

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

IN RE:)	Docket Number
)	1:07-MD-1845-TWT
CONAGRA PEANUT BUTTER PRODUCTS)	
LIABILITY LITIGATION)	Atlanta, Georgia
)	August 6, 2009
)	

TRANSCRIPT OF THE STATUS CONFERENCE PROCEEDING
BEFORE THE HONORABLE THOMAS W. THRASH, JR.,
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES OF COUNSEL:

For the Plaintiffs:	Mr. Robert Smalley
	Ms. Elizabeth Cabraser
	[By Telephone]
	Mr. Vincent Carter
	[By Telephone]
	Mr. Dan Brennan
	[By Telephone]

For the Defendants:	Mr. James Neale
	Mr. James Walsh

Official Court Reporter:	ALICIA B. BAGLEY, RMR, CRR
	600 First Street, S.W.
	Rome, Georgia 30161
	(706) 378-4017

Proceedings recorded by mechanical stenography, transcript
Produced by computer

P R O C E E D I N G S

[In Atlanta, Fulton County, Georgia; August 6, 2009,
11:00 a.m. in chambers]

THE COURT: This is the case of En Re: ConAgra Peanut Butter Products Liability Litigation, Case No. 07-MD-1845. First let me ask counsel for the parties to identify yourselves for the record beginning with the attorneys who are appearing here in my chambers and then I'll go to any that are appearing by telephone.

MR. SMALLEY: Thank you, Your Honor. Good morning.
Robert Smalley for plaintiffs.

THE COURT: Good morning, Mr. Smalley.

MR. WALSH: Jim Walsh for ConAgra.

THE COURT: Good morning, Mr. Walsh.

MR. NEALE: Jim Neale for ConAgra as well.

THE COURT: Good morning, Mr. Neale.

MR. NEALE: Good morning, sir.

THE COURT: All right. For those who are monitoring the status conference by telephone, it's not necessary that you identify yourself unless you expect to participate. If you later determine that you will participate, you can identify yourself by name at that time. But I'll start with any other attorneys for the plaintiffs who expect to participate by telephone.

MR. CARTER: Your Honor, this is Vincent Carter of Girardi & Keese representing the plaintiffs in the Ahrens, Andrews, and Anderson complaints, and I believe I may be speaking on

1 ConAgra's motion to compel with regards to the CTO-30 plaintiffs.

2 THE COURT: Any others?

3 [no response]

4 THE COURT: All right. This is a monthly status
5 conference being held at my request. For those of you who are
6 participating by telephone, let me ask that you follow the usual
7 rules; that is, each time that you speak, identify yourself by name
8 before you begin.

9 Also, as I've said before, my speaker phone will cut me off
10 if someone is speaking over the phone. So before you start to
11 speak, please ask for my permission to speak and then when you're
12 talking, I'll ask that you stop every couple of minutes and ask if
13 you can continue. That will give me a chance to interrupt or ask a
14 question or do something else.

15 All right. I've got the proposed agenda and my general
16 intention is to follow that and then I have some other issues that
17 I'll talk about after we complete that.

18 The first item on the agenda is the fact sheet motions.
19 First is ConAgra's motion to compel Conditional Transfer Order No.
20 30, plaintiffs who failed to file fact sheets. Mr. Neale.

21 MR. NEALE: Yes, sir, Your Honor.

22 And Mr. Carter identified himself, he and I have spoken
23 several times, as have our colleagues, about this. There remain,
24 Your Honor, 58 plaintiffs on this motion who have either not
25 submitted a fact sheet or, in more cases than that, submitted them

1 with some deficiencies. Mr. Carter and his staff have eliminated a
2 great many of the people who were originally on that list, but 58
3 do remain.

4 The motion to compel has been whittled down as much as it
5 can, Your Honor. I believe it's been agreed to in its current
6 form. It obligates Mr. Carter to submit either completed fact
7 sheets or, at his option, claims forms and participate in the
8 claims-processing arrangement. We would rather, Your Honor, the
9 plaintiffs do that and the plaintiffs' lawyers spend their time and
10 energy doing that, and I believe Mr. Carter's in agreement. The
11 order, as drafted, would give him 90 days to submit either a claim
12 form or a fact sheet. If the plaintiff elects not to participate
13 in the claims process at the conclusion of the offer or denial
14 issued by ConAgra, then they thereafter have to submit the fact
15 sheet.

16 THE COURT: Mr. Smalley, do you want to be heard on this
17 or should I just go to Mr. Carter?

18 MR. SMALLEY: Just Mr. Carter, Your Honor. Thank you.

19 THE COURT: Mr. Carter, do you wish to be heard?

20 MR. CARTER: Briefly, Your Honor.

21 Mr. Neale has set forth our agreement. I would only add the
22 plaintiffs are not necessarily admitting that the deficiencies of
23 the fact sheet alleged by ConAgra are necessarily true or fatal,
24 but we understand that the -- if there are -- and secure the
25 alleged deficiencies, the timeframe is correct and with regards to

1 the claim form as well.

2 THE COURT: All right. Mr. Neale, I'll grant your
3 motion. Do you have an order for me?

4 MR. NEALE: I do, Your Honor.

5 There is one plaintiff, other than the one represented by
6 Mr. Carter, that's Stacey Jones, and I don't know if the attorney
7 for Ms. Jones is on the line, but the same provisions or same
8 options would be available to Ms. Jones, if that person is
9 listening.

10 THE COURT: Anyone want to be heard on the Stacey Jones
11 case?

12 [no response]

13 MR. SMALLEY: Your Honor, might I remind everyone from
14 later Conditional Transfer Orders about this obligation?

15 THE COURT: Please do, Mr. Smalley.

16 MR. SMALLEY: For those on the telephone, if you've come
17 in the litigation more recently through the later Conditional
18 Transfer Orders, please be reminded that you have a fact sheet
19 obligation that must be completed within 60 days of transfer to
20 this MDL. To the extent you have any questions about it, you can
21 read the Court's Case Management Order either on the Court's
22 website or on Pacer, I'll be glad to send it to you, or you can
23 certainly call me at any time or email me or Mr. Neale, I'm
24 certain, and I'll be glad to send you a Word version of the fact
25 sheet which will make it easy for you to complete, fill out, and

1 send back to Mr. Neale.

2 THE COURT: Thank you, Mr. Smalley.

3 All right. The next item on the agenda is the motion to
4 dismiss certain Conditional Transfer Order 31 and 32, plaintiffs
5 who failed to file fact sheets.

6 MR. NEALE: Yes, sir, Your Honor.

7 On July 23rd, Your Honor, the Court entered an order
8 dismissing three cases of individuals who had failed to file fact
9 sheets. They were Ronald Ziven, Shela, that's S-h-e-l-a, McMurry,
10 and Virginia Enloe, E-n-l-o-e. That order directed ConAgra to
11 submit case -- or, excuse me, orders in the individual cases
12 memorializing the dismissal. I'm pleased to report that since then
13 Ms. McMurry and Ms. Enloe have complied, so two of the three are in
14 good standing and don't need to be dismissed. I have orders
15 mooting the motion to dismiss as to those two.

16 We do not yet, Your Honor, have a fact sheet from Ronald
17 Ziven, so I'm here to present an order, if I can, in that
18 individual case of dismissal and final judgment in ConAgra's favor.

19 THE COURT: All right. I'll grant your motion,
20 Mr. Neale.

21 With respect to Mr. Ziven's case, I find that no lesser
22 sanction would be appropriate. These hundreds of cases can only be
23 managed efficiently and without inordinate burden on the courts by
24 the parties complying with the Court's orders regarding discovery
25 and I find that no lesser sanction than dismissal with prejudice is

1 appropriate here, given all of the opportunities this plaintiff has
2 had to comply with my orders.

3 Did you want to be heard on that, Mr. Smalley?

4 MR. SMALLEY: If we can just ask to be sure that counsel
5 for the Ziven case is not on the line and wishes to be heard.

6 THE COURT: Anyone want to be heard on Ronald Ziven?

7 [no response]

8 MR. SMALLEY: Your Honor, also if I may.

9 Mr. Neale and I have communicated with Ms. Sewell that it
10 would be helpful if the Court could hold these dismissal orders
11 until our status conferences so that we would have the opportunity
12 to have this colloquy. I know that that's a little more trouble
13 for the Court because they come up on a regular schedule. But if
14 that would be possible, we'd appreciate it.

15 THE COURT: I'll be glad to do that, Mr. Smalley.

16 All right. The next item on the agenda is the settlement
17 program update.

18 MR. SMALLEY: Mr. Neale.

19 THE COURT: Mr. Neale.

20 MR. NEALE: Your Honor, the program, I believe it's fair
21 to say, is successful -- largely successful. We have over 1,040
22 claims that have been submitted to ConAgra through this MDL deal.
23 707 of those have been fully processed and nearly 300 actually
24 paid, another 50 have been settled and payments requested, about
25 170 additional offers have been extended, and just over 200 claims

1 have been denied. So we've -- the process is ongoing.

2 There is a little bit of a backlog now created by the number
3 of claims coming in. We're working hard to clear that backlog and
4 we've now made the second payment to the plaintiffs' steering
5 committee -- or we're now prepared to make the second payment to
6 the Plaintiffs' Common Benefit Fund which the Court established
7 several months ago. So I believe the settlement process is working
8 well. Many people are participating in it.

9 If anybody on the line is interested and doesn't know the
10 details, either Mr. Smalley or I could provide them. But the
11 intent, Your Honor, to the extent we can, is to funnel the
12 litigants, who are willing, into that program and I think the word
13 is getting out.

14 THE COURT: Mr. Smalley.

15 MR. SMALLEY: I'd just concur with Mr. Neale.

16 THE COURT: Well, very good. I hope everybody will make
17 a serious and good-faith effort to try to get their cases resolved
18 through the settlement program.

19 And if there's anything that I can do, Mr. Neale, to assist
20 y'all, Mr. Smalley, I'm available. But it sounds like things are
21 working pretty well without my involvement and if it isn't broke,
22 don't fix it. So I'll let y'all continue to work on settlement of
23 the cases.

24 MR. SMALLEY: Your Honor, Mr. Neale did mention the
25 Common Benefit Fund and I just wanted the Court to know that we

1 have given wiring instructions and I think that account is set up
2 at a local bank and the fund will be wired periodically directly
3 from ConAgra and we'll, of course, approach the Court at a later
4 time as to what to do with those monies.

5 THE COURT: Very good.

6 MR. SMALLEY: In accordance with the order.

7 THE COURT: All right. The next item on the agenda is
8 ConAgra discovery to individual plaintiffs.

9 MR. SMALLEY: I put that on the proposed agenda, Your
10 Honor, just to make the Court aware that ConAgra has served a
11 number of the plaintiffs with requests to admit in the individual
12 cases, and as I understand it, they've actually served those
13 individual lawyers with those and me, as liaison, as well.

14 In addition, ConAgra has served interrogatories and document
15 requests upon me as liaison counsel for all plaintiffs and I have
16 disseminated those discovery requests via email through my email
17 service list that I have. If anyone is not aware of that or has
18 not received them, please make sure you're in contact with me.

19 I wanted to put this on the agenda today, Your Honor, to
20 advise the Court there has been a good deal of confusion among
21 certain plaintiffs as to whether or not this obligation is in
22 addition to the fact sheet obligation or in lieu of the fact sheet
23 obligation.

24 I've tried to communicate that this obligation to respond to
25 this discovery is in addition to the fact sheet obligation.

1 However, I would imagine that there will be - there will be some
2 ongoing confusion about that for a time. As long as Mr. Neale and
3 I can continue to work through these matters on an individual basis
4 as we have been doing, I don't foresee any difficulties and I'm
5 certain we'll be able to continue to do that. I wanted the Court
6 to know that that has occurred.

7 MR. WALSH: And, Your Honor, the way this is working, to
8 the extent that individuals who receive this discovery are in or
9 enter the claims processing, we are suspending the obligation to
10 respond to that discovery until such time as the claim is either
11 resolved or determined non-payable. We simply want the discovery
12 there for -- as the Case Management Order permits, for those people
13 who are going to pursue litigation outside the settlement process,
14 because we don't want the MDL to end without having obtained that
15 discovery. But to the extent they are in or enter the program,
16 we're suspending it until we see how that goes. And then if it
17 doesn't work out, if the settlement doesn't work out, a claim's
18 denied, and they want to continue to pursue it, we will just extend
19 the period of time for responding to the discovery as appropriate
20 so they can respond in due course, if they're going to pursue their
21 claim.

22 THE COURT: It sounds like y'all are going to be able to
23 work through the issues.

24 Mr. Smalley, put this item on the agenda for the next status
25 conference as well and if any problems have arisen, I can try to

1 help you work through it.

2 MR. SMALLEY: Thank you, Your Honor.

3 And we are pleased that the claim-form process is taking
4 precedence over really both the fact sheet obligation and the
5 discovery obligation and hopefully that will encourage people and
6 funnel people who have appropriate cases for that process to spend
7 their energy and time on getting a claim form and supporting
8 documents filed.

9 THE COURT: All right. The next item on the agenda is
10 the discovery schedule. Mr. Smalley.

11 MR. SMALLEY: That is really just for the Court's
12 information to know we are on track as the current iteration of the
13 schedule from the CMO provides. As I understand it, ConAgra will
14 be disclosing their expert designations today, I believe it is.

15 MR. WALSH: That's correct.

16 MR. SMALLEY: And we have -- we anticipate that we'll be
17 able to complete those discovery depositions as per the order at
18 this point.

19 MR. WALSH: And, Your Honor, by the -- by agreement of
20 counsel, we're going to file the disclosure -- the actual reports
21 of the experts are going to be served on Mr. Smalley and not
22 actually filed with the Court because of confidentiality issues and
23 other things, and I think we've reached agreement on that. So it
24 will be the disclosure itself that will be filed today and also
25 Mr. Smalley will be provided with the report, but the reports

1 themselves will not be filed.

2 MR. SMALLEY: And I guess I should point out to those on
3 the telephone, Your Honor, if I may, that to extent that any of you
4 desire to see the actual expert reports, if you'll let me know.
5 And please be patient because I'm sure a number of you will want to
6 see them. I will forward them via email, but you'll need to
7 confirm for me that you have signed off on the Court's
8 confidentiality order that was entered in conjunction with the Case
9 Management Order in 2007. I know most of you on the telephone have
10 already done that, but if there are any requests for those expert
11 reports, if you could confirm that for me, I'd appreciate it.

12 THE COURT: All right. It sounds like y'all are working
13 through those issues and don't need any intervention from me.

14 The next item on the agenda is my availability for a
15 bellwether trial in 2009 and trial plan. I've got a trial
16 scheduled in my other MDL case on September the 14th. October is a
17 mess. I'm a little hesitant to commit to a trial in November, but
18 that is possible. December runs into serious availability
19 problems. I could almost assure you, if that was acceptable, of at
20 least one bellwether trial early in January. I'd be open to your
21 thoughts on that, gentlemen.

22 MR. WALSH: Judge, schedulewise, I think we need to
23 think through in terms of what would have to happen in terms of to
24 get to a bellwether trial.

25 They have completed, as I understand it -- or we have

1 completed the discovery of the plaintiffs' experts. Our expert
2 reports will be served today and I'm assuming -- I know it's going
3 to be quite a few of them and I'm assuming the plaintiffs are going
4 to want due opportunity to take depositions of those experts.

5 I think following that entire process, once the experts -- I
6 think there's going to be a number of *Daubert* motions and other
7 motions surrounding the experts. I think there also could be -- in
8 a number of these cases I think there could be some dispositive
9 motions, summary judgment motions, and other types of motions that
10 would have to be resolved.

11 It might be - it might be possible to schedule something and
12 get that done between now and January. I'm not sure it's possible
13 to get all of that done.

14 Personally I know -- and I know that we've got a lot of
15 lawyers working on the case, but I personally start trial in New
16 Jersey on September 8th that is going to be about eight weeks long.
17 It has nothing to do with this case. It's a different trial. So
18 I'm going to be gone basically September and October trying a case.

19 And so maybe we can get all that done, maybe we can't, but I
20 just call that to the Court's attention, for what it's worth,
21 because there are going to be some motions and there's still quite
22 a bit of expert discovery, I suspect, that will be done.

23 THE COURT: Mr. Smalley.

24 MR. SMALLEY: Your Honor, I guess, first of all, the
25 Case Management Order, as amended, the schedule has been amended

1 two or three times, we've always said to Your Honor, to the extent
2 that you can give us some time for a bellwether trial or two
3 bellwether trials, then we will make it work and I would still say
4 that's true even for the November dates.

5 The current requirement is that we conduct all discovery
6 depositions of experts -- I believe it's now by the end of
7 September, and we've already requested dates for as soon as
8 possible. So it's my hope we can get that done well before the end
9 of September, depending on how many it is. As I recall, the
10 current discovery deadline is the end of October and so even
11 without moving those deadlines, we ought to be able to do
12 bellwethers even if it were only for one week in November, if the
13 Court has that availability.

14 If the Court would like a specific plan of how we would
15 propose to use that, we can certainly confer with ConAgra and
16 advise. But if the Court has one week, we can make good use of it.
17 If the Court has two weeks, we can make good use of it, and we
18 would -- from the plaintiffs' perspective, we would like to have
19 trial dates and we will work -- we will back in whatever has to
20 happen before that. I'm not sure that -- depending on the type of
21 case we have, we couldn't have one or two bellwether trials, even
22 if these other matters had not been completed yet. It doesn't
23 necessarily follow that one has to follow the other.

24 THE COURT: All right. Tentatively I'm going to
25 schedule the first two weeks in January for trials in this case.

1 And Mr. Smalley, I'll ask that you submit to me in writing a trial
2 plan that would identify the plaintiffs that you want to
3 participate in one bellwether trial for that January period and
4 give me your best estimate as to the amount of time that the
5 plaintiff needs for that trial. What do you suggest, as far as a
6 deadline is concerned, for you to submit that to me, Mr. Smalley?

7 MR. SMALLEY: Today is Thursday the 6th. I think we
8 could probably - we could probably have that done by maybe next
9 Wednesday.

10 THE COURT: You need more time than that.

11 MR. SMALLEY: I think we can get this done in fairly
12 short order, Your Honor. But if the Court thinks we would have
13 sufficient time to take a week, maybe by the close of business
14 Friday one week.

15 THE COURT: That's fine.

16 And Mr. Walsh, how long do you need to file a
17 counterproposal?

18 MR. WALSH: I'd like to have a little more time than the
19 week. Maybe ten days after submission for us to file a
20 counterproposal.

21 THE COURT: That's fine.

22 Let me explain to you my system of time limits in civil
23 trials, and I certainly expect that I will impose time limits for
24 any trials that I conduct in these cases.

25 What I do is I give each side a set number of hours and

1 those hours are for your direct, for your cross-examination, for
2 any rebuttal, any surrebuttal. It does not include time spent in
3 voir dire, it does not include opening statements, but any time
4 consumed in front of the jury is going to be charged against
5 somebody. And when your time is up, your time is up and you don't
6 get to do anything else. In other words, if the plaintiff uses up
7 all their time on direct examination of their witnesses, they just
8 would not be allowed to cross-examine your witnesses.

9 MR. WALSH: Or put on their damage evidence.

10 THE COURT: Or put on any further evidence.

11 If you use up all your time cross-examining the plaintiffs'
12 witnesses, you just don't put up any evidence.

13 We run a pretty reasonable schedule. Start at 9:30, take a
14 break at 11:00 for 15 minutes, break for lunch at about 12:20 to
15 1:30, have an afternoon break at 3:00 and maybe another short one
16 later. With that schedule, we can easily get in five hours of
17 testimony a day.

18 So, for example, the bellwether trial I'm going to do in the
19 other MDL in September, I've given each side 20 hours. That works
20 out to about four days per side for the evidence. So bear that in
21 mind when you submit your trial plan, Mr. Smalley; and Mr. Walsh,
22 with your counterproposal.

23 Also, if there are lengthy objections that consume a lot of
24 time, the total time spent arguing over the objection is charged
25 against whoever loses the objection.

1 MR. WALSH: Judge, I take it from your comments if we
2 put down 200 hours, we're probably not going to get them?

3 THE COURT: You're probably not going to get that.

4 MR. WALSH: Okay. I think - I think probably this is
5 going to depend on what cases you identify as trying. I mean, I
6 can see some cases being very short and I can see others requiring
7 a little more involvement.

8 And Your Honor, I think the one thing that we would like
9 Your Honor to keep in mind on these is, to the extent that they are
10 significant cases, there's a lot of experts in these cases.
11 There's everything from medical doctors to epidemiologists,
12 biostatisticians, to all kinds of different manufacturing experts,
13 roofing experts, just a whole host of different types of experts
14 that are potentially involved. Because of that and because of the
15 issues -- they're in there because there's issues pertaining to
16 each of these, it makes it a little more difficult. This is such a
17 heavily intensive expert case in a sense. It does -- it may
18 consume more time, to a certain extent, than a case that is not so
19 expert intensive. So as you're considering our requests for the
20 hours of trial time, if you could keep that in mind, it would be
21 very much appreciated.

22 THE COURT: I'll do that, Mr. Walsh.

23 The reaction to my time limit by the lawyers is almost
24 uniformly horror and dismay and fright. But after it's over, they
25 almost always say the time limits were helpful, they made the

1 lawyers focus on what was important, rather than stuff that might
2 be of interest, and that the time limits worked. Nine times out of
3 ten nobody even comes close to using up all their time, because it
4 does focus you on what's important and it means you don't waist my
5 time and don't waist the jury's time. My experience with them has
6 been very good, very good.

7 I understand your concerns, Mr. Walsh, and that's not
8 unexpected from my standpoint.

9 MR. WALSH: Judge, do both the winners and losers say
10 the same thing?

11 THE COURT: Usually the winners are more favorable about
12 the time limits than the losers.

13 The next item on the agenda is other matters. Anything
14 else, gentlemen?

15 MR. NEALE: No, sir.

16 THE COURT: The next status conference -- I've got some
17 stuff to talk about, but the next status conference -- do these
18 continue to be of value, worth doing?

19 MR. WALSH: I think so.

20 MR. SMALLEY: Yes, Your Honor.

21 THE COURT: Let's shoot for the week after Labor Day in
22 September. Y'all get with Ms. Sewall.

23 MR. WALSH: I won't be here because I'm going to be in
24 trial, but Mr. Neale, I'm sure, can get it.

25 THE COURT: The number of in-person participants seems

1 to be dwindling, but that's alright.

2 MR. BRENNAN: Your Honor, for the record, my name is Dan
3 Brennan. I'm from Steve Seidman's office in Chicago. I apologize,
4 I joined late. I got held up in front of another court.

5 THE COURT: All right.

6 MS. CABRASER: And Elizabeth Cabraser for plaintiffs. I
7 wasn't able to get in while you were taking appearances. Thank you
8 for your tentative trial setting rulings, Your Honor.

9 THE COURT: Good morning, Ms. Cabraser.

10 MS. CABRASER: Good morning.

11 THE COURT: All right. There are a few items that I
12 need to bring up and discuss with y'all.

13 The first one is that the law firm of Bradley, Arant, Boult,
14 Cummings has put in an appearance in one case on behalf of ConAgra,
15 and I don't have the specific case number in front of me. My
16 brother-in-law is a partner at that firm. He was a partner with
17 Boult, Cummings before the merger and is now a partner of the
18 merged firm.

19 My reading of the Judicial Code of Conduct requires me to
20 recuse if that firm is going to continue substantial representation
21 of ConAgra in this case.

22 MR. NEALE: Your Honor, that firm is involved as our
23 local counsel and it's not in Alabama or Tennessee, I don't know
24 where your brother-in-law's office is. I believe it's Mississippi,
25 but I could be mistaken about that.

1 In any event, Your Honor -- and I don't know whether this
2 satisfies the Court or not, that firm will not be actively involved
3 in any way while the case is before this Court prior to remand for
4 trial. If that resolves it, wonderful. If that doesn't, then
5 we'll address it and tell the Court what the resolution is shortly.

6 THE COURT: Do you want to be heard on this,
7 Mr. Smalley?

8 MR. SMALLEY: Not at this point, Your Honor. I would
9 just need to confer with Mr. Neale about the matter further, I
10 think.

11 THE COURT: Well, because this is an MDL, if the
12 Bradley, Arant firm is functioning entirely as local counsel and
13 will not be appearing before me in the MDL proceedings, I'm
14 satisfied that I can go forward.

15 MR. NEALE: We will ensure --

16 THE COURT: But it is potentially a problem.

17 MR. NEALE: We will ensure that that's the case, Your
18 Honor. And if the Court wishes to revisit that for any reason, we
19 certainly will.

20 THE COURT: All right. The next thing is Case No.
21 08-CV-2863. The plaintiff is Cooper. In that case I have granted
22 an order allowing the plaintiff's attorney to withdraw.

23 Do you have any information about that case, Mr. Neale,
24 about whether there's going to be subsequent representation?

25 MR. NEALE: I do not, Your Honor.

1 THE COURT: If you'll check on that for me and report
2 back at the next status conference -- do you know anything about
3 it, Mr. Smalley?

4 MR. SMALLEY: I don't, Your Honor.

5 THE COURT: If both of y'all would look into that and
6 see what the status of that case is.

7 MR. WALSH: Was the order submitted by the withdrawing
8 attorney?

9 THE COURT: That's my recollection, yes.

10 All right. The next matter is the plaintiff Douglas
11 Seifert's motion to set aside the order of dismissal in that case.
12 Is the attorney representing Mr. Seifert, Mr. Mark Bahn, is he on
13 the phone?

14 [no response]

15 THE COURT: Are you familiar with that motion,
16 Mr. Neale?

17 MR. NEALE: I am, Your Honor. It's a fact sheet motion.
18 Plaintiff has moved to reconsider the dismissal. ConAgra has
19 responded in opposition. I believe the matter's fully briefed. It
20 was decided by the Court similar in another case on the pleadings
21 last time, ConAgra's content with that, unless the Court has
22 questions or desires argument on it.

23 THE COURT: I wasn't aware that there had been a
24 response, frankly, Mr. Neale.

25 MR. NEALE: Yes, sir. I believe the motion is ripe and

1 I'll confirm that with Ms. Sewall, but it should be submitted to
2 the Court shortly.

3 THE COURT: Mr. Smalley.

4 MR. SMALLEY: Your Honor, I have spoken with Mr. Bahn,
5 and I was -- I wasn't aware this would be talked about today, but I
6 would like - I would like to have an opportunity to try to make
7 contact with him so that he might be heard on the matter, if the
8 Court's willing to do that.

9 THE COURT: That's fine. I have no problem with that.

10 MR. SMALLEY: Could we just put it on the agenda for the
11 next status conference?

12 THE COURT: Any objection to that?

13 MR. NEALE: No, sir.

14 THE COURT: That's fine.

15 All right. We have also received a letter from a Ms. Adina
16 Gail Harlow from Murfreesboro, Tennessee inquiring about what she
17 should do to pursue a case. Have you had any contact with this
18 person, Mr. Smalley?

19 MR. SMALLEY: I don't believe so, Your Honor.

20 THE COURT: I'm going to ask Ms. Sewall to make you a
21 copy of this letter and look at it and see if you think you need to
22 do anything about it and report back at the next status conference.

23 MR. SMALLEY: Thank you, Your Honor, I will.

24 THE COURT: There is also a case, Joseph Pritchard
25 represented by an attorney, Justin Pimenta, from Tampa, Florida.

1 This case was transferred to us and linked to the MDL. The
2 defendant is Walmart and ConAgra is not listed as a party, and
3 we're just not sure what to do with this.

4 MR. WALSH: Walmart is -- we represent Walmart in
5 conjunction with the MDL. Walmart, as you might recall, Your
6 Honor, they sold a private-label brand and their label group was
7 Great Value Peanut Butter that was manufactured in Sylvester by
8 ConAgra. So they have been involved in certain of the cases and I
9 guess -- is there any reason why ConAgra -- I can't see of any
10 reason why that would disqualify them from the MDL, because there's
11 other cases in the MDL involving Walmart.

12 MR. NEALE: There are.

13 MR. WALSH: Yeah.

14 THE COURT: All right. So we'll just treat this as
15 another transferred case?

16 MR. WALSH: Yes, sir.

17 THE COURT: Do you agree with that, Mr. Smalley?

18 MR. SMALLEY: I believe so, Your Honor. And with that,
19 I assume the Court's CMO, then, would be followed in that case?

20 THE COURT: You need to get in touch with this attorney,
21 I think, Mr. Smalley, unless he's appearing by phone today, and
22 coordinate their entry into the MDL.

23 MR. SMALLEY: I will, Your Honor. Thank you.

24 THE COURT: Have you got the case number and everything
25 down there?

1 MS. SEWELL: I'll give it to him, Judge.

2 THE COURT: All right. I think that is everything on
3 your agenda and everything on my agenda.

4 Again, I am most appreciative of y'all's cooperation and work
5 ethic in these cases and I hope it continues. Thank you very much.
6 That concludes the status conference.

7 [proceedings concluded at 11:40 a.m.]

8
9
10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF GEORGIA

12 CERTIFICATE OF REPORTER

13 I do hereby certify that the foregoing pages are a true
14 and correct transcript of the proceedings taken down by me in the
15 case aforesaid.

16 This the 14th day of August, 2009.

17

18

19

20

21

22

23

24

25

ALICIA B. BAGLEY, RMR, CRR
OFFICIAL COURT REPORTER
(706) 378-4017