

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: : MDL NO. 13-2436
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TYLENOL (ACETAMINOPHEN) :
MARKETING, SALES PRACTICE : Philadelphia, Pennsylvania
AND PRODUCTS LIABILITY : February 24, 2014
LITIGATION : 2:30 p.m.

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE LAWRENCE F. STENGEL
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: LAURENCE S. BERMAN, ESQUIRE
MICHAEL M. WEINKOWITZ, ESQUIRE
Levin, Fishbein, Sedran & Berman
510 Walnut Street
Suite 500
Philadelphia, PA 19106

R. CLAY MILLING, ESQUIRE
Henry, Spiegel & Milling
950 East Paces Ferry Road
Suite 2450
Atlanta, GA 30326

For the Defendants: CHRISTY D. JONES, ESQUIRE
ALYSON JONES, ESQUIRE
Butler, Snow, O'Mara,
Stevens & Cannada, PDLP
1020 Highland Colony Parkway
Ridgeland, MS 39157

Transcribers Limited

17 Rickland Drive
Sewell, NJ 08080
856-589-6100 • 856-589-9005

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APPEARANCES:

(Continued)

MADELINE M. SHERRY, ESQUIRE
STEPHEN J. FINLEY, ESQUIRE
Gibson, P.A.
1700 Two Logan Square
18th and Arch Streets
Philadelphia, PA 19103

MEREDITH REINHARDT, ESQUIRE
Drinker, Biddle & Reath, LLP
One Logan Square
Suite 2000
Philadelphia, PA 19103

MARGARET C. O'NEILL, ESQUIRE
Goodell DeVries, LLP
Two Commerce Square
2001 Market Street
Suite 3700
Philadelphia, PA 19103

MICHAEL HUGHES, ESQUIRE
(No appearance provided.)

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Audio Operator: Laura Buenzle

Transcribed By: Jeff Nathanson

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1 (The following was heard in open court at
2 2:30 p.m.)

3 THE COURT: Good afternoon, everyone.

4 ALL: Good afternoon, Judge.

5 THE COURT: All right. Let me just make sure
6 I know who is on the phone. We are actually
7 broadcasting live from Courtroom 3B. We had to be in
8 here because we wanted to put this on the record, so we
9 have Laurence Berman, is that right?

10 MR. BERMAN: Yes, on the phone, Your Honor.

11 THE COURT: Mike Weinkowitz?

12 MR. WEINKOWITZ: Yes, Your Honor.

13 THE COURT: Clay Milling?

14 MR. MILLING: Yes, Your Honor.

15 THE COURT: Alyson Jones?

16 MS. A. JONES: Yes, Your Honor.

17 THE COURT: Christy Jones?

18 MS. C. JONES: Yes, Your Honor.

19 THE COURT: Michael Hughes?

20 MR. HUGHES: Yes, Your Honor.

21 THE COURT: Okay. Did I miss anyone? Okay.

22 MS. REINHARDT: Meredith Reinhardt from
23 Drinker Biddle is here, Your Honor.

24 THE COURT: Okay. Very good.

25 MS. SHERRY: Madeline Sherry and Steve Finley

1 from Gibbons on behalf of Consumer Health are also on
2 the call.

3 THE COURT: Very good, thank you.

4 MS. O'NEILL: Sorry, Margaret O'Neill from
5 Goodell DeVries, as well.

6 THE COURT: Thank you. Okay. Well, I wanted
7 to talk about a couple of items. The agenda kept
8 expanding as we got closer to the call, and there is a
9 few things that I want to cover with you, and then talk
10 about a schedule for some of the other items on the
11 agenda.

12 I did receive the letter of February 24, 2014
13 from Christy Jones raising some concerns about some of
14 the items on the agenda. I will let you speak to those
15 as we get there, Ms. Jones.

16 The first thing I wanted to talk about is
17 this dispute regarding the deposition of Colleen
18 Goggins, which as I understand it has been noticed and
19 the defense has lodged an objection to the deposition.

20 So, I thought perhaps the best thing to do
21 would be to let plaintiffs' counsel simply and briefly
22 give me their reason for wanting the deposition, and I
23 will give the defendant a chance to respond.

24 MR. MILLING: Sure, Your Honor. This is Mr.
25 Milling. Colleen Goggins has been the subject of

1 dispute -- not dispute, of discussion, excuse me,
2 amongst the counsel and certainly Judge Higbee going
3 back to the fall.

4 Colleen Goggins was the -- oversaw the
5 consumer department of Johnson & Johnson during the
6 relevant time period, and was responsible for as part
7 of her duties for McNeil.

8 We have the defense that says that we are not
9 entitled to take Colleen Goggins' deposition in their
10 papers, and what I am saying is mostly repetitive and I
11 apologize, but the defense says that she had no
12 day-to-day involvement with Tylenol or McNeil, and we
13 challenge that assertion.

14 It puts us in a box, as you know, in terms of
15 our work product, but just on the documents we have
16 received to date, you know, the reason Ms. Goggins came
17 up is because we have seen evidence that McNeil
18 organizes and presents safety and other -- carries out
19 safety and other meetings with Ms. Goggins regularly
20 regarding their Tylenol products that Ms. Goggins is
21 integrally involved in the marketing.

22 Down to the nitty-gritty, if you will, of
23 when certain commercials are going to run, how much is
24 going to be spent, budgeting issues. She also was
25 the -- is as head of the consumer group Johnson &

1 Johnson, overtook the responsibilities of McNeil in the
2 mid-2000s to handle the intake analysis and reporting
3 of all adverse events from acetaminophen, including
4 liver failure.

5 Ms. Goggins, as the head of that, is familiar
6 with those standards and, in fact, testified to the
7 United States Congress about those standards. Ms.
8 Goggins is not the CEO of the company who would be only
9 taken for burdensome reasons and has no knowledge.

10 I think what we have provided to Your Honor
11 in terms of documentation, which is the tip of the
12 iceberg, clearly shows that this is an individual who
13 worked hand-in-hand with McNeil on Tylenol and is in
14 the decision making process as it pertains to this
15 brand.

16 As such, she is a witness that we believe
17 should be taken. We have requested documents from her
18 that have been -- that I do not believe have produced,
19 and there has been an objection filed in our papers.

20 We do not want Ms. Goggins' documents or any
21 documents related to the allegations that there may
22 have been product issues in terms of -- at the Fort
23 Washington facility.

24 What we do want is we want Ms. Goggins'
25 communications with McNeil and we think we are entitled

1 to them regarding acetaminophen for a number of
2 reasons, not only what I have stated but also we intend
3 to prove and are trying to prove, as Your Honor knows,
4 that Johnson & Johnson is far more than a mere holding
5 company as it relates to its interaction with McNeil
6 and the Tylenol brand. Thank you.

7 THE COURT: Okay. What about the defendants'
8 position?

9 MS. C. JONES: Your Honor, this is Christy
10 Jones. We take the position, and really it is pursuant
11 to Rule 26(b)(2)(c), that the information that they
12 seeking can be obtained from some other source that is
13 more convenient, less burdensome, and less expensive,
14 and that the party seeking discovery, in this case the
15 plaintiff, has had ample opportunity to obtain the
16 information by discovery in the action.

17 As we had pointed out in our letter, Colleen
18 Goggins was the worldwide chairman of Johnson & Johnson
19 consumer group beginning in 2001. She had no
20 involvement whatsoever with respect to the
21 over-the-counter medicines until 2007, and between 2007
22 and '11 she had responsibility ultimately as head of
23 that and as the group operating chair for that.

24 But, as we point out, Your Honor, she had
25 some 22,000 personnel working arguably in the different

1 companies under her. She was responsible for literally
2 hundreds of products and dozens of businesses. She is
3 far beyond involvement in the day-to-day business.

4 A couple of things that I would point out is
5 first of all, plaintiffs talk about that they are
6 interested in her because of the adverse events profile
7 and procedures and so forth, and cite only her
8 testimony before congress that said we take these very
9 seriously and assess them.

10 But, more important is they have already
11 taken the deposition of Kenneth Kwong, who was directly
12 responsible for that information for the analysis of
13 those adverse events, reporting, and so forth.

14 Number two, they have attached to their
15 letter documents that supposedly justify the
16 deposition, most of which relate to advertising and the
17 approval global advertising -- the selection of global
18 advertising companies that kind of deal with far more
19 than just Tylenol.

20 But, beyond that, and perhaps most important
21 is on the vast majority these exhibits that they have
22 attached, Ashley McEvoy is a recipient. Ashley McEvoy
23 is the former president of McNeil who ran the
24 operation, who has been deposed, and clearly, clearly
25 plaintiffs had the opportunity to pursue any of this

1 information with Ms. McEvoy or others.

2 As it is, you know, currently structured,
3 they could have asked Ms. McEvoy or anybody else about
4 the involvement of J&J or filed a 30(b)(6), but they
5 have not. There are clearly other people who could
6 provide whatever information they are more concerned
7 about.

8 The fact of the matter is that this is
9 information that they are seeking that is readily
10 available from other sources. The plaintiffs had had
11 the opportunity to get the information from other
12 sources.

13 I will just remind Your Honor that in
14 addition to the depositions that have been taken in
15 this litigation or scheduled in this litigation, we
16 have already provided plaintiffs with 26 -- with the
17 depositions of 26 different present or former employees
18 that have been taken over the years that amounts to
19 tens and tens of depositions, not just 26.

20 They have had a wealth of information
21 available to them, and it just seems that this, Your
22 Honor, frankly is one of the -- a classic on the use of
23 the rules and Your Honor's authority to limit discovery
24 when it is, in fact, available otherwise.

25 THE COURT: Right.

1 MS. C. JONES: For that reason and the reason
2 that as we set forth, Ms. Goggins did not have direct
3 day-to-day responsibility nor, for example, has there
4 been any showing by the plaintiffs that they could not
5 get the information from another source, and there is
6 no showing that she received anything other than
7 reports in the context of being, you know, chairman of
8 the group operating company. The fact is she simply is
9 not there.

10 THE COURT: Okay.

11 MS. C. JONES: So, it is for those reasons
12 that we oppose this discovery, Your Honor.

13 THE COURT: Is she currently --

14 MR. MILLING: Your Honor, this is Mr.
15 Milling.

16 THE COURT: Is she --

17 MR. MILLING: Your Honor, if I may respond
18 briefly?

19 THE COURT: She is not currently with J&J, is
20 that right?

21 MS. C. JONES: That's correct, Your Honor.

22 THE COURT: Okay. All right. Go ahead, Mr.
23 Milling.

24 MS. C. JONES: Hasn't been for about three
25 years.

1 THE COURT: Right. Okay.

2 MR. MILLING: I want to just make sure that
3 Your Honor -- make sure that everything is accurate.

4 Ms. Goggins was directly responsible for the
5 consumer group from 2007 to 2011, the exact time that
6 these plaintiffs suffered acute liver failure, number
7 one.

8 Number two, Ms. Jones is correct, we did take
9 the deposition of Kenneth Kwong, but she is incorrect.
10 He was head of pharmacovigilence at McNeil from 2000 to
11 2004, a completely different time period.

12 Number three, Ms. Jones mentions that other
13 more -- that this would be burdensome and inconvenient,
14 that Ms. Goggins has retired and is represented by Ms.
15 Jones' law firm, and they have accepted a subpoena on
16 her behalf.

17 Number four, this puts us in a bind -- number
18 four is we are obviously not going to show every
19 document we have or every piece of information we have,
20 and that would be disclosing all our work product.

21 But, the point I think is is that -- and she
22 mentions we have a lot of depositions. We do have a
23 lot of depositions, Your Honor, they are provided as
24 historical depositions from McNeil.

25 I think it is important for Your Honor to

1 note that throughout this litigation the repeated
2 assertion has been made in the filings and in the oral
3 statements that Johnson & Johnson is essentially not
4 involved in the case.

5 We have not taken one Johnson & Johnson
6 deposition, not have we been told in an interrogatory
7 that I can recall this is the Johnson & Johnson person
8 to take.

9 Colleen Goggins comes up quite frequently in
10 our review as somebody who is involved. She is not the
11 CEO, she is retired. It is not inconvenient, we will
12 do it at her convenience, and we think we are clearly
13 entitled to the deposition.

14 THE COURT: I have reviewed the documents
15 that you sent in here, and there are a number of
16 e-mails from Colleen Goggins and to her, and e-mails
17 where she is copied. It does appear that she was very
18 involved in discussions, and strategies, and plans for
19 certainly marketing efforts for Tylenol.

20 There certainly is a significant advertising
21 marketing campaign claim in this case, and so I think
22 to that extent her testimony certainly is relevant.
23 So, I will allow her to be deposed.

24 I will tell you that I spoke with Judge
25 Higbee about this over the lunch hour. Judge Higbee is

1 in trial and we had a chance to speak today, and she
2 also has been over these documents and concurs with me
3 that Ms. Goggins certainly has information to offer in
4 discovery that would be relevant to at least some
5 claims in this case.

6 So, I think you should go ahead to take her
7 deposition at a time that is convenient to her and to
8 the parties.

9 Now, is there a pending motion on this, do I
10 need to rule on a motion, or is this something that was
11 raised by a letter?

12 MS. C. JONES: Your Honor, it is pursuant to
13 the pretrial order and the letter.

14 THE COURT: Okay.

15 MS. C. JONES: The letter, a writing. So,
16 what we have here is just a letter.

17 THE COURT: Okay.

18 MS. C. JONES: I understand Your Honor's
19 ruling and understand the plaintiffs' representation
20 that they do not request any information and will not
21 be asking any questions with respect to any recall of
22 products, that this is simply limited to, if you will,
23 her involvement with marketing or whatever it is, but
24 it will not relate to her testimony before congress as
25 to the recall, which is what was involved there, or to

1 the recall of products which are unrelated to liver
2 toxicity.

3 MR. MILLING: To be clear, Ms. Jones, we --
4 this is not limited to just marketing. It is limited
5 to all issues relevant to the case that she may have
6 involvement in. We are not pursuing a case related to
7 the recall of products from Fort Washington.

8 However, I don't know how Ms. Goggins is
9 going to answer questions to the extent she brings that
10 up, but I can tell you that is not our intent, not it
11 is not our intent to have a pre-deposition handcuff on
12 us, if you will.

13 We want to talk to her about her involvement
14 with Tylenol, the representations she made to congress
15 regarding pharmacovigilence are directly related in
16 this case. She is stating the position of the company,
17 and she is stating exactly what is standard operating
18 procedures of the company.

19 So the Court is clear, there is not a claim
20 in this case that the acetaminophen our clients
21 ingested was somehow contaminated.

22 THE COURT: Right.

23 MR. MILLING: With --

24 THE COURT: Right.

25 MS. C. JONES: Therefore, I assume, counsel,

1 and I am asking that the Court -- I apologize, Judge,
2 for jumping in.

3 THE COURT: Go ahead.

4 MS. C. JONES: I am assuming that there will
5 be no questioning relating to the product recalls.

6 MR. MILLING: There will be no questioning
7 related to the product recall, I do not know, but if
8 the witness brings something up, I mean, we may follow
9 it up. But, it is not part of our case. I can't say
10 it any clearer as an officer of the court.

11 THE COURT: All right. Other than that, I am
12 not inclined to put any limits on the deposition. I
13 mean, she was a senior official with the wealth of
14 knowledge about the product in question.

15 So, it seems that they can ask her what she
16 knows about information that would be supportive of any
17 claim or any defense in this case.

18 All right. I would like to move on to the
19 PSC request for witness compensation. This is
20 something that came up in a call made to me. I believe
21 it was last week during one of the depositions about
22 whether the executives or former executives from J&J or
23 McNeil can be asked about their compensation.

24 Do we anticipate that that will come up with
25 future depositions? I guess that's a question put

1 first to the Plaintiffs' Steering Committee.

2 MR. WEINKOWITZ: Your Honor, this is Mike
3 Weinkowitz. I was the individual --

4 THE COURT: Yes.

5 MR. WEINKOWITZ: The attorney that called you
6 from Ashley McEvoy's deposition on this issue.

7 THE COURT: Yes.

8 MR. WEINKOWITZ: We do anticipate that this
9 will come up at every executive deposition. We are
10 entitled to discovery the financial ties between the
11 defendants and the witnesses. As I explained on the
12 phone to you during the deposition, this goes directly
13 to bias.

14 There is a protective order in place in this
15 case that would protect the disclosure of that
16 information. We believe that we are entitled to salary
17 information, bonus information.

18 For instance, Ashley McEvoy testified at her
19 deposition that in addition to salary and compensation,
20 bonus compensation, she is entitled to deferred
21 compensation.

22 There is another witness, Dr. Anthony Temple,
23 who was hired back in 2005. Since then he has been
24 under a consultancy agreement and specifically is paid
25 \$500 an hour for his testimony in the case. So, we

1 believe that we are entitled to information regarding
2 that compensation, his consultancy agreement, and we
3 believe that all of this goes directly to bias.

4 THE COURT: The defendants' position, as I
5 take it, is that this is irrelevant information. Do
6 you want to elaborate on that?

7 MR. HUGHES: Yes, Your Honor. Michael Hughes
8 on behalf of McNeil, and I was one of the attorneys who
9 attended Ms. McEvoy's deposition.

10 THE COURT: Yes.

11 MR. HUGHES: I did have the opportunity to
12 discuss this with you at her deposition on February
13 12th.

14 By way of background, Your Honor, Ms. McEvoy,
15 as we have already discussed, is a former president of
16 Mcneil and she currently works for a J&J family in the
17 area of vision care.

18 The issue that arose at the deposition was
19 whether she had to state her compensation directly when
20 asked at the deposition, and we objected. You
21 instructed her not to answer pursuant to CMO-14, which
22 allows objections and instructions not to answer if the
23 deponent's counsel believes that the information
24 requested is not discoverable.

25 Since the deposition, Your Honor, we have

1 received additional requests from plaintiffs relating
2 to compensation that we believe far exceeds the scope
3 of Your Honor's instruction at the deposition.

4 For instance, in addition to salary
5 information, Your Honor, the plaintiffs have asked for
6 specific detailed information of all of these witnesses
7 401K plans, their pension plans, from their bonus
8 structure, from their consulting agreements.

9 They have not distinguished between
10 executives and non-executives, they have not
11 distinguished between current employees and former
12 employees, and they have asked for this information,
13 Your Honor, for every year that the person was with the
14 company, and they have asked for the witnesses to
15 execute IRS authorizations so that they can go to the
16 IRS and get this information from the IRS.

17 As we stated during the argument, Your Honor,
18 we agree that we acknowledged the existence of stock
19 options, of the existence of 401K, of the existence of
20 an employment relationship, but the actual compensation
21 numbers, Your Honor, are not relevant.

22 I cited in our letter, Your Honor, some case
23 law, and I apologize if I have not -- I don't know if
24 the plaintiffs filed a response or not, Your Honor, but
25 I have not received it.

1 In our letter of October 19th we cited some
2 case law where the specific issue was addressed in the
3 context of motions to compel. Specifically, they were
4 corporate defendants where the plaintiffs had asked for
5 stock options, where the plaintiffs had asked for
6 401Ks, where the plaintiffs had asked for salary
7 information and bonus information.

8 The courts consistently held that the fact of
9 the employment alone was sufficient to demonstrate
10 bias, and specific compensation numbers did not add to
11 that element or did not add to that equation. The
12 courts have ruled consistently that specific
13 compensation numbers are not relevant to the case.

14 That is what we base our position on, Your
15 Honor, not only on the relevance, but on the scope and
16 the expanded scope of the plaintiffs' request to us
17 immediately after Ms. McEvoy's deposition for every
18 witness, whether he or she is going to be deposed or
19 produced at trial, for every single year that witness
20 was an employee at McNeil, whether that employee is no
21 longer employed didn't matter.

22 There was no distinction made between the two
23 and we request, Your Honor, some guidance on the
24 relevance issue as well as the scope of this
25 compensation request.

1 For those reasons, Your Honor, we submitted
2 the CMO-6 letter and respectfully request that Your
3 Honor review the case law and the arguments made here
4 today on that position.

5 THE COURT: All right.

6 MR. WEINKOWITZ: Your Honor, Mike Weinkowitz,
7 if I may respond?

8 THE COURT: Yes, Mr. Weinkowitz, the PSC has
9 not responded in writing on that, is that right?

10 MR. WEINKOWITZ: I believe we have, Your
11 Honor. Yes, we submitted a letter.

12 THE COURT: Was that last night, Mike?

13 MR. WEINKOWITZ: No, that was not one of the
14 ones that came in last night, Your Honor.

15 THE COURT: Okay. Good.

16 MR. WEINKOWITZ: I believe we submitted a
17 letter shortly afterwards, but I can make the arguments
18 now that were in the letter that may not have gotten
19 there.

20 THE COURT: We are not seeing one.

21 MR. HUGHES: Your Honor, I don't have any
22 record of ever having received one, Your Honor.

23 MR. WEINKOWITZ: You have.

24 THE COURT: Okay. Melissa, do we have a
25 response from the PSC?

1 (Pause in proceedings.)

2 THE COURT: We don't. Okay. What I would
3 like you to --

4 MR. WEINKOWITZ: You know what, Your Honor?

5 THE COURT: Yes?

6 MR. WEINKOWITZ: I think the issue isn't that
7 we were not entitled under the CMO to respond by
8 writing.

9 THE COURT: Okay.

10 MR. WEINKOWITZ: We had one shot at
11 responding to the defendants' letter.

12 THE COURT: Okay.

13 MR. WEINKOWITZ: Under the CMO we didn't get
14 a -- we didn't have a reply, so we didn't submit one.

15 THE COURT: Let me ask you --

16 MR. WEINKOWITZ: I am mistaken, Your Honor, I
17 apologize.

18 THE COURT: Okay. Let me ask you to --

19 MR. WEINKOWITZ: If I could have an
20 opportunity to respond pursuant to the CMO, it is the
21 reply that is not allowed under the CMO, but a response
22 is allowable.

23 THE COURT: Okay. I have the defendants'
24 legal authority in writing and their arguments, and I
25 would like to get something from the PSC. I want to

1 make sure that we look at this carefully.

2 I do agree with the bias argument. I think
3 it's a question of how far this goes, and I don't know
4 that we need to get into the details of 401K plans.

5 MR. WEINKOWITZ: Your Honor, if you will
6 allow us the opportunity we will submit something
7 short.

8 THE COURT: Sure.

9 MR. WEINKOWITZ: Simply, I can distinguish
10 the cases that there is a big distinguishing fact
11 between the cases that the defendants have cited in
12 here.

13 THE COURT: Okay.

14 MR. WEINKOWITZ: There is a protective order
15 in place. In none of those other cases was there a
16 protective order in place to protect the disclosure of
17 the salary information.

18 THE COURT: Okay.

19 MR. WEINKOWITZ: So, we have an extra level
20 of protection here on that particular issue.

21 THE COURT: Okay. Can you get me something
22 in writing that sets forth your position?

23 MR. WEINKOWITZ: Absolutely, Your Honor, we
24 will do that by tomorrow.

25 THE COURT: Okay. That would be fine. All

1 right. Thank you very much.

2 MR. WEINKOWITZ: Thank you, Your Honor.

3 THE COURT: We will take a look at that and
4 get a ruling out to you.

5 MR. WEINKOWITZ: Thank you, Your Honor.

6 MR. HUGHES: Thank you, Your Honor.

7 THE COURT: Okay. That is by Tuesday the
8 25th. Okay. Thank you. We have an issue also about
9 third party subpoenas for witnesses Lee, Hirsch,
10 Beckert, Glick, Brady, and that came in here I believe
11 last Thursday.

12 Where are we with these third party
13 subpoenas? Are these issued in the MDL or are these
14 New Jersey subpoenas?

15 MR. MILLING: Your Honor, this is Mr.
16 Milling. I can address where we are. These
17 individuals are third parties that the PSC and the
18 plaintiffs' counsel in New Jersey have identified from
19 the documents that have been produced to us by the
20 defendants in the case.

21 We intend and we raised this with Judge
22 Higbee, we have reached out to these third parties and
23 have lined up their depositions for a couple of weeks
24 in March, which we have already had that discussion
25 with Judge Higbee.

1 The issue we were dealing with was do we need
2 to get them under subpoena, and if so how do get them
3 under subpoena given the time constraints really of our
4 case in New Jersey, but also recognizing coordination
5 with Your Honor's MDL proceedings.

6 So, we believe that -- I believe the status
7 is that we have informed the defense that we intend to
8 issue subpoenas or subpoenas out of Your Honor's court.
9 We are also asking for expedited commissions from Judge
10 Higbee for these witnesses.

11 But, this may actually end up not being a
12 non-issue. I can represent to Your Honor at least as
13 to the ones that I know the third parties will all
14 appear voluntarily, and so we are actually considering
15 that we may not even need to be addressing this issue
16 with Your Honor or fighting about time periods for
17 requesting documents.

18 Instead, it may be that we just take their
19 notice of depositions and take them voluntarily.

20 THE COURT: Okay. All right. I mean, you
21 have plenty of time to do that in my case. I guess the
22 issue is whether you can get it done in time for trial
23 in New Jersey, but you say you have already talked
24 about that with Judge Higbee.

25 MR. MILLING: Well, Judge Higbee, to be clear

1 we did not talk -- we did not get that in detail.
2 There was a discussion about depositions. I don't know
3 if Mr. Buchanan referred to it, but at the beginning we
4 actually met, not this week but next week, we really
5 run into three and a half solid weeks of depositions
6 every day.

7 Judge Higbee just gave us the direction to
8 get the depositions done in that time period. She does
9 not want to move the trial.

10 THE COURT: Okay.

11 MR. MILLING: We didn't really get into the
12 issue of the procedural issue of whether or not there
13 would be subpoenas or whether we just notice these
14 witnesses and they would show up voluntarily, et
15 cetera.

16 THE COURT: Okay. All right.

17 MS. A. JONES: Yes, Your Honor, and this is
18 Alyson Jones. If I could address this?

19 THE COURT: Yes.

20 MS. A. JONES: To back up and put it in
21 context, I have been on the record with Judge Higbee
22 each time that the plaintiffs have, but I do not recall
23 any discussion as to third party subpoenas, and I have
24 not seen the request come through for any commissions
25 to be issued out of the New Jersey State Court from

1 Judge Higbee on these particular witnesses.

2 Now, I appreciate the PSC's letter to the
3 Court and what they may or may be asking the Court to
4 address here today is that they have given us notice
5 ten days ago of these additional six third party
6 witnesses from which they want to take the depositions
7 of.

8 What they are asking us to do is to make a
9 commitment as to whether we are going to object to
10 these deponents or not in their depositions. We are
11 evaluating that. We did not have any explanation as to
12 what the testimony would be from these witnesses.

13 What we do know from our investigation is
14 that at least one is a former plaintiff's expert in a
15 Tylenol case, and another one is significantly involved
16 in some public efforts that we have seen that may be on
17 the plaintiffs' side, as well.

18 What we would seek is we want to request for
19 production of subpoena. We want to have enough
20 discovery to know what these individuals will say, and
21 an opportunity to prepare for the depositions and not
22 be rushed in the face of what plaintiffs are requesting
23 this Court to do in conjunction with a trial date that
24 is not set before this Court.

25 THE COURT: Right.

1 MS. A. JONES: Additionally, what wasn't
2 included in the letter to the Court, but was included
3 in our letter of February 14th that the plaintiffs sent
4 just to us were additional stipulations related to
5 these depositions that we went back to the PSC and
6 said, you know, asked for more detail about those
7 stipulations that were attached to the request.

8 For the benefit of Your Honor, because it
9 wasn't included in the letter that the PSC submitted,
10 those included a specific division of the depositions
11 to be taken. Three and a half hours for a discovery
12 deposition followed by three and a half hours for a
13 trial preservation deposition, and that is inconsistent
14 with this Court CMOs.

15 As well, we asked for information as to
16 whether these witnesses were retained by the PSC,
17 whether they would be serving as an expert or a
18 non-expert capacity, and we didn't receive any response
19 from the PSC on those inquiries.

20 So, I wanted to give the Court a better
21 background as to this request, and I understand that
22 the PSC is not at this time asking the Court to do
23 anything on these subpoenas, but I wanted the Court to
24 have the full background.

25 THE COURT: You had a chance to meet and

1 confer on those depositions?

2 MS. A. JONES: Well, the plaintiffs in its
3 letter on February 14th notifying us of these
4 depositions, what we did, you know, they asked for
5 immediate responses to our position, and we responded
6 back and asked for additional details as to these
7 witnesses, like I said the stipulations as to the
8 timing they were requesting.

9 We responded as to our position on that,
10 asked about information pertaining to whether these
11 witnesses were experts or non-experts, and we have not
12 received a response.

13 THE COURT: Okay.

14 MR. MILLING: Your Honor, this is Mr.
15 Milling.

16 THE COURT: Yes, go ahead, Mr. Milling.

17 MR. MILLING: I'm sorry, you go ahead, Your
18 Honor.

19 THE COURT: Well, I was just going to suggest
20 that you may need to discuss -- get a conference call
21 shortly about these depositions and see if you really
22 have any issues.

23 MR. MILLING: Yes. These witnesses are not
24 experts. Everything that the witnesses are going to
25 say, many of them are published, they are published

1 documents that are within the -- that we got through
2 the discovery in the case. They are not giving any
3 expert opinions other than opinions based on their own
4 personal research that they have done and that the
5 defendants are aware of.

6 I think there is a little bit of a -- if I
7 understand, I think you confused the Georgia lawyer
8 with New Jersey procedure, but the issue as to the
9 spreading of time is really, I think, a New Jersey
10 specific issue as opposed to a federal issue where
11 we could take, I believe the deposition for any
12 purpose.

13 But, I think this is really the -- these
14 witnesses are non-issues. They are primarily -- I can
15 look at the list and with the exception of maybe one
16 physician who has been represented to be a plaintiffs'
17 expert, he is Dr. William Lee, he has testified at
18 every -- he is not a plaintiffs' expert, he was a
19 plaintiffs' expert in one case 20 years ago.

20 So, I don't there to be any -- albeit a
21 plaintiffs' expert for these lawyers. In his whole
22 career he has been involved in one Tylenol case, but he
23 is a physician who is the head of the acute liver
24 failure group.

25 He has testified at the advisory committee,

1 he has conducted the most research on acetaminophen and
2 it has all been published and he is prepared to discuss
3 his personal research on this issue as a witness.

4 Other than that, I would just let the Court
5 know that I don't expect the plaintiffs to have these
6 witnesses to be anything more than 90 minutes at the
7 most. These are sort of vignette witnesses who have
8 discrete pieces of information that we gleaned from
9 their documents, and like I said, we believe all if not
10 virtually all of them will appear voluntarily.

11 THE COURT: All right. Well, I would like
12 you to get together and talk about whether you really
13 have any issues with these. It sounds like they have
14 relevant information to present. It is just a question
15 of whether they have to come in by subpoena, and if
16 they don't come in by subpoena, there is probably not
17 an issue at all.

18 But, I will direct you to meet and confer
19 about that this week.

20 MR. MILLING: Absolutely, Your Honor.

21 THE COURT: Thank you. Now, what about Mr.
22 Vernon's deposition in the Northern District of
23 Illinois? We got a motion to --

24 MR. BERMAN: This is Mr. Berman speaking,
25 Your Honor.

1 THE COURT: Yes.

2 MR. BERMAN: And Mr. Vernon is a former
3 president of McNeil --

4 THE COURT: Right.

5 MR. BERMAN: -- and he also became an
6 executive with J&J and we have discussed taking his
7 deposition at several of the status conferences.

8 THE COURT: Right.

9 MR. BERMAN: Because we were told that he was
10 not under the control of the defendants and had
11 separate counsel, we were put on to the name of his
12 private counsel to try to coordinate and schedule his
13 deposition.

14 This has been going on maybe as long as since
15 November or so where I have been communicating with his
16 counsel to attempt to get a satisfactory date for his
17 deposition and also to arrange for the acceptance of
18 the subpoena.

19 We did serve a subpoena and inadvertently it
20 had selected a Philadelphia location and we were told
21 by Mr. Vernon's counsel that that violated the rules
22 and needed to re-serve.

23 In connection with that I asked for a
24 convenient date, convenient location and rather than us
25 having to guess as to what that would be, if he would

1 provide that information to us we would comply and put
2 that in the subpoena and get it scheduled.

3 That was not forthcoming and after repeated
4 efforts to try to accomplish that, ultimately we cured
5 the insufficiency in the subpoena and asked again for
6 dates, were not provided, so we then actually attempted
7 to serve Mr. Vernon through a process server.

8 He was unavailable at the time, but it did
9 sort of get the attention of his counsel who then
10 contacted me and said you shouldn't have done that, I
11 told you I would accept service, et cetera.

12 I said well, here is the subpoena if you are
13 going to accept service accept it, and let's work out a
14 convenient date and location, and rather than getting
15 that he sent an e-mail and said Mr. Vernon is
16 unavailable on the date you selected, and he said he
17 really has no information that is going to be relevant
18 and if you don't withdraw the subpoena we are going to
19 move to quash and approximately 30 hours later a motion
20 to quash was filed in the Northern District of
21 Illinois.

22 I have not had any contact with his counsel
23 since the filing of that motion to quash. I did
24 contact the clerk's office for the federal judge in
25 Illinois asking about how their procedure would work

1 with respect to this.

2 They told me that typically they had what's
3 called a presentment day and until the motion to quash
4 is noticed up for presentment there is no reply brief
5 that is due and there is no telling when the motion
6 might actually be resolved.

7 I then contacted the panel, the judicial
8 panel, to ask whether it is possible that this could be
9 transferred as a tag along matter since it does have an
10 official federal court docket number in the Northern
11 District of Illinois. They told me that it is
12 possible.

13 Again, it was a clerk I was speaking to and
14 said it would be assigned to either a staff attorney or
15 the panel itself to make a decision whether to do a tag
16 along. The issue with the tag along is it might take
17 a period of time before that would be accomplished and
18 there would probably be a right to speak on that.

19 So, getting back to your agenda where you
20 asked possible ideas or mechanisms for having it
21 transferred to Your Honor, one would be the tag along
22 methodology, but I am not sure how judicious that would
23 be.

24 The second would be whether counsel for Mr.
25 Vernon would stipulate to have the matter transferred

1 over. I have not asked him about that. The third
2 thing might be for me to file a motion for transfer
3 under 1404 with the Northern District of Illinois
4 asking that the matter be transferred to Your Honor
5 and, again, that would require maybe some time.

6 So, we wanted to bring it to Your Honor's
7 attention so you would know that this is going on and
8 not to be presumptuous, but possibly whether Your Honor
9 could reach out to the judge in the Northern District
10 of Illinois and ask if there is any interest in having
11 the matter transferred to the MDL for resolution.

12 THE COURT: Right. Well, we have already
13 done that. My clerk, Melissa Mazer (ph) has been in
14 contact with Judge Dowell (ph) and Judge Dowell is fine
15 with transferring the matter here. So, I think what
16 you should do is file a motion to transfer under
17 Section 1404 and get it here and then we can talk about
18 it.

19 MR. BERMAN: Okay. Thank you, very much,
20 Your Honor. I will do that promptly.

21 THE COURT: Yes, I don't want to talk about
22 the merits of it. I think we need to get Mr. Vernon's
23 attorney either on the phone with everybody or here and
24 we could probably do it on a telephone conference, but,
25 we need, I think, first a motion to transfer.

1 MR. BERMAN: I understand. I tried to
2 purposely steer away from discussing the merits --

3 THE COURT: Right.

4 MR. BERMAN: -- and just the procedural
5 history.

6 THE COURT: All right. So, I think we need
7 to get the motion to transfer in the works and then
8 once it is here then we can take up the merits of the
9 motion to quash.

10 Okay. Then, there is a request for
11 production of documents relating to Ashley McEvoy's
12 deposition. What's going on with that?

13 MR. WEINKOWITZ: Your Honor, Mike Weinkowitz
14 again for the PSC. I took Ashley McEvoy's deposition,
15 as you know, and during the deposition I was asking her
16 about what she was calling public service ads related
17 to liver toxicity and overdose.

18 I showed her a number of advertisements and
19 in the testimony I submitted to you. I asked her if
20 there were any other materials that were relevant to
21 the particular public service campaign and she answered
22 that they were a host of other print materials and
23 internet communications, patient brochures in the
24 doctors' offices.

25 What I did then was after the deposition was

1 over I requested that the defendant simply identify or
2 produce to me any of those documents or materials. You
3 know, we've been working pretty much pretty well
4 together when I asked for them to identify specific
5 documents that have already been produced by dates
6 range, I generally get a response.

7 Here I was told no, we're not going to
8 identify those documents, we're not going to produce
9 the documents, you had seven hours to take Ms. McEvoy's
10 deposition and regardless of her answer that's it,
11 we're not going to help you out.

12 Simply, we think, one, in the New Jersey
13 litigation we have expert reports that are due next
14 Monday. I can represent to the Court that we have a
15 marketing expert and it is important for us to get this
16 information so that that expert can consider the
17 information, not be exposed to an unreasonable
18 cross-examination for not having considered the
19 information as part of his analysis and opinion.

20 Clearly the information is relevant. It was
21 Ms. McEvoy that herself identified the information
22 during her deposition. We think we want to know what
23 it is and where it is and we would like to take a look
24 at it.

25 THE COURT: Have you taken this up with Judge

1 Higbee?

2 MR. WEINKOWITZ: This letter was actually
3 sent to Your Honor and copied to Judge Higbee.

4 THE COURT: Okay.

5 MR. WEINKOWITZ: We did not -- we filed it
6 actually after our conference with Judge Higbee on
7 Friday so that had it -- she has been copied on this
8 issue, but we haven't raised it and had argument about
9 it at this point in time.

10 THE COURT: Okay. All right.

11 Mr. WEINKOWITZ: Yes, this letter was
12 yesterday.

13 THE COURT: Right.

14 MR. WEINKOWITZ: We had discussed the issue
15 with defendants at the end of last week and I was
16 hoping that we would have some resolution by today or
17 by Friday and we got final word last week that they
18 were refusing to identify and produce the material.

19 THE COURT: Okay. And what's the defendants'
20 position, either on the substance or the procedure that
21 we're following here?

22 MS. A. JONES: Yes, Your Honor, this is
23 Alyson Jones and Mr. Weinkowitz is correct. We have
24 worked well together on these types of individual
25 requests that have come in to us and, in fact, they are

1 significant. We get requests at least two to three
2 times a week on individual follow-up.

3 This particular request, however, I am at a
4 loss at what to search for specifically. There was no
5 significant follow-up in the deposition as to what
6 particular material is being referred to.

7 I can work with the plaintiffs to the extent
8 that they can identify more specifically what the
9 requests would be or what campaign. We have produced
10 all of the documents.

11 They have the exact same search ability that
12 we do to perform searches of documents and what I would
13 ask is that we would be given time to respond to these
14 as a typical request for production and that the
15 request be narrowed to the extent that we would be
16 forced to respond to such a request.

17 THE COURT: Okay.

18 MR. WEINKOWITZ: Your Honor, if I may
19 respond?

20 THE COURT: Yes.

21 MR. WEINKOWITZ: Look, this is really a
22 simple line of questioning about three advertisements.
23 One involved -- called the "liver ad," one involving
24 their vice president of sales, Brenda Batt (ph), and
25 one involving their vice president of regulatory

1 affairs, her last name is Polinski.

2 We were showing her the ads. You can read
3 the testimony. The follow-up was is there any other
4 information surrounding these public service ads and
5 her answer was yes, there is a host of print materials,
6 internet communications and patient brochures in
7 doctors offices. It is very narrow. I think it is
8 very specific.

9 So, if there are those materials we are
10 asking that they identify them, period. I mean, and
11 you know, they could go -- they could pick up the phone
12 and they can call Ashley McEvoy and say Ashley, what
13 were you talking about.

14 THE COURT: Okay. Did you make -- Mr.
15 Weinkowitz, did you --

16 MR. WEINKOWITZ: I don't want to keep
17 delaying this so that the plaintiffs in New Jersey
18 don't have the materials to prepare for their experts
19 on Monday. It is very simple.

20 THE COURT: Okay.

21 MR. WEINKOWITZ: The testimony is very
22 clear --

23 THE COURT: Did you make a request for these
24 documents in writing or were these made on the record
25 of the deposition?

1 MR. WEINKOWITZ: The request was made after
2 the deposition in an e-mail to Ms. Jones.

3 THE COURT: Okay.

4 MR. WEINKOWITZ: Ms. Alyson Jones.

5 THE COURT: Right.

6 MR. WEINKOWITZ: And the response was you had
7 seven hours to take the deposition, I am not sure what
8 you are asking for. And then I responded again, here
9 is the testimony. It is very clear, it is very
10 specific.

11 MS. A. JONES: Your Honor --

12 THE COURT: All right. Ms. Jones?

13 MS. A. JONES: If I may respond quickly? If
14 the request is limited to two specific advertisements
15 that he showed and those particular exhibits, then
16 perhaps he could write a specific delineated request
17 for production and what I would do would be to work
18 with the plaintiffs to come up with search criteria for
19 them to run the same searches across the documents that
20 we have to find these advertisements and any associated
21 documents with these advertisements, because they have
22 all been produced.

23 And so I am happy to undergo that effort, but
24 I do not appreciate from this excerpt of deposition
25 testimony that it was specific that to these three

1 particular ads with this wording that then I could even
2 craft search criteria to go within the documents.

3 THE COURT: Well, can the two of you, Mr.
4 Weinkowitz and Ms. Jones, get together and talk about
5 the search criteria and come up with these documents?
6 You are saying that they have already been produced, it
7 is just in a vast amount of documents, right?

8 MS. A. JONES: To the extent it is referring
9 to these two particular ads --

10 THE COURT: Right.

11 MS. A. JONES: -- then I can work with that.

12 MR. WEINKOWITZ: And simply I would request
13 for that is we just really need the Bates numbers,
14 that's it. If you got the Bates numbers, all I need is
15 if you tell me what the Bates numbers are I can find
16 the material.

17 THE COURT: All right. I think that sounds
18 reasonable. Can the two of you talk about this later
19 today or tomorrow and get this squared away?

20 MR. WEINKOWITZ: Absolutely, Your Honor.

21 MS. A. JONES: Yes, Your Honor.

22 THE COURT: Okay. All right. Thank you.
23 The final thing I have on the agenda, and that's
24 because we cut the agenda off at midnight last night --

25 MR. WEINKOWITZ: Your Honor, at the time that

1 we told you that we didn't need a status conference, we
2 really didn't need a status conference.

3 THE COURT: Right. I get that. I get that.
4 Obviously you weren't watching True Detective last
5 night from 8:00 until 9:00 or you wouldn't have made
6 this request at 8:30. The PSC's request for expedited
7 discovery on the FDA announcement, what's going on with
8 that?

9 MR. MILLING: Your Honor, this is Mr.
10 Milling. On Friday there was a -- we -- I noticed that
11 the FDA had issued a formal notice I believe in the CFR
12 that the FDA was going to hold a meeting in a month and
13 the meeting is most relevant to this case because the
14 FDA is acknowledging in the CFR and in the article that
15 we attached, that the monograph system which is what
16 any of the Tylenol products, not all, are governed
17 under is a -- it could be very difficult to take prompt
18 action on safety signals, because the way it works is
19 if the FDA is interested in something it has to have a
20 request proposal, it goes for years, people write into
21 the government, they have hearings, it goes to the
22 Congressional Budget Office and things take forever and
23 the FDA is saying we want to have a hearing to possibly
24 change this so that we can do what we do with
25 prescription drugs, which is if we see a safety signal

1 we can say Mr. Company, change your product, change
2 your label.

3 We can't do that in the OTC market and the
4 monograph system in Tylenol is under what's called a
5 tentative final monograph, the company is free to make
6 changes voluntarily and McNeil has, even as recently as
7 2011.

8 In addition, though, the FDA for the first
9 time said publicly that it wants to do away with extra
10 strength Tylenol and only have regular strength
11 Tylenol. That's what the spokesperson for the FDA
12 said. And that's, of course, obviously a major piece
13 of news.

14 Also in the article is reference to what's
15 called CHPA, the Consumer Health Products Association
16 which is the trade organization and lobbying
17 organization for the OTC pain manufacturers including
18 McNeil, and they were already prepared with a statement
19 as of yesterday that we like the system as it is, the
20 monograph system.

21 And based on our experience, when the FDA has
22 held meetings and looking at these documents like we
23 have over the years, when the FDA holds meetings on OTC
24 products manufacturers know about it well in advance.

25 Manufacturers prepare for them, manufacturers

1 carefully consider what they are going to submit in
2 writing and/or orally at the meetings. Manufacturers
3 like McNeil have consult on virtually every kind of FDA
4 meeting on Tylenol, consult with third parties, what's
5 our position going to be, they work with CHPA group,
6 their consumer group, how are we going to handle these
7 issues and, of course, we just got notice of this
8 yesterday.

9 And it, of course, is directly related -- it
10 goes directly to the issue of the effectiveness, lack
11 of effectiveness and how the monograph works as well as
12 the FDA's position on the safety of acetaminophen
13 generally.

14 All we are saying is this came up to us, the
15 PSC, on Friday. We had every -- we would suspect,
16 given that CHPA was able to have a response on behalf
17 of all of its members already prepared that this has
18 been known, that this meeting has been well-known
19 within the industry for a long time.

20 All we want to know is if there are documents
21 (inaudible) articulated them and we would like to have
22 the defendants supplement their production and identify
23 a witness who is most knowledgeable about this promptly
24 so that we can use this information and discover this
25 information in an expedited way.

1 The response that we got today from Ms.
2 Jones, respectfully, would just -- simply said, you
3 know, well, the plaintiffs have said they are ready to
4 go. The truth is we are ready to go when we made that
5 representation, but we didn't know when we told Judge
6 Higbee we were ready to go that the FDA was going to
7 come out with what we consider to be a blockbuster
8 announcement Friday afternoon.

9 So, to the extent this has been known within
10 the company, and I make no presumption that it has, but
11 based on what I see over time and an example, the
12 medical affairs director for McNeil said that in
13 preparation for one of these FDA meetings, certainly
14 advisory committee meetings, there might be 100
15 internal meetings.

16 We would have every reason to believe that
17 this change, potential change in the regulatory scheme,
18 the position of the FDA as it relates to acetaminophen,
19 which is the drug they chose to use as an example, and
20 their potential involvement with consultants trying to
21 figure out and formulate their position on this has
22 been the topic of internal communication and we would
23 like to have access to that as quickly as possible.
24 Thank you.

25 THE COURT: All right.

1 MS. C. JONES: May I respond to that, Your
2 Honor?

3 THE COURT: Yes, please.

4 MS. C. JONES: I mean, first of all, if the
5 plaintiffs are entitled to this information, and if
6 there is any information out there we certainly are
7 entitled to the ordinary discovery time in terms of a
8 request for production and the ability to collect and
9 gather the materials on a timely basis, but there is
10 no need for an expeditious recon in this MDL at this
11 time.

12 We don't have a trial setting at all, number
13 one. Number two, Mr. Milling is correct, that often in
14 advance of an FDA meeting there are discussions.
15 However, that's not generally before the notice of a
16 meeting.

17 So, I suspect, though I can't make any
18 representations to the Court, that his request right
19 now is premature and is best to be had after the actual
20 meeting that's been scheduled to the extent that there
21 is something later.

22 THE COURT: Okay.

23 MS. C. JONES: Beyond that, we know that
24 there is a supplemental production that was done
25 between October, 2013 and January, 2014, and to the

1 extent that there were any discussions at that time,
2 those documents have already been produced.

3 MR. MILLING: The supplemental production
4 concerned prescription acetaminophen and the highly
5 confidential documents.

6 MS. A. JONES: No --

7 MS. C. JONES: No, it did not.

8 MR. MILLING: -- the significant documents.
9 In fact, (inaudible) same documents you've responded to
10 came in too big of a volume were all supplemental
11 productions done in the McNeil custodians and J&J
12 custodians and there is a host of documents potentially
13 related to proposed rule within those.

14 Now, additionally you mentioned, you know,
15 questioning about this particular event and Lynn
16 Pavelski (ph), who was the director of regulatory
17 affairs for a significant period of time, could
18 certainly be asked about this in her deposition that is
19 scheduled for this week.

20 THE COURT: Well, is there --

21 MR. MILLING: Your Honor, I don't think --

22 THE COURT: Is there a request for production
23 that has been made regarding these documents related to
24 the FDA announcement?

25 MR. MILLING: Your Honor, the FDA

1 announcement, this particular FDA announcement, no, but
2 as it relates to -- there are outstanding requests for
3 production relating to the categories of information we
4 seek, which is interaction between McNeil and third
5 parties with relation to regulatory and safety issues.

6 THE COURT: So, these would be supplements to
7 responses that have already been made?

8 MR. MILLING: Yes, Your Honor. And all we
9 are doing is bringing this to the attention of the
10 Court and we also have -- we filed it with Your Honor
11 because there was an indication when we talked to Judge
12 Higbee on Friday that she might actually be part of
13 this call.

14 We've also served this letter on -- served a
15 copy of this letter to Judge Higbee and all we are
16 saying is that we don't want -- we want to make clear
17 our position that oftentimes in this case, and it is
18 not for lack of effort, given the size of the case and
19 the number of documents, document requests would be
20 served, and it may be -- we are still receiving as
21 supplements to document requests that were served a
22 year and a half ago.

23 As it pertains to this specific issue, and
24 given its critical importance and timeliness -- the
25 time nature of it as it relates to this trial, we would

1 just want the Court to the extent possible to assist if
2 possible in assuring that we get these documents on an
3 expedited basis. We don't want these documents in six
4 months after trial.

5 THE COURT: All right.

6 MR. MILLING: If there are documents related
7 to this hearing that the FDA is holding in March, if
8 McNeil has already begun to formulate strategies
9 regarding how to deal with this, if McNeil has already
10 worked with CHPA, which McNeil is one of the largest
11 manufacturers involved with the Consumer Health Product
12 Association, if those documents exist, all we are doing
13 is saying we would like to see them ASAP because of our
14 trial.

15 THE COURT: Ms. Jones?

16 MS. C. JONES: Your Honor, I understand, but
17 there are two things at issue here. One is we are
18 regularly supplementing document productions and have
19 supplemented from January of 2014.

20 There will come another time for a
21 supplemental document production, but to come in and
22 say because the FDA issues a notice on Friday they need
23 documents related to this ASAP is simply not
24 appropriate. There is no reason in this Court for such
25 an expeditious request.

1 It is not that the documents wouldn't be
2 produced in due course when and if they are discovered
3 and, in fact, exist, but the assumption that there are
4 documents, number one, which Mr. Milling has at least
5 admitted that it is an assumption that there are
6 documents right now, and to send us off because an
7 article or because the FDA issues an article because
8 there is a news article, to go out and get documents
9 immediately because they have a case set for trial in
10 New Jersey, not even in this MDL, is just frankly
11 unreasonable at this point, Your Honor.

12 It is not that they are not going to get the
13 documents. They will get them, but we ought to be
14 given a reasonable time to locate them and produce
15 them.

16 THE COURT: Okay. How much time do you need
17 to respond to these? I mean, you have 30 days.

18 MS. C. JONES: I mean, if we have 30 days we
19 will have 30 days and we will respond within 30 days
20 with anything that's there.

21 THE COURT: All right.

22 MR. BERMAN: Your Honor, this is Mr. Berman.
23 You know, I am sorry to interrupt, if I may for a quick
24 second.

25 What I do think we want for purposes of

1 clarification is, one, whether the defendants consider
2 the already existing discovery requests to encompass
3 this area of discovery so that there is an existing
4 obligation for them to supplement with any new
5 information.

6 And, two, if they do not consider that, and I
7 think it is something that they could answer now
8 without regard to going off and looking for documents,
9 but if they do not consider that, we do not want to be
10 confronted with the objection that there had been an
11 order by the Court, which was alluded to in their
12 letter of today that there should be no more discovery
13 by the plaintiffs unless authorized by the Court.

14 So, we don't want to be in a position of them
15 taking the position, one, it is not encompassed within
16 a prior discovery request that we need to supplement
17 and, two, you are not permitted to make a new discovery
18 request because there is an order that says we've
19 already had too much discovery.

20 And then three, the third point would be that
21 we simply -- if it's not going to be a problem, we
22 simply would like to get them working on this and
23 supplement and quickly as possible and not to hold us
24 to the full 30 days if they already know that these
25 documents exist and hold it to the last minute.

1 We've already had a lot of items that come in
2 at the very last minute and we're just trying to get
3 this on a front burner so that we're able to know
4 what's going to exist so we can deal with it on an
5 expeditious basis.

6 THE COURT: Okay. Ms. Jones?

7 MS. C. JONES: Your Honor, I will be happy --
8 I mean from my standpoint the documents that they have
9 requested, to the extent that I understand what they
10 are, I believe are probably encompassed in one of their
11 earlier document requests.

12 I will be the first to say that in the event
13 that we determine in the next, you know, 48 hours that
14 they're not, we will advise them and we will work out
15 something on this. I understand that.

16 What I do think, though, is that we are still
17 entitled to a reasonable time, and if that means 30
18 days it means 30 days to go out and produce documents,
19 because there is simply -- I mean, I am not saying we
20 are not going to produce the documents, but I am saying
21 that we've produced millions of documents and we've got
22 a schedule in place, and we need to be able to do this
23 in an orderly fashion.

24 THE COURT: Right. Well, I think there is
25 two issues here at least. One is whether this is

1 within the scope of a previous discovery request. It
2 sounds like it is. It sounds like there is some
3 agreement on that and I appreciate if you would within
4 48 hours let them know if your position is that it is
5 not, as you have indicated.

6 MS. C. JONES: We will be happy to do that.

7 THE COURT: Okay. And then can we get these
8 produced inside of 30 days? I am thinking, you know,
9 three weeks, can we do something like that?

10 MS. C. JONES: Your Honor, I don't mean to be
11 difficult. We basically got this request at the same
12 time you got this request at midnight last night or
13 whatever it was.

14 THE COURT: Right.

15 MS. C. JONES: I am not in a position to
16 respond to this.

17 THE COURT: Okay.

18 MS. C. JONES: I will be honest with you, I
19 don't even know if there is anything out there.

20 THE COURT: Okay.

21 MS. C. JONES: Or how many different places
22 we have to go to do it. I am just being as honest with
23 you as I can be, it is just not one of those things
24 that -- I don't know that there is one person that we
25 can call and we find out whether there is anything out

1 there or not.

2 All I can say is that it is -- we have to get
3 the documents and have an opportunity to review them
4 and --

5 THE COURT: Right.

6 MS. C. JONES: -- it is really not feasible
7 or I think reasonable to ask us every time there comes
8 a notice to immediately go out and get all of the
9 documents that may relate. You know, there may be
10 documents that were generated on Friday, for all I
11 know.

12 THE COURT: Right.

13 MS. C. JONES: I mean we just can't be
14 collecting documents on a daily basis.

15 THE COURT: That's why the rules give you 30
16 days. So, let's just go with that and I will ask you
17 to make efforts to locate those documents. If you can
18 get them to the plaintiffs sooner, fine, but I think
19 you certainly have a month within which to do it.

20 MS. C. JONES: Thank you, Your Honor. I will
21 say, just so there is no question, to the extent that
22 there was anything that related to this in existence
23 before January of 2014, all of that has already been
24 produced.

25 THE COURT: Okay.

1 MR. MILLING: And, Your Honor, all we would
2 ask is that there have been since January and Mr.
3 Weinkowitz can talk about this. We have received 53, I
4 think, percent of all documents in the case in the last
5 three months, millions and millions and millions of
6 pages in the last three months.

7 Anything that's related to this we would
8 simply ask this issue that the defendants pull it out
9 and produce it in an orderly production, one production
10 30 days from now.

11 MS. C. JONES: Your Honor?

12 THE COURT: Yes, Ms. Jones?

13 MS. C. JONES: I don't mean to be
14 unreasonable, but they have the same search
15 capabilities that we have, and if we have to do it they
16 ought to bear the costs for it.

17 MR. WEINKOWITZ: Your Honor, this is Mike
18 Weinkowitz, with all due respect, we have the same
19 search capabilities if we have the documents. If we
20 don't have the documents we can't search for them.

21 MS. C. JONES: You do have the documents.

22 MR. MILLING: We don't --

23 MS. C. JONES: You have all the documents
24 that we have on the subject.

25 THE COURT: Well, I think the issue is

1 whether the documents regarding this new FDA
2 announcement have been produced, and I think you have
3 to confer then.

4 MS. A. JONES: I think if they can search
5 proposed rule in 2013 forward they would find a host of
6 documents.

7 THE COURT: Okay.

8 MR. WEINKOWITZ: And, Your Honor, there is
9 one other issue on this particular front. Early on a
10 subpoena was searched on CHPA. CHPA is the lobbying
11 group that had statements on Friday about this
12 particular issue. We would like to serve an updated
13 subpoena on CHPA, and we would like to do it pretty
14 quickly.

15 The defendants didn't object initially to the
16 service of the subpoena. We would just like to know if
17 they are going to object and quash the subpoena at this
18 point in time?

19 MS. C. JONES: We haven't seen the subpoena,
20 but we do not anticipate objecting to it.

21 THE COURT: Okay.

22 MR. WEINKOWITZ: Okay. So, we will send the
23 subpoena over to you. Could you just let us know
24 before the 15 days, if possible, if you are going to
25 object?

1 MS. C. JONES: We will be glad to do so.

2 MR. WEINKOWITZ: Thank you, Christy, I
3 appreciate it.

4 THE COURT: Okay. That's all I have on my
5 list. I think we -- yes, I think we have covered
6 everything. Is that right? Okay. Okay.

7 Thank you for your time this afternoon and we
8 will look forward to getting the motion to transfer,
9 the Vernon motion to quash, and I think we have our
10 plan as to the other items that we have discussed.
11 Okay.

12 MS. C. JONES: Thank you, Your Honor.

13 THE COURT: Thank you, very much. All right.
14 Have a good day.

15 ALL: Thank you, Your Honor.

16 (Proceedings adjourned at 3:41 p.m.)

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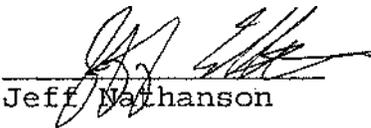
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CERTIFICATION

I, Jeff Nathanson, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

3-27-14
Date


Jeff Nathanson