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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: GADOLINIUM-BASED Case No. 1:08-gd-50000  
CONTRAST SOLUTION PRODUCTS Cleveland, Ohio  
LIABILITY LITIGATION Thursday, March 31, 2011  
10:30 a.m.  
(MDL Number 1909)

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

APPEARANCES:

For the Plaintiffs: Peter H. Weinberger  
Christopher V. Tisi  
Steven J. Skikos  
Lawrence J. Gornick

For the Defendants: Charna E. Sherman  
Heidi L. Levine  
J. Philip Calabrese  
Deborah A. Moeller  
Thomas N. Sterchi  
Michael L. O'Donnell

Official Court Reporter: Heidi Blueskye Geizer, RMR-CRR  
United States District Court  
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7-178 U.S. Court House  
Cleveland, Ohio 44113  
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Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

1 MORNING SESSION, THURSDAY, MARCH 31, 2011 10:30 A.M.

2 LAW CLERK: Hello, everyone, this is Mary  
3 Hughes again. As I told you before, we have Heidi Geizer,  
4 who is the court reporter taking this conference down.

09:33:46 5 I'm going to go quickly through the roll call one more  
6 time. Pete Weinberger.

7 MR. WEINBERGER: Yes.

8 LAW CLERK: Steve Skikos?

9 MR. SKIKOS: Good morning.

09:33:58 10 LAW CLERK: Chris Tisi.

11 MR. TISI: Yes. Good morning, everybody.

12 LAW CLERK: Larry Gornick?

13 MR. GORNICK: Here.

14 LAW CLERK: Have I missed anyone who is on the  
09:34:08 15 line for the plaintiffs?

16 Okay. We'll go to defendants. Charna Sherman.

17 MS. SHERMAN: Yes, Mary.

18 LAW CLERK: Phil Calabrese.

19 MR. CALABRESE: Okay. Good morning.

09:34:21 20 LAW CLERK: Heidi Levine.

21 MS. LEVINE: I am here, Mary.

22 LAW CLERK: Mike O'Donnell.

23 MR. O'DONNELL: Good morning.

24 LAW CLERK: Tarek Ismail.

09:34:34 25 MR. ISMAIL: I'm here.

1 LAW CLERK: Debbie Moeller.

2 MS. MOELLER: Yes.

3 LAW CLERK: Tom Sterchi.

4 MR. STERCHI: I'm here.

09:34:43 5 LAW CLERK: And did Tom Hill get on the line?

6 UNIDENTIFIED SPEAKER: I don't think Tom is  
7 going to join us, Mary.

8 LAW CLERK: Have I missed anyone on the line  
9 for defendants?

09:34:59 10 Okay. We're ready to begin.

11 THE COURT: Okay. I think that Pete and Mike  
12 wanted to put something forward.

13 MR. O'DONNELL: Yes, Your Honor --

14 MR. WEINBERGER: Yes, Your --

09:35:14 15 MR. O'DONNELL: -- Mike -- do you mind if I  
16 proceed, or --

17 THE COURT: That's fine.

18 MR. O'DONNELL: Either way, with Pete,  
19 although I did just want to make clear, Judge, as you know,  
09:35:26 20 I'm settlement counsel, and I was following the various  
21 proposals, and felt the best way to keep settlement on track  
22 would be for a standstill with some of the other defendants.  
23 And Heidi is out of the country, so I spoke with Steve and  
24 Pete, and last night Pete and I agreed, subject to your  
09:35:44 25 approval, to stand down until the May 2 conference, and GE

1 would be treated like the other defendants, and we'd, you  
2 know, relook at it at the May 2 conference before Your  
3 Honor.

4 And we agreed that Chris and our litigation team would  
09:36:02 5 continue, Chris Tisi would continue to discuss pretrial and  
6 trial scheduling in Marino, and that Larry Gornick's Buckner  
7 state court case won't be impacted.

8 But mostly I wanted to let you know that I'm not  
9 trying to stray out of my settlement role, I am just trying  
09:36:21 10 to keep settlements continuing.

11 And sorry to interrupt, Pete. Go ahead.

12 MR. WEINBERGER: No, that's okay. And I agree  
13 with what Mike said, and I just wanted to add that our  
14 discussions centered also around the fact that we are  
09:36:39 15 prepared to give GE some time until May 2nd to make a  
16 significant effort at resolving its cases, and to treat them  
17 in that regard similar to our treatment and agreement with  
18 the co-defendants.

19 It is really important to us, and I think Mike  
09:37:04 20 understands that, that we get the trial date for Marino  
21 locked down in October of this year. We expect that GE will  
22 make good faith efforts to resolve the Ashcraft and Gornick  
23 cases, and we would expect that Judge Polster would have a  
24 significant role in that.

09:37:36 25 We understand that for the time being through May 2nd

1 that GE is going to withdraw all requests for case-specific  
2 discovery. And we -- and that means me and Steve -- and  
3 anybody else on the PSC who GE believes can be instrumental  
4 in assisting resolution of GE cases, we are prepared to  
09:38:05 5 assist in any way possible.

6 And it's important that we hold the May 2nd large  
7 group conference as a date for plaintiffs' lawyers who don't  
8 have their cases settled to be able to be before the Court  
9 at that time.

09:38:28 10 And so that's what Mike and I discussed last night,  
11 and that's sort of the status of things at this point, Your  
12 Honor.

13 MR. O'DONNELL: And Judge, just to make sure I  
14 understand, you know, with regard to the Marino October  
09:38:50 15 date, I haven't been involved in that process at all. My  
16 understanding is that the parties are discussing, and  
17 somebody suggested one month, somebody suggested another,  
18 and they're continuing to talk. We're waiting to hear from  
19 Chris and Michelle with respect to an offer that's  
09:39:09 20 outstanding on the settlement side.

21 So I'm not involved in that process, so whatever GE  
22 and -- but the understanding, the agreement last night was  
23 that, you know, we're not asking -- (unintelligible) -- as  
24 far as setting a time that works for everyone.

09:39:32 25 THE COURT: Mike, you're breaking up.

1 MR. O'DONNELL: We're talking about stand down  
2 with respect to discovery, but people are -- I think March  
3 31 people are still supposed to fill out their -- take care  
4 of their deficiencies. On the settlement side, we may be  
09:39:51 5 asking people for information that we need. And certainly I  
6 did not intend to impact either of those. We're still  
7 expecting the March 31 responses on the deficiencies and  
8 we're still expecting, you know, when we need information  
9 for settlement evaluations to get it.

09:40:11 10 And so, Pete, I just want to make sure we're on the  
11 same page with regard to those issues.

12 MR. TISI: Yeah -- this is Chris on the Marino  
13 matter. I believe that actually we submitted it -- and  
14 correct me if I am wrong, because I thought I saw it come  
09:40:24 15 over ECF -- that we submitted a request that it schedule for  
16 a trial date on Monday. And I think we were talking about  
17 an October trial date, and I'd like to at least get that  
18 schedule locked in, obviously subject to continuing  
19 discussions with Mike on the settlement side. But I think  
09:40:43 20 it's important to get a schedule set in Marino, and I think  
21 we submitted one for the Court to look at.

22 MR. CALABRESE: This is Phil Calabrese.  
23 Chris, you know, I think the submission is premature, and  
24 there's a couple items that are outstanding. I can get back  
09:41:02 25 to you on Monday, and then I think we can be in a position

1 to hopefully present something that's agreed to the Court.

2 MR. TISI: Judge, we've been discussing this,  
3 as you know, for at least three to four weeks. If we have  
4 an October trial date, that's a pretty compressed schedule.  
09:41:20 5 We had a meeting, a call, almost ten days now to try to  
6 follow up on some minor issues that we hadn't heard back  
7 from. So at this point, Judge, I mean, I'd like to have a  
8 schedule set.

9 THE COURT: All right. Look, first, to Pete  
09:41:40 10 and Mike, and anyone else who was involved in that, I very  
11 much appreciate your proposal. I was going to suggest  
12 something like that, but it's much better that the parties  
13 came to that resolution.

14 I know that GE has scheduled a lot of discussions over  
09:42:01 15 the next month. I believe they can be fruitful if both  
16 sides approach them with the idea of resolving cases. And  
17 so there's no reason not to give GE the same opportunity  
18 that Bayer and Mallinckrodt and Bracco have had, and see how  
19 they go.

09:42:22 20 I obviously have one mediation scheduled. I've made  
21 it clear that if I'll call it the bilateral discussions  
22 between GE and any individual plaintiff's counsel break  
23 down, I'm happy to get involved. I think it makes sense for  
24 the parties to try and do it themselves first, but then if  
09:42:43 25 they break down or they reach a snag, then I'm happy to get

1 involved. So that's the way we've done it in the past, and  
2 we'll continue to do it.

3 And I have been involved along with Judge Mayer in the  
4 discussions involving all of the Ashcraft cases, which of  
09:43:04 5 course includes Marino, and I expect to continue to do that.  
6 My hope and expectation is that those do get resolved, and  
7 I'm endeavoring to do it substantially before midnight of  
8 the day of the trial, for obvious reasons.

9 I mean, it makes a lot of sense, and I'm going to work  
09:43:28 10 hard on that, but I do want to schedule a trial date. I've  
11 looked at a lot of things, I was figuring on doing it at the  
12 end of 2011. I need to avoid holidays. I had to look at my  
13 schedule, and I want to schedule that trial for October  
14 31st. I'm going to be out of town the entire preceding  
09:43:59 15 week. It's the MDL conference, the MDL Transferee  
16 Conference, and then there's a Northern and Southern Ohio  
17 Bench Bar Conference in Columbus. So I didn't want to  
18 obviously do the trial before then and have to take a whole  
19 week off. A day or two is okay, but we're not going to  
09:44:19 20 break a week.

21 And my plan is to have a two-week trial then starting  
22 October 31st, so the parties can confer and work back from  
23 that, you know, probably have a similar schedule to what we  
24 had in Knase.

09:44:39 25 But again, my expectation is to try and get that



1 entire pool resolved long, long before October 31st, and I'm  
2 going to start working on that right away.

3 And then we'll see how things have progressed when we  
4 convene on May the 2nd, and my hope is that there will be  
09:45:09 5 substantial progress made. And I guess in terms of a  
6 submission, I guess I'd like a written submission which will  
7 indicate, I guess, what cases are left and which defendants  
8 are involved, so we can discuss how to manage the balance of  
9 the MDL.

09:45:40 10 I mean, it's clear to me that neither the plaintiffs  
11 nor any of the defendants can try their way out of this MDL.  
12 The logical thing is to settle as many cases as can be  
13 settled, and if there are any left over, and if there are  
14 common legal issues that involve a substantial number of  
09:46:00 15 cases, I should address those, and then remand what's left.  
16 But just remanding a lot of cases is not productive, it's  
17 going to be very, very expensive, none of my colleagues  
18 around the country are going to be happy. And so I'm not  
19 planning to do that unless it becomes absolutely necessary.

09:46:25 20 So I think if everyone works hard on the settlement  
21 front between now and May 2nd we should be able to  
22 streamline this considerably, and then give focused  
23 attention as to what to do with the balance.

24 And obviously GE needs as much, you know, information  
09:46:43 25 on these cases as possible so they can evaluate them, and

1 the parties have cooperated in getting that in the past.  
2 We've never had -- at least none of the mediations I've done  
3 has there been a problem in getting what was needed to  
4 evaluate the cases. So everyone needs to cooperate on that.

09:47:10 5 So think what's a reasonable time frame for the  
6 plaintiffs and GE to come up with a litigation schedule for  
7 Marino, working back from October 31?

8 MR. TISI: Your Honor, this is Chris again. I  
9 think we've hit most marks. I think the real dispute that  
09:47:36 10 we have in the case, you know, I think is going to be  
11 whether or not you schedule *Daubert* hearings and issues like  
12 that. We obviously think all the generic issues have been  
13 decided.

14 THE COURT: The generic issues have been  
09:47:54 15 decided. If there are case-specific *Daubert* motions,  
16 obviously the parties can file them, and if I feel I need a  
17 hearing, I'll have a hearing. I only need a hearing if I  
18 feel that I need the witnesses, the experts themselves  
19 questioned. Everyone writes very good briefs. But if I  
09:48:13 20 feel that we need questioning of the experts, then we will  
21 have a hearing.

22 MR. TISI: Right. So I think the answer is,  
23 now that we know a trial date we can work backwards, and I  
24 think we have a good skeleton of a schedule to send to you.  
09:48:32 25 And my hope is that we can get that done very, very shortly,

1 like by the early part of next week, subject to GE's  
2 availability.

3 MR. CALABRESE: Yes, Judge. This is Phil  
4 Calabrese. I agree with that. I'm traveling until Monday,  
09:48:50 5 so --

6 THE COURT: Why don't we just say I'd like to  
7 have something submitted by next Friday.

8 MR. CALABRESE: Okay.

9 MR. TISI: I think we can get that done.

09:49:04 10 MR. CALABRESE: I agree.

11 THE COURT: The 8th or the 9th, whatever that  
12 next Friday is.

13 MR. CALABRESE: Yes.

14 THE COURT: Okay. I guess, Mary has reminded  
09:49:28 15 me, I should set a date for submissions for the May 2nd  
16 conference. I won't need a lot of lead time. How is 4:00  
17 on Thursday the 28th? I want to give you as much time as  
18 possible to make progress on settlement.

19 MR. TISI: That sounds fine, Your Honor.

09:50:10 20 THE COURT: So submissions 4:00 p.m.,  
21 Thursday, 4-28.

22 All right. And obviously you know the settlement  
23 process, you know, I've been getting a lot of entries, so  
24 it's clear that settlements and the dismissal process is  
09:50:36 25 going well with Bayer and Bracco and Mallinckrodt. I want

1 that to continue, because I want to see on May 2nd, you  
2 know, if there are cases that those defendants are unable to  
3 settle, what should be done about those. They may be joint  
4 cases with GE, there may be some that involve only those  
09:51:01 5 defendants, but I'll need to take a look at those, too.

6 CONFERENCE MODERATOR: "Joining the  
7 conference. "

8 THE COURT: Did someone just join? Oh, Mike  
9 must have gotten off.

09:51:15 10 MR. O'DONNELL: Judge, I just lost the call,  
11 so I just called in. I just lost the last 30 seconds. I  
12 hope you didn't order me to do anything.

13 THE COURT: No, just to keep working hard on  
14 settlements.

09:51:28 15 MR. O'DONNELL: Okay.

16 THE COURT: Okay. Is there anything that  
17 anyone additional needs to bring up before we adjourn?

18 MR. SKIKOS: Well, Your Honor, this is Steve.  
19 Two things. With respect to the other defendants, we are  
09:51:55 20 continuing to make very good progress. There are very few  
21 cases left, and hopefully even smaller number that are  
22 confounded with GE.

23 So we think on behalf of PSC, Bayer, Bracco,  
24 Mallinckrodt, we think progress is going great, and we hope  
09:52:17 25 that by May 2nd we're going to have a lot of good news to

1 report to you.

2 With respect to GE, Mike O'Donnell said that the  
3 plaintiffs need to maintain the March 31st deadline. We  
4 understand that, with the PFF that wasn't specifically  
09:52:33 5 addressed.

6 We understand that Mike O'Donnell is going to try to  
7 continue to resolve cases. I can tell you on behalf of the  
8 individual plaintiffs who are not on this call that they  
9 have been extremely responsive in working with Bayer,  
09:52:50 10 Bracco, and Mallinckrodt, and in responding to GE on  
11 requests for case-specific medical information and  
12 authorizations, but it is our understanding that there's no  
13 need for case-specific deposition discovery in order to  
14 resolve cases. We're doing that with Bayer, Bracco, and  
09:53:08 15 Mallinckrodt. Mike O'Donnell successively, I believe, runs  
16 all 450 cases for GE, and we're willing to help.

17 So that's our statement on behalf of the PSC.

18 THE COURT: Okay. Thanks, Steve. Well, thank  
19 you everyone, and then good holidays for everyone, and I'll  
09:53:32 20 see you all on May the 2nd. Thank you.

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22 (Telephone conference 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/Heidi Blueskye Geizer                      March 31, 2011

Heidi Blueskye Geizer, RMR-CRR                      Date