  
18 one -- that is 72 plaintiffs -- are in violation of your  
19 orders.

15:49:52 20 We can no longer avoid this fact. We want  
21 you, Your Honor, we ask that -- we implore Your Honor to  
22 order the plaintiffs to verify every fact sheet within 14  
23 days. We ask Your Honor to order the plaintiffs to complete  
24 full and supplemental fact sheets within 14 days and not  
15:50:14 25 just send us letters telling us what is added or what they

1 want to add.

2 We have inconsistencies between fact sheets  
3 that were served on us two years ago and the letters that  
4 the plaintiffs have written, and they have never bothered to  
15:50:30 5 coordinate their letters with their fact sheets to make it  
6 make sense to the defendants.

7 If you read one of them, a fact sheet says  
8 someone has a diagnosis of depression that doesn't have a  
9 treater. The letter then says there is a treater. And then  
15:50:44 10 the new fact sheet continues to say that there's not a  
11 treater.

12 We just received supplemental fact sheets that  
13 now list new treaters that we never knew about for a vast  
14 majority of the plaintiffs. Yet they didn't provide us  
15:50:58 15 authorizations for those treaters, so we still can't get  
16 medical records.

17 We still have fact sheets that suggest that we  
18 are responsible for looking through the medical records  
19 ourselves, and that is very --

15:51:10 20 THE COURT: Look, I've heard enough. Look, I  
21 don't have time, the Court does not have time to review each  
22 and every fact sheet.

23 If you all want to hire a special master --

24 MS. LEVINE: We realize that.

15:51:24 25 THE COURT: -- you work it out. You find one.

1 You put the money in. I'll send this all to a special  
2 master, and he or she can go through every fact sheet and do  
3 whatever you want and give me some reports and, fine, do it  
4 that way. I'll make some general orders.

15:51:38 5 Every plaintiff is to notify, file a  
6 notification of death no later than 30 days from the date of  
7 the death. And if they don't, there are going to be some  
8 serious consequences. All right?

9 Every fact sheet needs to be verified, so part  
15:51:58 10 of what has to be done by March 31st, if someone hasn't  
11 verified that fact sheet, they've got to file a verified  
12 fact sheet. If you've got a lot of miscellaneous letters,  
13 that doesn't cut it. So you've got to file your verified  
14 fact sheet by March 31st.

15:52:14 15 And by March 31st, every plaintiff's got to  
16 get to GE every medical release that there is. I mean, if  
17 we're talking about a case that was just filed a couple  
18 weeks ago, okay, but it's not acceptable that we still have  
19 medical releases that haven't been -- haven't been  
15:52:34 20 submitted.

21 And I'll just say --

22 MR. WEINBERGER: Your Honor, this is Peter  
23 Weinberger.

24 MS. LEVINE: Hold on, Pete.

15:52:46 25 Your Honor, we also would like an order that

1 every plaintiff must file a full supplemental fact sheet and  
2 not just a letter.

3 THE COURT: I said that. A verified fact  
4 sheet.

15:53:00 5 MS. LEVINE: A verified and full fact sheet.

6 And, Your Honor, with respect to the defendant  
7 fact sheet, GE has produced to plaintiffs every defendant  
8 fact sheet Part 1 that it is required to produce.

9 MR. WEINBERGER: You just -- I withdraw, go  
10 ahead.

11 MS. LEVINE: Defendant fact sheet, I think  
12 Your Honor ordered GE has to produce a defendant fact sheet,  
13 is that right, Your Honor?

14 THE COURT: Yeah, in any case you haven't  
15 filed one.

16 This idea of you're not filing them if you  
17 think there's one little technical violation of the  
18 plaintiff's fact sheet, so just file the defendant's fact  
19 sheet.

15:53:38 20 MS. LEVINE: There are no technicalities on  
21 which we refuse to file.

22 I want to make sure Your Honor understands  
23 what a DFS Part 1 is, and that is we cannot verify the  
24 products at a facility that we do not know the name of, and  
15:54:02 25 that's what the DFS Part 1 is.

1                   Once the plaintiff alleges and shows the  
2                   medical record of some sort, that they had a GBCA scan at a  
3                   particular facility, the defendants who are named are then  
4                   required to produce a DFS that discusses the sales  
15:54:20 5                   information and whatever is in the DFS from that facility.

6                   Until the plaintiffs tell the defendants where  
7                   and when the gadolinium administration took place, there is  
8                   nothing to produce and we literally would have no  
9                   information upon which to produce it.

15:54:42 10                   And so, Your Honor, perhaps a special master  
11                   is a good idea, and GE would be very willing to discuss that  
12                   because it is so important to have each individual  
13                   plaintiff's deficiencies and the allegations that they make  
14                   in their fact sheets that they have not been able to prove,  
15:55:00 15                   and GE is left without knowing the information about their  
16                   cases.

17                   We are -- we are unduly prejudiced and, in  
18                   fact, GE does plan to respond to the Court and to each and  
19                   every plaintiff by early next week with the specific  
15:55:20 20                   deficiencies that remain, but we had hoped that this call  
21                   would address the bigger picture and the fact that the  
22                   plaintiffs as a whole remain deficient and continue to  
23                   violate this Court's orders without any, any redress for  
24                   doing so.

15:55:38 25                   They have never been called on that.

1 THE COURT: Well, the redress is that their  
2 cases are sitting there and nothing's happening to them,  
3 okay?

4 MS. LEVINE: Well, Your Honor, we are being  
15:55:50 5 asked to resolve cases without all of the information that  
6 the plaintiffs obviously have at their fingertips that we  
7 have absolutely no access to, and we are asking the Court  
8 to --

9 THE COURT: Well, Heidi, Heidi, all of the  
15:56:04 10 mediations I've conducted, the mediation hasn't occurred  
11 until GE had sufficient information to evaluate each of the  
12 cases in that lawyer's inventory.

13 So whether it was done by fact sheet, whether  
14 it was done by supplement, whatever, I know that because I  
15:56:22 15 was there so --

16 MS. SHERMAN: Your Honor, this is Charna and I  
17 was there.

18 MR. WEINBERGER: Charna, do you mind if I  
19 respond for a moment?

15:56:34 20 Can I finish?

21 MS. SHERMAN: It is disturbing, Your Honor,  
22 Your Honor deems these as technical and unimportant  
23 violations when you know that a PSC member Mr. Tisi appeared  
24 not only before you but another tribunal with respect to a  
15:56:52 25 plaintiff who had died, and yet represented the contrary.

1 MR. WEINBERGER: Your Honor, that is --

2 THE COURT: I've already dealt with that,  
3 Charna.

15:57:04

4 MR. WEINBERGER: Charna, you're going to keep  
5 going.

6 THE COURT: I've dealt with that. I've made a  
7 specific order about notifying no later than 30 days after  
8 date of death. That's to be done. All right? There's  
9 no --

15:57:16

10 MS. SHERMAN: And yet Your Honor is --

11 MR. WEINBERGER: Your Honor, I would like to  
12 address --

15:57:26

13 MS. SHERMAN: -- when we just learned an hour  
14 and a half ago that this occurred, yet the exact same  
15 scenario with respect to another PSC member.

16 THE COURT: All right. I've taken care of  
17 that. I've taken care of that, all right?

18 So if it happens again, someone's going to be  
19 in big trouble because there's a specific order.

15:57:40

20 MS. SHERMAN: Your Honor, that's not the only  
21 issue that bears on how you evaluate.

22 THE COURT: I've made my order, all right?

23 MS. SHERMAN: It is clearly a wildly critical  
24 one, but there are many others, and what we've asked --

15:57:52

25 THE COURT: Charna, you need to understand,



1 you need to understand all the cases you're talking about --

2 MR. WEINBERGER: You don't know about --

3 THE COURT: Hold it. Hold it.

4 Those cases you're talking about, nothing is  
15:58:04 5 happening to them. All right? That's the penalty those  
6 lawyers have suffered. Their cases are sitting there.

7 MS. SHERMAN: Why is it GE is considered to be  
8 incurring a penalty, to be incurring a --

9 THE COURT: They have not paid a penny.

10 MS. SHERMAN: There are multiple things that  
11 have --

12 THE COURT: Fine. I've issued my orders. All  
13 right. Charna, Charna, I've issued my order, all right?  
14 We're moving on.

15 MR. WEINBERGER: Your Honor, this is -- Your  
16 Honor, this is Peter Weinberger. Can I speak for a minute?

17 THE COURT: Very briefly, yes.

18 MR. WEINBERGER: Thank you.

19 It is very unfortunate and, frankly,  
15:58:40 20 disrespectful for lawyers to interrupt the Court in the  
21 middle of the Judge's statement. That's number one.

22 Secondly, and on behalf of everyone on the  
23 phone, I just wanted to make that point and I don't believe  
24 it should continue.

15:58:58 25 Secondly, I don't want our silence from the

1 PSC or from the plaintiffs' standpoint to be taken as an  
2 agreement to anything that Ms. Levine or Ms. Sherman has  
3 said on the phone.

4 As I indicated in my communication to the  
15:59:16 5 Court, which defense counsel got a copy of, if we had been  
6 provided with specifics of where our plaintiffs' facts  
7 sheets were deficient, in a meet and confer we would have  
8 considered that, and if they were correct, it would have  
9 been corrected.

15:59:36 10 That's the whole purpose of the meet and  
11 confer process under Local Rule 37.

12 Instead, a motion to compel seeking sanctions  
13 was filed without that having taken place. That's  
14 inappropriate.

15:59:50 15 Secondly, as I've indicated in my  
16 communication, since January 12th, 2011 -- which was, by the  
17 way, the Knase final pretrial and was not intended to  
18 address this issue of the plaintiffs' fact sheets -- 80  
19 cases on the list, on GE's list of deficiencies in terms of  
16:00:18 20 plaintiffs' fact sheets have been resolved.

21 And having dealt with GE now for over 18  
22 months with respect to attempts at resolution, I am quite  
23 certain that GE would not be resolving cases if they were  
24 not convinced that they had all the information they needed  
16:00:36 25 to evaluate those cases.



1       confounded cases with multiple defendants, and yet GE is the  
2       only one who has seen fit to file this motion to compel.

3                 That should be some evidence as to whether or  
4       not this motion is appropriate.

16:02:08 5                 THE COURT: Well, they are entitled to have  
6       the information that the fact sheets specify, so we set  
7       these procedures for everyone and they're entitled to use  
8       those processes.

9                 All right. So I've issued these orders.

16:02:24 10                MS. SHERMAN: Thank you.

11                MS. LEVINE: Thank you, Your Honor.

12                Your Honor, this is Heidi Levine.

13                THE COURT: There's a scheduling issue.

14                I had asked -- all right. There are four or  
16:02:32 15       five firms that have, you know, ten or more cases left with  
16       GE, and then there are a whole lot of lawyers who have one  
17       or two cases.

18                I had asked the liaison counsel -- and it's  
19       not just GE; it involves Bayer and Mallinckrodt and  
16:02:54 20       Bracco -- to confer and by no later than March 25th at  
21       3:00 p.m. to submit, hopefully, an agreed upon protocol for  
22       dealing with the remainder of the MDL.

23                And I still want that to happen.

24                If -- obviously if there's no agreement, then  
16:03:14 25       I guess I'll have to see what you agree upon and then your

1 separate submissions.

2 And if -- I have some of my ideas, but I'd  
3 much rather get some good ones from counsel.

4 You generally have had pretty good  
16:03:28 5 suggestions, particularly when you've been able to meet and  
6 confer and really put your heads together and try and come  
7 up with something workable.

8 So I hope that you can do that again.

9 THE CLERK: Is there a deadline?

16:03:42 10 THE COURT: Yes, March 25th.

11 MS. SHERMAN: Your Honor, this is Charna.

12 And I did not mean to interrupt you and I had  
13 before expressed the difficulty of telephone communication  
14 on these very critical issues, but I don't want the Court to  
16:03:56 15 be in any way surprised that General Electric at a minimum,  
16 given the overwhelming mountain of information that we were  
17 long ago entitled to under Your Honor's orders and that has  
18 proven in multiple instances as false and unreliable, will  
19 be seeking as part of any process that we would agree to  
16:04:28 20 actual discovery that we have been denied now since almost  
21 the very inception of this litigation to verify the actual  
22 conditions of these plaintiffs who Mr. Weinberger insists  
23 should be settled at fair value.

24 THE COURT: Well --

16:04:50 25 MS. SHERMAN: Fair value relates to who they

1 are and what's wrong with them, and that's why we're seeking  
2 this information.

3 And so far, the proposal that purportedly was  
4 put forward by the PSC, and I have no confidence, Your  
16:05:06 5 Honor, that it was actually, given communications today,  
6 vetted with the PSC let alone with any other attorneys on  
7 this call, suggests that we should continue to be deprived  
8 of fundamental discovery to which we're entitled under the  
9 Federal Rules.

16:05:24 10 So we -- we will meet and confer, but I don't  
11 want you to be under any misimpression as to what GE  
12 believes is necessary to move this docket, what remains of  
13 this docket, towards resolution, whether by litigation or  
14 settlement.

16:05:40 15 THE COURT: All right. Look.

16 MR. BURG: Your Honor.

17 THE COURT: No.

18 MR. BURG: I just want --

19 THE COURT: No, this isn't productive any  
16:05:48 20 more.

21 MR. BURG: We've had a lot of cases that  
22 obviously resolved. We have a lot of cases that haven't  
23 resolved.

24 I think in response to Ms. Sherman's comments,  
16:05:58 25 I feel an obligation to all of the lawyers out there who

1 have spoken with me and the remaining part of my inventory  
2 that have living plaintiffs that, separate from this need  
3 for general discovery, these people need to have some  
4 process where either -- and these cases do not have fact  
16:06:18 5 sheet issues whatsoever, they haven't been raised in the  
6 motions that have been before this Court, but these people  
7 need to see a light at the end of the tunnel.

8 And either GE needs to step up, get the cases  
9 resolved because they have the information, or I implore  
16:06:36 10 Your Honor to begin to remand cases or create some forum in  
11 which GE will then do Lexecon waivers, but where these  
12 remaining living plaintiffs in particular can bring some  
13 resolution that is going to happen within a reasonable  
14 period of time.

16:06:52 15 And I'm speaking on behalf of all of the  
16 plaintiff lawyers that have living plaintiffs that remain  
17 more or less trapped in the current dynamic that -- of the  
18 comments that were just made by Ms. Sherman and the dynamics  
19 that we were just facing in this MDL.

16:07:20 20 THE COURT: I want to end this real fast. Was  
21 that Peter Burg speaking?

22 MR. BURG: That's correct, Your Honor.

23 THE COURT: Hold it. Hold it. I thought,  
24 Peter Burg, I thought you settled your cases.

16:07:30 25 MR. BURG: No. We still have remaining cases

1 that we're trying to get resolved.

2 I also, as one of the lead lawyers in this  
3 litigation, have been contacted by other lawyers who are  
4 quite frustrated, but I have --

16:07:44 5 THE COURT: Well, that's what -- all right.

6 MR. BURG: I have cases that are not resolved.

7 THE COURT: I am looking for the parties'  
8 suggestions by 3:00 p.m. Hopefully you can come up with  
9 some joint protocol for dealing with the remainder of this  
10 MDL.

16:07:56

11 All right. GE wants massive discovery.

12 The plaintiffs want remands. Okay?

13 I mean, fine. I mean, the plaintiffs want me  
14 to just remand their cases all over the place. I suppose I  
15 can do that.

16:08:08

16 GE wants me to allow wholesale discovery of  
17 every remaining case.

18 I've got problems with both of those, so why  
19 don't you get to work? There are enough smart people on the  
20 phone, excluding me because my ideas may not be very good.

16:08:22

21 You've done this in other MDLs. All right? I want you to  
22 suggest a way to deal with the remainder of this MDL that  
23 makes sense, both in terms of fairness and cost and  
24 efficiency.

16:08:40

25 All right? It's clear that those lawyers who



1 have groups of cases, 10, 15, 20 cases left, you all know  
2 how you can settle those cases. All right? The same way  
3 the others have been settled, all right? There's a range,  
4 and those can be settled.

16:08:56 5 People who have one or two cases, you can't do  
6 it that way because the case could be ten million, it could  
7 be zero. If you have one or two cases there's no way to say  
8 it's a typical or an average case. So we need a way to deal  
9 with those.

16:09:12 10 MS. SHERMAN: Your Honor, the process that we  
11 just went through with you, that we just went through has  
12 produced, in at least two of the groups of cases you're  
13 talking about, misrepresentations as to whether or not a  
14 plaintiff is even alive. And I just want to make sure  
16:09:32 15 you --

16 THE COURT: All right. I've dealt with that.  
17 I've dealt with that already.

18 MS. SHERMAN: It's the expectation that GE  
19 will approach resolution as it has in the past. It can no  
16:09:42 20 longer be assumed given these kinds of disclosures. They  
21 are alarming.

22 At a minimum, Your Honor's orders should have  
23 required the lawyers in this litigation to have at least  
24 contacted their clients to see if they were alive in a  
16:09:58 25 timely way.

1 THE COURT: I assumed that that was being  
2 done, all right?

3 MS. SHERMAN: That simply has not occurred.

4 THE COURT: Well, all right. I assumed it was  
16:10:04 5 being done.

6 MS. LEVINE: Your Honor, this is Heidi Levine.

7 I don't know how you can assume that was done,  
8 but the one example that we just gave you --

9 THE COURT: Heidi, I said I assumed it had  
16:10:14 10 been done, all right? The fact it hasn't, I've had to give  
11 a specific order about that, all right? All right? I made  
12 it, and if someone violates that specific order, they're  
13 going to have a hard time with me.

14 All right.

16:10:28 15 MS. SHERMAN: Your Honor, your orders have  
16 been violated as we sit here today.

17 THE COURT: All right. I'm not going to do  
18 this.

19 All right. The other thing is I think we need  
16:10:40 20 a --

21 MR. WEINBERGER: May I make several comments,  
22 Your Honor? Your Honor, this is Peter Weinberger.

23 THE COURT: No, I think we need to schedule  
24 a -- we haven't had a large group conference for I don't  
16:10:50 25 know how long, and I think we should have one, so I want to

1 schedule one, but I think sometime in April.

2 That will give -- you know, I'll get something  
3 from the parties on March 25th, that I may give it some  
4 thought, I may have some further dialogue, and we may have  
16:11:10 5 to have -- to discuss it.

6 So I think we ought to schedule it now.

7 All right. We're going to avoid the week of  
8 April 18th.

9 I guess we should do it the week of  
16:12:04 10 April 25th. Well, the best times for me would be either  
11 Thursday morning, the 28th or Friday morning, the 29th.

12 MS. SHERMAN: Your Honor, can we do it the  
13 week before?

14 THE COURT: No.

16:12:52 15 MS. SHERMAN: Can we do it on Monday, the  
16 25th?

17 THE COURT: The week before is Passover and  
18 Easter week. I don't want to do it that week.

19 MS. SHERMAN: I am scheduled to be -- this is  
16:13:00 20 an important one and I'm scheduled to be speaking on -- from  
21 April 27th through 29th.

22 THE COURT: Well, the problem is, Charna, I've  
23 got a trial, a short civil trial the 25th and the 26th, and  
24 I put it off a bunch of times and I've just got to do it. I  
16:13:22 25 don't want to have --

1 MS. LEVINE: Wednesday, the 27th?

2 THE COURT: What day?

3 MS. LEVINE: Wednesday, the 27th.

4 THE COURT: Well, I scheduled a complex  
16:13:32 5 mediation that day.

6 MS. SHERMAN: The afternoon of the 26th after  
7 your --

8 THE COURT: Well, I don't want to jam it in  
9 late in the day. First of all, my trial could go most of  
16:13:44 10 the day and I don't want to try and jam something in late in  
11 the afternoon.

12 That doesn't do this justice.

13 MS. LEVINE: How about May 2nd? I don't know  
14 when spring breaks are for kids. I assume it's the week  
16:14:04 15 right before or after.

16 THE COURT: It's not in May.

17 MS. SHERMAN: Would the 2nd work, Your Honor?

18 THE COURT: Yeah, I think so. I've got some  
19 criminal trials, but I don't think they're going to go,  
16:14:16 20 either one.

21 MS. MOELLER: Your Honor, if you want all  
22 defendants to come, May 2nd will not work for me. This is  
23 Debbie Moeller from Mallinckrodt. My son has First  
24 Communion the day before.

16:14:32 25 THE COURT: I can do it May 3rd. That day is

1 pretty clear actually.

2 MS. LEVINE: Can't do it, Your Honor; I can't  
3 do the 5th -- 4th, 5th or 6th -- this is Heidi Levine -- but  
4 the 3rd is good.

16:14:50 5 MS. SHERMAN: How about May 4th? Does May 4th  
6 work?

7 MS. LEVINE: I can't do the 4th.

8 MR. WEINBERGER: Judge, it's --

9 THE COURT: We're going to do it one day that  
16:15:00 10 week. I'll move -- I wanted to do it the week before, but  
11 I'll do it one day that week.

12 Even if I've got a criminal trial, I'll take a  
13 couple hours off from the trial, simple as that.

14 MS. SHERMAN: How about May 2nd, Your Honor?

16:15:14 15 MS. LEVINE: Debbie Moeller can't make it.

16 THE COURT: That's when Debbie Moeller can't  
17 do it and I really need -- you know, we're talking about a  
18 protocol for the remainder of the MDL. I've got to have  
19 someone from Mallinckrodt there.

16:15:28 20 MS. MOELLER: If we do it in the afternoon I  
21 can do it. I can't leave on Sunday.

22 THE COURT: Oh, I see.

23 MR. WEINBERGER: May 3rd.

24 MS. SHERMAN: I am actually giving a speech on  
16:15:42 25 May 3rd in the middle of the day.

1 MR. WEINBERGER: Phil can do it.

2 THE COURT: We've got tons of people for GE.  
3 There's only one for Mallinckrodt.

4 All right. I can do it the afternoon of the  
16:15:54 5 2nd. I can do it anytime except the noon hour on the 3rd  
6 so.

7 MS. SHERMAN: How is the afternoon of the 2nd?

8 THE COURT: Monday afternoon at 1:00 o'clock  
9 is fine, the 2nd. Monday, 5/2, 1:00 o'clock p.m.

16:16:12 10 MS. SHERMAN: What time?

11 THE COURT: 1:00 o'clock eastern Cleveland  
12 time. That will be a large group conference, and I  
13 would -- this one I would encourage, I would encourage any  
14 plaintiff's lawyer who still has a case to be there and not  
16:16:30 15 do it by phone; should be there.

16 MR. WEINBERGER: I'm sorry. Just to confirm,  
17 Your Honor, you're looking at 1:00 p.m. eastern on May 2nd,  
18 correct?

19 THE COURT: Right. Right. Yes, Peter.

16:16:42 20 And I'm strongly encouraging any plaintiff's  
21 lawyer who still has a case pending at that time to be  
22 there.

23 And obviously the Court is -- remains  
24 available almost any, any time to engage in settlement  
16:17:00 25 discussions.

1 I've done it. I've moved things around. I've  
2 come in on a holiday to do it. So the offer is still open.  
3 I've had various conversations with GE, with Bayer, with  
4 just about everyone and with a lot of plaintiffs' lawyers,  
16:17:18 5 so if the parties want me, you just get on the phone and  
6 I'll give you a date.

7 All right. I appreciate everyone being on,  
8 and I guess thanks to -- did GE set this up? Thank you to  
9 GE for setting it up. You accomplished something the  
16:17:38 10 Court -- the Court's bridge line couldn't accommodate  
11 everyone. We learned the hard way.

12 All right. Thank you.

13 MR. WEINBERGER: Thank you, Your Honor.

14 THE COURT: Bye.

16:17:56 15 (Proceedings concluded).

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C E R T I F I C A T E

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

**/s/Susan Trischan**

/S/ Susan Trischan, Official Court Reporter  
Certified Realtime Reporter

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