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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE: CHANTIX (VARENICLINE) *2:09-cv-02039-IPJ
PRODUCTS LIABILITY *January 25, 2010
LITIGATION *Birmingham, Alabama
*10:06 a.m.

TRANSCRIPT OF INITIAL CONFERENCE
BEFORE THE HONORABLE INGE P. JOHNSON
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

THE COURT: Good morning.

Let the record show this is CV09-2039. And the style of the case is In Re Chantix (Varenicline) Products Liability Litigation MDL 2092.

10:07:00

And this is the initial conference set by order issued on November the 9th, 2009. And the simplest thing would just be for everybody to say who they are. And my court reporter and my courtroom deputy have asked that you state additionally who you are when you start talking so she can write down and she can keep up with it.

10:07:16

Who is here for plaintiff?

10:07:30

MR. CORY: Good morning, Your Honor. I'm Ernie Cory. I'm here for the plaintiffs.

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MR. HAHN: Your Honor, Blair Hahn from the Richardson Patrick firm in Charleston, South Carolina. I apologize for my dress. Delta still has my bag.

10:07:38

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THE COURT: I know the feeling. I actually sat on the 11th Circuit by designation about a year and a half ago, and a lady lawyer

10:07:48

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1 came in in tennis shoes and a sweat suit. And I
2 thought, I wonder whether Judge Edmonson is going
3 to say something about this. And he didn't say
4 anything, and Judge Proctor didn't say anything
5 either. And I thought, well, she probably lost
6 her luggage just like the rest of us. And she
7 did. But she was, nevertheless, very eloquent.

8 MR. LOPEZ: Good morning, Your
9 Honor. Ramon Lopez. I'm from California.

10 THE COURT: And you lost your
11 luggage, too?

12 MR. LOPEZ: I have the same excuse
13 Mr. Hahn has.

14 THE COURT: That's okay.

15 MS. SUTTON: I'm Tara Sutton from
16 Minneapolis, Minnesota.

17 MR. RATNER: David Ratner from New
18 York, New York.

19 MR. MEADOW: Rick Meadow from the
20 Lanier Law Firm, New York, Texas, and California.

21 MR. DRAKE: Jack Drake, Whatley,
22 Drake & Kallas, Birmingham.

23 MR. RASMUSSEN: Kristian
24 Rasmussen, Cory Watson firm here in Birmingham.

25 MS. HACKER: Sara Hacker, Whatley,

1 Drake & Kallas, Birmingham.

2 MS. CRANFORD: Ashley Cranford,
3 Whatley, Drake & Kallas, Birmingham.

4 MR. GROSSMAN: Marc Grossman,
10:08:50 5 Sanders, Viener, Grossman, Mineola, New York.

6 MR. HUNT: Stephen Hunt, Cory
7 Watson in Birmingham.

8 MS. BURKE: Beth Burke, Richardson
9 Patrick in South Carolina.

10:09:02 10 MR. MARCUM: Christiaan Marcum
11 also with Richardson Patrick.

12 MR. LOPEZ: Matthew Lopez, Lopez
13 McHugh.

14 MS. CHAMBERS: Beth Ellis
10:09:10 15 Chambers, Cory Watson in Birmingham.

16 MR. TAYLOR: Gerry Taylor,
17 Fairhope, Alabama.

18 MS. CONROY: Jayne Conroy, Hanly
19 Conroy, New York.

10:09:24 20 THE COURT: You're sitting on the
21 wrong side.

22 MS. CONROY: I'm being a little
23 rebellious. Feeling good. I've got my luggage.

24 MS. PETOSKY: Anna Petosky,
10:09:28 25 Robins, Kaplain, Miller & Ciresi.

1 MR. FERRELL: James Ferrell,
2 Taylor & Associates, Houston, Texas.

3 MR. MICELI: David Miceli, the
4 Simmons firm, Carrollton, Georgia and East Alton,
10:09:42 5 Illinois.

6 MR. FISHER: Clint Fisher, Hanly
7 Conroy, New York.

8 MR. FOLEY: John Foley, the
9 Simmons firm.

10:09:48 10 MR. MIRACLE: Trent Miracle, the
11 Simmons firm.

12 THE COURT: Anybody else from the
13 plaintiff?

14 Okay. Who is here for the defendant?

10:09:56 15 MR. HASTON: Good morning, Judge.
16 Trip Haston from Bradley Arant.

17 MR. BROWN: Good morning, Your
18 Honor. Loren Brown with the DLA Piper firm.

19 MR. PETROSINELLI: Good morning,
10:10:04 20 Your Honor. I'm Joe Petrosinelli with Williams &
21 Connolly in Washington, D.C.

22 MR. JOINER: John Joiner, Williams
23 & Connolly.

24 MR. HOLIAN: Matt Holian from DLA
10:10:14 25 Piper.

1 MR. JOHNSON: Good morning. Andy
2 Johnson from Bradley Arant.

3 THE COURT: Who are all these
4 people sitting in the back that have not
10:10:24 5 identified themselves?

6 MS. SHILLING: Good morning, Your
7 Honor. I'm Amy Shilling from Pfizer.

8 MR. LERMAN: And Brad Lerman, Your
9 Honor, also from Pfizer.

10:10:34 10 UNIDENTIFIED: Judge, this is
11 Thomas Schneider. He is a German legal intern
12 who is working for us for three months.

13 THE COURT: Okay. All right.

14 MS. SUGGS: Michelle Suggs from
10:10:56 15 Pfizer.

16 MS. BOOTNEY: Sally Bootney from
17 Pfizer. (SIC)

18 MR. ANWERTS: I'm Bob Anwerts from
19 Berk News. (SIC)

10:11:04 20 THE COURT: All right. You have
21 actually done everything I asked you all to do in
22 the original order. And I appreciate that.

23 And then I want to tell you that I expect
24 y'all to help me. You're officers of the Court,
10:11:22 25 and I expect y'all to help me. This is the first

1 MDL I have done. And I have said no several
2 times. And then they caught me with jet lag
3 after I came back from my high school reunion in
4 Copenhagen. And I said yes. I meant to say no.
10:11:38 5 But I said yes, so I'm stuck with it. I think
6 it's going to be interesting. And I really
7 appreciate that you've already filed what you
8 have filed.

9 With respect to the proposed joint agenda
10:11:46 10 that you filed with me, let's just go through it
11 paragraph for paragraph. The first thing you
12 have on the agenda that you have submitted to me,
13 which I assume you want me to go through like it
14 is, is appointment of counsel.

10:12:00 15 And let's start with plaintiffs' proposal.
16 I have read that. And is that an agreed-to
17 between plaintiffs' counsel?

18 MR. CORY: Ernie Cory. Yes,
19 ma'am. It is agreed to by all parties with cases
10:12:18 20 before the Court that we have identified.

21 THE COURT: Okay. That's a lot of
22 committees and people involved. And I just want
23 to make sure that it's on the record that
24 compensation will not be done or paid or approved
10:12:34 25 for duplicative efforts. Has that been

1 discussed?

2 MR. CORY: No, ma'am. But we
3 understand your position. And that's fine.

4 THE COURT: Okay. All right. How
10:12:46 5 many -- let me ask lead counsel and liaison
6 counsel: How many MDLs are you presently
7 handling? I'm trying to figure out whether to do
8 this for a one-year term.

9 Are you handling a lot of MDLs all over
10:13:02 10 the country that you're going to devote your time
11 to or split your time between this and the
12 others?

13 MR. CORY: Your Honor, you talking
14 about with respect to me?

10:13:06 15 THE COURT: And also Mr. Whatley.

16 MR. CORY: Right now, Your Honor,
17 I'm involved with one other in Rhode Island. And
18 it's, I would think, on a phase-out.

19 THE COURT: Okay.

10:13:18 20 MR. CORY: So once that one is
21 done, hopefully this March, I'll be able to move
22 forward on this one full time.

23 MR. DRAKE: Judge, Joe Whatley is
24 not here. I'm Jack Drake.

10:13:30 25 I'm personally only involved in one MDL

1 currently in a leadership position. And that's
2 the Medtronic Sprint Lead Fidelis litigation in
3 Minneapolis. That's on appeal in the Eighth
4 Circuit. There's not anything for me to do. And
10:13:48 5 I think our firm will be very involved, and we
6 have people to cover.

7 THE COURT: Okay. How are you
8 going to keep up with -- how is everybody going
9 to keep up with their time? Are you going to
10:14:34 10 submit your time?

11 MR. HAHN: Your Honor, Blair Hahn.
12 What we've done in the past in similar drug MDLs
13 is we have a discovery committee. And then we
14 require all the lawyers that are working on
10:14:46 15 discovery, as has been assigned to them by the
16 committee, to submit their time on a monthly
17 basis. And one firm then keeps that on a monthly
18 basis. And then at the end of the litigation,
19 we'll tally up all the hours and submit them to
10:14:58 20 the Court with proper backup.

21 THE COURT: Okay. That's good.

22 MR. HAHN: Thank you.

23 THE COURT: Well, I'm going to
24 approve the proposed leadership structure by the
10:15:12 25 plaintiff.

1 Next there's the defendant's report. And
2 proposal. And I mean, it is a lot easier for the
3 defendants because there's only one defendant.
4 So I don't -- that's obviously by agreement, as
10:15:36 5 well, right?

6 MR. HASTON: Yes, Your Honor.

7 THE COURT: Now, I should ask you
8 the same question with respect to lead counsel
9 and liaison counsel. How many MDLs are y'all
10:15:48 10 involved in?

11 MR. HASTON: Your Honor, Trip
12 Haston. I am not active in appearing before any
13 MDLs. I am working for other clients and other
14 MDLs, but I'm not in a role like this currently.

10:16:00 15 THE COURT: Okay.

16 MR. BROWN: Your Honor, Loren
17 Brown. This is the only MDL in which I have a
18 leadership position right now. I have peripheral
19 involvement in some others, but this is the main
10:16:14 20 one for me.

21 THE COURT: All right. They're
22 approved, as well.

23 Okay. I have gotten your reports about
24 the status of federal and state litigation. And
10:16:38 25 there is a proposal by the defendant that all

1 pending motions be withdrawn and included in a
2 master -- well, that all pending motions be
3 withdrawn; that y'all agree on the filing of a
4 master complaint; that you make deadlines for
10:17:00 5 filing answers and motions to dismiss to that
6 master complaint.

7 Is that something the plaintiff is in
8 agreement with?

9 MR. CORY: Ernie Cory. Yes,
10:17:08 10 ma'am, Your Honor.

11 THE COURT: Are there any motions
12 to remand? I looked at the defendant's list of
13 pending motions, both in -- well, actually just
14 in federal court, obviously. Are there any
10:17:18 15 motions to remand?

16 MR. PETROSINELLI: Your Honor, Joe
17 Petrosinelli.

18 I believe there are not.

19 THE COURT: Okay. That's good.
10:17:24 20 So what is your time frame for this filing of a
21 master complaint? Do you have one?

22 MR. CORY: Your Honor, I would
23 imagine that we would have one ready for filing
24 within 45 days.

10:17:38 25 THE COURT: Okay. And what about

1 defendant? I mean, is that something y'all are
2 going to propose to me in a proposal, what you
3 can do? Or do I need to put that in an order as
4 a result of today?

10:17:50 5 MR. PETROSINELLI: Your Honor, Joe
6 Petrosinelli.

7 Mr. Cory and I have spoken, and I think
8 what we intend to do is, in fact, meet right
9 after this hearing and start discussing a
10:18:00 10 discovery plan and also things like deadlines for
11 filing a master complaint and a master answer.

12 So I think what we suggest is that we come
13 back to you with a proposal on deadlines for
14 these types of things. And I think they'll be
10:18:14 15 agreed upon.

16 THE COURT: Okay. That's good.

17 MR. CORY: Your Honor, to the
18 extent that we can agree on stuff and present it
19 in post order for you, that would be probably the
10:18:22 20 best way to go.

21 THE COURT: That would be
22 wonderful for me if that's okay with y'all, both
23 sides.

24 Now, let me just tell you what I've
10:18:28 25 thought about because I -- you know, you can't

1 watch television without seeing about Chantix and
2 ads that have been added and what I read -- I've
3 read the complaints as they come in in this MDL.
4 And I've read your reports, which are not on
5 file. They are just in my chambers because they
6 were not supposed to be filed in -- as part of a
7 public record.

8 It seems to me -- and I may not have
9 enough of an understanding to actually order this
10 at this point. But it seems to me that the focus
11 for at least the preliminary discovery should be
12 on the issue of general causation.

13 And there will be experts, I anticipate,
14 on that issue because the complaints really --
15 the causes of actions in the complaints do not
16 vary, but some plaintiffs allegedly committed
17 suicide as a result of taking Chantix. Some were
18 hospitalized as a result of taking Chantix. Some
19 have suffered other damages, allegedly, as a
20 result of taking Chantix.

21 So it seems to me that the proper way to
22 focus on the -- the proper way to handle this and
23 get a handle on the discovery, because I
24 anticipate there will be more cases filed on top
25 of this, is, I think, to focus on the issue of

1 general causation.

2 Now, what does the plaintiff think about
3 that?

4 MR. CORY: Your Honor, we would
10:20:08 5 have to assume that's where we're going. We
6 probably wouldn't oppose that.

7 THE COURT: Okay. That's good.

8 Now, if we ever come to trial in one of
9 these -- and you know, some of them we actually
10:20:20 10 can try in this court because I actually had some
11 assigned to me. So under *Lexicon*, I can try some
12 of them here. We might do something different.
13 I'm just telling you in advance because it might
14 cause you to want to look into a settlement
10:20:34 15 earlier.

16 I went to a seminar for the 11th Circuit
17 judges right before Christmas. And there was a
18 whole day and a half focused on jury -- use of
19 jurors. And I let jurors ask questions during
10:20:50 20 voir dire. But the people that actually spoke to
21 us also suggested that we let the jurors ask
22 questions of each witness.

23 And I know you all look like this is a
24 terrible process. But what we did -- I just
10:21:04 25 tried it last week when I tried a jury case.

1 Each witness got through. Both the plaintiff's
2 lawyer and the defense counsel got through asking
3 all their questions. And while the witness was
4 still here, we took a ten-minute break. I told
10:21:16 5 the jurors they could not discuss the case among
6 themselves but they could go in and write down if
7 they had any questions. And I would look at them
8 with the attorneys, and if I thought they were
9 appropriate questions, I would ask the witness so
10:21:28 10 that neither one would -- and there was no
11 allowed follow-up by the lawyers.

12 And they were real good sports. They
13 agreed to it. And there were questions after
14 each witness. But it was -- the process took
10:21:42 15 eight minutes after each witness. I mean, it
16 took no time at all.

17 And I plan to do it if we try because it
18 worked -- I probably will do it in every case
19 that I try from now on because the jurors seemed
10:21:56 20 to be helped by the fact they didn't have to
21 guess certain facts.

22 They also suggested that in cases where
23 there are expert battles, which maybe this would
24 be a case, that the plaintiff's expert and the
10:22:10 25 defendant's expert testify right after each other

1 as opposed to part of the plaintiff's case and
2 part of the defendant's case. I have not
3 experimented with that. So I don't know what I'm
4 going to do. But that way the jurors get to see
10:22:24 5 the -- where they differ in their opinions and
6 how they got to where they are in the different
7 opinions.

8 And that may be something that we could
9 try in this case. I'm not saying that we're
10:22:38 10 going to. But I'm saying that's possible.

11 They also suggested, and that has been
12 tried -- not by me and I don't think in the
13 11th -- I don't think in the Northern District,
14 but I know in some other districts they suggested
10:22:52 15 that if the case takes three weeks or longer to
16 try, which, you know, I don't know if we ever try
17 any of these cases -- the ones I have, anyway,
18 that the lawyers give -- are allowed to give
19 15-minute statements after, say, a week or week
10:23:08 20 and a half to set -- to tell the jurors this is
21 where we have been; this is where we're going.

22 Each side gets 15 or 20 minutes, like,
23 it's sort of like an intermediate argument. And
24 they convinced me, the powers that spoke, that
10:23:26 25 you got better verdicts and more fair verdicts by

1 using all of that.

2 And I talked to my jury last week when I
3 got through. And I said, did it help you that
4 you could ask questions. And they even asked
10:23:38 5 questions, like, why is such-and-such relevant?
6 And we all thought, now, that's a real good --
7 somebody is getting it. So anyway, I'm just
8 telling you we might do some of those things if I
9 end up trying some of them.

10:23:54 10 MR. HAHN: Your Honor, Blair Hahn.
11 Just so that we're clear, in talking with the
12 defendants today on discovery issues, what we've
13 done in prior drug litigations like this is we
14 had two different tracts of discovery. One is
10:24:06 15 general causation because it just makes sense for
16 it to be that way. And then we do a separate
17 track with specific causation on
18 bellwether plaintiffs.

19 THE COURT: That's good.

20 MR. HAHN: If that's what the
21 Court is looking for --

22 THE COURT: Yeah.

23 MR. HAHN: -- we'll incorporate
24 that in our discussion.

10:24:20 25 THE COURT: Okay. How do you pick

1 the bellwether plaintiffs?

2 MR. HAHN: That's usually a bone
3 of contention between both sides. And we come to
4 the Court and if we can't --

10:24:28 5 THE COURT: Are you going to talk
6 to me about that?

7 MR. HAHN: We'll talk first. We
8 might be able to figure it out ourselves. If
9 not, we'll bring it to the Court.

10:24:32 10 MR. CORY: I do think this, Your
11 Honor; that we do need to get an understanding
12 from the defendants whether they intend to waive
13 *Lexicon* or not and so we can understand which
14 cases will be before this Court that are triable.

10:24:46 15 And I'm assuming we're looking for
16 bellwether cases that will be cases that you have
17 the ability to try. I know there are some here
18 that are Northern District cases that you can
19 try.

10:24:58 20 THE COURT: Yeah. Without
21 worrying about *Lexicon*.

22 MR. CORY: I don't know if that's
23 a big enough pool. That's matters that we're
24 going to take up with the Court.

10:25:06 25 THE COURT: Okay. Well, talk to

1 me about it. I will just tell you I've only had
2 one experience with that and that was after Judge
3 Pointer, who was my idol -- after Judge Pointer
4 retired, I inherited a poison case -- an alleged
10:25:20 5 poison case from him. And he had picked, along
6 with the lawyers -- and there were 1,700
7 plaintiffs -- he had picked the bellwether
8 plaintiffs. And I didn't agree with them. But I
9 did it his way anyway and it turned out to be
10:25:32 10 just great. So I have some ideas from my time
11 with Judge Pointer where we talked about that.

12 MR. CORY: With respect to
13 guidance from the Court, how would you propose
14 that we come to you in the event we do have
10:25:42 15 matters that we want to discuss?

16 THE COURT: Well, how often do you
17 want to meet with me? You know, this is a
18 lifetime appointment, so I'm here until I die.
19 Almost.

10:25:54 20 MR. CORY: I'll probably spend the
21 rest of my life on this case.

22 THE COURT: No. I hope not. But
23 I would meet with you monthly to begin with. I
24 think that would be good. It would also educate
10:26:04 25 me. I mean, I certainly don't know it all. So

1 it will also educate me if we met as often as
2 monthly. I know some of you would have to travel
3 to do that. But how would that be?

4 MR. PETROSINELLI: Your Honor, Joe
10:26:18 5 Petrosinelli.

6 I think that would be a good idea right
7 out of the box in this litigation to meet monthly
8 and maybe have some informal conferences with
9 Your Honor.

10:26:26 10 THE COURT: Yeah.

11 MR. PETROSINELLI: And we may talk
12 about this a little later. We've floated the
13 idea of what we call a science day. And that's
14 something we can talk about --

10:26:36 15 THE COURT: Floated the idea of --

16 MR. PETROSINELLI: A science day.

17 THE COURT: Yeah.

18 MR. PETROSINELLI: That's
19 something we could do early on, I think,
10:26:44 20 consistent with Your Honor's schedule.

21 THE COURT: All right.

22 MR. CORY: We wanted to address
23 the science day issue with you when you got to it
24 on the agenda. We have some thoughts about it.
10:26:56 25 Do you want to do it now?

1 THE COURT: Yeah. Sure. I saw
2 that -- it's Number 8 on the agenda.

3 MR. CORY: Your Honor, if you
4 understand our position that we have not received
10:27:06 5 a single document yet, and we've not deposed a
6 single witness yet, and we do not have anything
7 that we can give our experts -- any internal
8 documents we can give our experts with respect to
9 science.

10:27:20 10 THE COURT: Right.

11 MR. CORY: It kind of puts us at a
12 disadvantage because we're really not prepared to
13 give information to our experts to enable us to
14 give you any meaningful science presentation. At
10:27:28 15 least from the plaintiffs' perspective.

16 We are absolutely in favor of a science
17 day. We think it is something that would be
18 useful to the Court. But we think it's premature
19 to do it until we at least get some documents --

10:27:42 20 THE COURT: Sure. Obviously, you
21 have to have some information to give to your
22 expert.

23 MR. LOPEZ: I just want to be, if
24 you don't mind, heard briefly on that.

10:27:50 25 Ramon Lopez on behalf of the plaintiffs.

1 My experience has been it's usually more
2 than just some documents to get us to a point
3 where the defense is on some of the general
4 causation issues.

10:28:02 5 Sometimes there are clinical trials and
6 other research materials that were done by
7 predecessors to predecessors of this drug by
8 people holding the patent.

9 I mean, this is not something that's going
10:28:14 10 to happen in the next six months. I just want
11 the Court to understand that this may require the
12 plaintiffs to dig very deep into the defendant's
13 documents to find some very, very important and
14 relevant, you know, scientific causation,
10:28:30 15 clinical trials, material like that.

16 We may even have to take some depositions
17 of some of these researchers to get that.

18 THE COURT: Okay.

19 MR. BROWN: Your Honor, what we'd
10:28:42 20 like to do is the opportunity to present what a
21 lot of Courts around the country either call a
22 science day or a science tutorial.

23 And we think that doing that early in the
24 litigation benefits Your Honor more than doing it
10:28:58 25 later, with the recognition that there may be

1 some types of documents and some types of data
2 that the plaintiffs may want that may make the
3 day more productive.

4 However, our view of a science day is not
10:29:12 5 to litigate general causation before Your Honor.
6 It is more or less a background where only a
7 portion of that day would be devoted to talking
8 about Chantix and the alleged side effects that
9 we're dealing with here.

10:29:30 10 We would want to present to Your Honor
11 issues about suicide in general, some background
12 on science related to suicide, which would have
13 nothing to do with Pfizer, in particular.

14 We would like to talk about various types
10:29:44 15 of bodies of evidence in clinical research, none
16 of which would be specific to Pfizer; different
17 methods for analyzing clinical research;
18 different hierarchies of liability; and just talk
19 about the regulatory framework, in general, for
10:30:02 20 medications like Chantix.

21 So it would be a backgrounder for Your
22 Honor that would cover a range of issues that
23 hopefully would inform the Court and allow for
24 Your Honor to structure discovery in a sensible
10:30:16 25 and productive way for all of us; to consider and

1 think about what types of threshold motions might
2 be applicable; and ultimately to think about what
3 the best and most productive trial selection
4 methodology might be in these cases.

10:30:30 5 So we're not thinking about a, you know,
6 plaintiff versus defendant day of court. We're
7 thinking about backgrounders, if you will.

8 THE COURT: Well, obviously,
9 plaintiffs have some just general information
10:30:52 10 because you listed it in the footnotes in your
11 report.

12 MR. HAHN: Yes, Your Honor.

13 THE COURT: But I mean, that would
14 be just what, I guess, anybody could read on the
10:31:00 15 internet?

16 MR. HAHN: Yes, Your Honor. We
17 have some general information. As an
18 illustration, the problems that the plaintiffs
19 face in that type of situation is a medical
10:31:12 20 article was recently published talking about the
21 side effects of Chantix. It was sponsored by
22 Pfizer.

23 For us to properly look at that medical
24 research and see if it was done properly -- they
10:31:26 25 excluded a number of people at the front end of

1 that study that will affect the results of the
2 back end of the study.

3 For us to properly look at that and the
4 results from that study, we have to take
10:31:40 5 depositions of the people that were involved in
6 the study and get their background information
7 and understand why they excluded a large number
8 of people from the study. That's just
9 illustrative of the types of problems that we
10:31:54 10 have.

11 We really don't think that it's
12 particularly helpful early on to do that type of
13 a presentation in the judicial system.

14 We think that we need to look at their
10:32:06 15 documents. We need to look at the studies.
16 There are going to be many, many different
17 studies. And to rely only on the studies that
18 have been provided by Pfizer puts us at a
19 tremendous disadvantage.

10:32:20 20 We would ask if the Court wants a science
21 day that we have the opportunity to at least
22 brief it and argue it in a more complete fashion.

23 THE COURT: Okay. I don't expect
24 you to agree on that today. Okay? So let's not
10:32:30 25 worry about it today. Let me just tell you I

1 think what you need to do first is focus on a
2 consent order that you submit to me where you put
3 in what we talked about, withdrawing all pending
4 motions; timeline for a master complaint;
10:32:50 5 timeline for answer; timeline for motions to
6 dismiss.

7 And you may not need -- you may not be
8 able to put in timeline for motions to dismiss
9 yet because that does involve the scientific
10:33:02 10 studies and the testing that Pfizer did and
11 individual -- I mean, not individual discovery.
12 What I'm talking about is discovery on
13 plaintiffs' part from Pfizer. And maybe from
14 FDA. I don't know where else you will get your
10:33:18 15 information. But I would like to see that done
16 first.

17 And I would like to see -- and then,
18 included in that order should be the fact that
19 we're going to bifurcate general causation
10:33:36 20 discovery and bellwether plaintiff specific
21 discovery.

22 And you don't need to say when the
23 bellwether plaintiffs have to be picked because
24 we can talk about that as we meet monthly. We
10:33:48 25 can talk about a science date. Sounds like sixth

1 grade, really. But we can talk about a science
2 day.

3 But the plaintiffs do need to do some
4 discovery before they can -- I mean, I looked up
10:34:04 5 some of the things that they filed in their
6 report. And you can get it on the internet. And
7 I mean, there's no reason to have a day of eight
8 hours in court if I can look it up on the
9 internet.

10:34:14 10 So they do need to have some discovery
11 before. And I'm not prepared to tell you today,
12 because I don't know enough about it to tell you
13 today, when you can have a science day.

14 But if there is -- I love to be educated.
10:34:28 15 So if there is a day where you can agree that
16 whatever comes out as a result of that day is not
17 going to be in form of motions to dismiss,
18 motions for summary judgment, or other
19 dispositive motions -- I don't have any
10:34:44 20 objections to having a day where you tell me they
21 did not include people that had mental problems,
22 to put it just very generally, in their studies
23 when they had approved or sought approval in 2006
24 from FDA or where you want to say, look,
10:35:04 25 withdrawal of nicotine in itself gives you

1 depressive symptoms. And the same number of
2 people that have committed suicide allegedly as a
3 result of Chantix would statistically also have
4 committed suicide as a result of nicotine
10:35:20 5 withdrawal. I don't know.

6 I do want y'all to know that at the same
7 very informative 11th Circuit workshop, we had a
8 whole day on how drugs work on the brain by a
9 neurologist -- what was he? Was he a
10:35:36 10 neurologist? Anyway, a brain man. And he was
11 very, very good.

12 And he had pictures and MRIs about where
13 dopamine is released and what it does to the
14 human process of feeling good, where drugs are
10:35:54 15 absorbed, what centers are in the brain -- we
16 were not talking about Chantix or Celebrex or
17 some other medication for specific purposes. We
18 were talking about heroin, cocaine, marijuana,
19 methamphetamine. But, you know, they are also
10:36:10 20 drugs.

21 So it was a very informative presentation
22 about how it works on the human brain. At least
23 those drugs do. And how you stop -- the whole
24 purpose of the presentation was to teach judges
10:36:30 25 why certain substance abuse programs are more

1 result friendly -- in other words, they're more
2 likely to stop using drugs as a result of certain
3 medications as opposed to other substance abuse
4 treatments. And it was very interesting.

10:36:52 5 And so, you know, I have some general
6 brain knowledge from that. But that's all I
7 have. So anyway, we can talk about it at one of
8 our monthly meetings. Okay?

9 Now, I didn't understand from your
10:37:12 10 proposals how we're going to coordinate this with
11 state court cases. I know they're all pending in
12 New York? All the state court cases?

13 MR. PETROSINELLI: Your Honor, Joe
14 Petrosinelli.

10:37:26 15 I think there are three categories of
16 state court cases. The vast majority of them are
17 pending in New York. There is a motion for a
18 coordinated proceeding that the plaintiffs have
19 filed and we have not opposed. The Court just
10:37:38 20 hasn't acted on it yet. I presume sometime soon
21 the Court will grant that motion. The cases will
22 be coordinated and assigned to a particular
23 judge. I think at that point we will tell Your
24 Honor who that judge is and his or her phone
10:37:52 25 number.

1 I think from my understanding, discussions
2 with Mr. Cory, we both have a keen interest in
3 making sure, to the extent possible, that that
4 proceeding is coordinated with this proceeding.
5 But that just hasn't happened yet. And once it
6 does get coordinated and a judge gets assigned in
7 New York, I think it would be useful for Your
8 Honor, if you're so inclined, to speak with that
9 judge.

10 THE COURT: Sure.

11 MR. PETROSINELLI: That's one
12 category. There are two other cases in state
13 court that are just single plaintiff cases. One
14 in state court in Missouri and one in state court
15 in Illinois. And those are, as I say, single
16 plaintiff cases. They are both in, I would say,
17 their earliest preliminary motions phases. So no
18 discovery has happened. Nothing substantial has
19 happened.

20 And I think in the Missouri case, for
21 example, we have informed the Court about the
22 fact of this MDL. And that judge has actually
23 set a status conference for sometime soon to sort
24 of hear what happened at our initial conference
25 here today.

1 THE COURT: Okay.

2 MR. PETROSINELLI: And I think
3 that from Pfizer's perspective, it would be good
4 to make sure that those two cases, whatever
10:39:06 5 discovery is going to happen, if those cases
6 proceed likewise, are coordinated with the
7 discovery that's going on here.

8 THE COURT: Who are plaintiff's
9 counsel in those two cases? Do you know?

10:39:18 10 MR. CORY: I don't know.

11 MR. PETROSINELLI: They're not any
12 of these plaintiff's counsel. I don't remember
13 their names. They're not part of the leadership
14 structure that is in this MDL.

10:39:28 15 So as I say, they are -- I think there's
16 one firm in each place that is representing a
17 single plaintiff in each place.

18 MR. CORY: Your Honor, as I told
19 Pfizer, we have no objection, and we actually
10:39:44 20 would look forward to you reaching out to any
21 state court judge and telling them what's going
22 on here and asking them to coordinate with your
23 efforts so we can avoid duplication and costs
24 and --

10:39:56 25 THE COURT: When you tell me who

1 they are, I'll be glad to.

10:40:06

2 MR. CORY: I think I'll leave it
3 up to the defendants to do it. And in New York,
4 we're kind of in a holding pattern, waiting on
5 assignment of a judge.

10:40:20

6 In our proposed leadership structure,
7 we've asked you to appoint and you have appointed
8 two state liaison counsel. They were introduced
9 to you. But if you would like to -- Jayne and
10 David are going to take that role for us. They
11 will be our eyes and ears in New York, Your
12 Honor.

10:40:30

13 THE COURT: Okay. Well, that's
14 good. Well, when you have them -- obviously, you
15 have them, but I --

16 MR. PETROSINELLI: We will get
17 those to you, Your Honor, the names and numbers
18 of the judges.

10:40:48

19 THE COURT: Okay. What about
20 confidentiality agreement and protective orders?
21 Can you all agree on those?

10:41:12

22 MR. PETROSINELLI: Mr. Cory and
23 his firm and we have been talking for a while.
24 In fact, before the MDL got set up, we had an
25 agreed-upon discovery order and confidentiality

1 order.

2 I think with respect to just the
3 confidentiality order, as best I can recall, we
4 had an agreement on the form of that, although I
10:41:24 5 wanted to confirm that after this hearing with
6 the Court.

7 THE COURT: Okay. And what
8 about --

9 MS. SUTTON: Your Honor, may I
10:41:32 10 speak to that briefly? Tara Sutton.

11 We have taken a look at the order that was
12 previously discussed with the Cory Watson firm,
13 and we have a few changes to it. And I think one
14 of the first orders of business before documents
10:41:46 15 can be produced is we have to get a protective
16 order in place.

17 THE COURT: Right.

18 MS. SUTTON: And I hope to speak
19 with counsel after this hearing to start the
10:41:52 20 discussion so we can get hopefully a stipulated
21 order for your signature.

22 THE COURT: Okay. Now, what about
23 e-discovery? Have you discussed that?

24 MR. PETROSINELLI: Yes, we did.
10:42:02 25 Joe Petrosinelli again.

1 Your Honor, we did discuss that. And we
2 sort of exchanged proposals for search terms and
3 format of production. And, again, I think that's
4 something that we were going to hit on this
10:42:16 5 afternoon when we met after -- and then come back
6 to Your Honor with some proposal.

7 THE COURT: Okay. And I
8 understand plaintiff has in its leadership
9 proposal a proposal for maintaining a master
10:42:32 10 service list?

11 MR. CORY: We can, Your Honor.

12 THE COURT: Well, I thought you
13 did. Maybe I didn't --

14 MR. CORY: Yes, we will.

10:42:42 15 THE COURT: I mean, I've got to
16 have some kind of -- a plan for service of
17 process. And I thought there were some -- let me
18 just look at your proposal. I thought you had
19 some in there about what --

10:42:56 20 MR. CORY: We'll include that,
21 Your Honor, in the pretrial order that we submit
22 to the Court for your signature.

23 THE COURT: Okay. Now, I know
24 that this is a question you probably are not
10:43:12 25 prepared to answer, but when I went down to

1 multidistrict litigation seminar for the first
2 time, like, two days after I got this and
3 accidentally said yes, they said I need to find out
4 from you all, whoever wish to speak, about
5 realistic assessments of when at least a
6 bellwether plaintiff would go to trial and when
7 at least you would think about mediation and if
8 you would let me pick the mediator if mediation
9 becomes an actuality.

10:43:34 5
10:43:52 10 Now, Mr. Cory, do you have any realistic
11 time frame in mind with respect to trial of a --

12 MR. CORY: Your Honor, I think
13 before I could answer that question, either of
14 the questions, I guess I need to get a timetable
15 on when the defendants are going to begin
16 producing documents and begin making witnesses
17 available.

18 I would assume that after that process
19 begins, as normally happens in these MDLs, within
10:44:18 20 24 months of getting stuff, we're usually ready
21 to go.

22 And, you know, we'll be on two tracks.
23 While we're doing Pfizer discovery, they can
24 begin the process of working up the discovery on
10:44:32 25 the plaintiffs. So I would imagine once we begin

1 the process, within 24 months, we would be ready
2 to go.

3 With respect to settlement, I've never
4 known a plaintiff's lawyer that didn't want to
10:44:44 5 settle a case. We're there. And I guess we
6 could sit down and meet and confer with the
7 defendants about choice of mediators. I'm not
8 prepared to address it right today.

9 THE COURT: Well, I'm not either.
10:44:54 10 I was told I had to ask that question at the
11 initial conference, so I'm doing it. I'm doing
12 what I'm told.

13 What does the defendant say?

14 MR. PETROSINELLI: Your Honor, Joe
10:45:04 15 Petrosinelli.

16 I think on both of those questions, the
17 issue of timetable and the issue of mediation or
18 settlement -- I think what we really need to find
19 out from Pfizer's perspective is what this docket
10:45:14 20 is going to look like.

21 We have some cases that have been filed in
22 the MDL. But we're told that there are going to
23 be more. And so in terms of the number of cases
24 that are going to be there -- and almost as
10:45:26 25 important, what are the predominant injuries that

1 are going to be alleged? Because there's some
2 very different stuff out there, even within the
3 general umbrella of neuropsychiatric symptoms.

4 So I think once we get a sense of kind of
10:45:42 5 what is going to be out there -- and I know
6 Mr. Cory has been surveying his group as to how
7 many cases are going to be filed and so forth.
8 And what types -- I think that -- then we'll be
9 in a better position to talk about timetables and
10:45:54 10 things like Your Honor has raised.

11 THE COURT: Well, that was not an
12 answer, you know. You just didn't tell me any
13 months or anything. But that's okay.

14 Let me just tell you: I do know, from
10:46:08 15 reading the plaintiffs' request for the
16 leadership structure that I have approved, that
17 there are many more cases out there. And I'm
18 worried about a master complaint being drafted,
19 like, soon, and then these cases being filed
10:46:24 20 later.

21 So to the extent the plaintiff has control
22 over lead counsel, liaison counsel, and the
23 committees have control over those cases, I
24 suggest they get filed ASAP and then -- so the
10:46:38 25 master complaint will relate to hopefully

1 everything that's filed.

2 I mean, I know there are going to be cases
3 coming along later. But to the extent that -- I
4 think Pfizer is entitled to know how many cases
10:46:50 5 there are going to be and what the injuries are.

6 Just from reading some of the complaints,
7 I see there are some that are -- some plaintiffs
8 that are living that claim some temporary
9 injuries and some permanent injuries.

10:47:06 10 And to the extent that there are, you
11 know, many more varieties of claims, I think the
12 sooner all the cases can be incorporated into
13 this MDL, the better. But I don't have any
14 control over that at all.

10:47:26 15 MR. HAHN: Your Honor, I think we
16 agree.

17 What we've done in the past with master
18 complaint is it's more of a general allegation
19 complaint. And then as plaintiffs file in the
10:47:36 20 MDL, they can, by reference, go to the master
21 complaint.

22 THE COURT: That's great.

23 MR. HAHN: They have their own
24 individual complaint for individual damages. But
10:47:44 25 what you're talking about raises the issue we had

1 in Number 4, which is filing of complaints. I
2 don't know if you purposefully skipped over that
3 one or not.

4 The plaintiffs, and I believe the
10:47:56 5 defendants would, as well, would like some
6 direction from the Court as to whether or not we
7 can file directly in this court.

8 If I have a plaintiff, for instance, who
9 is properly venued in North Carolina, many MDL
10:48:06 10 judges have set up procedures where we can file
11 directly in this court instead of going through
12 the transfer process and burdening the MDL panel,
13 et cetera. And that gives the defendant, I
14 think, a little more handle on whose --

10:48:20 15 THE COURT: Do you agree to that?

16 MR. PETROSINELLI: Joe
17 Petrosinelli, Your Honor.

18 I think that's fine as long as it's clear
19 and explicit that that doesn't waive jurisdiction
10:48:28 20 and venue challenges.

21 MR. HAHN: Sure.

22 THE COURT: That's fine. That's
23 fine with me. You can do that.

24 MR. HAHN: We'll incorporate that
10:48:34 25 in an order.

1 THE COURT: That's fine. It makes
2 it simpler for us, too, and for the clerk.

3 I just talked to her about that before I
4 came in for the conference. I talked to her
10:48:42 5 about what she does.

6 MR. HAHN: To that end, Your
7 Honor, do you have any prohibition to multiple
8 plaintiffs on a complaint?

9 MR. CORY: I can speak to my cases
10:48:58 10 where I've filed before you. You've severed
11 them.

12 THE COURT: I sever them.
13 Actually, that is a general rule in the Northern
14 District. I mean, I was told that by Judge
10:49:10 15 Pointer when I got here many years ago. So like
16 I said, I just did what I was told. So that's
17 what I'm doing.

18 MR. HAHN: We probably had
19 something to do with that. Because the breast
10:49:20 20 implants, we abused the privilege.

21 THE COURT: Okay. Is there
22 anything else we need to go over?

23 MR. CORY: Your Honor, I had a
24 couple of questions --

10:49:28 25 THE COURT: Okay.

1 MR. CORY: -- I thought we could
2 get some guidance from the Court on.

3 Number 1 is: On the monthly conferences,
4 is it possible we could do them on a Tuesday
10:49:36 5 instead of Monday because of travel problems?

6 THE COURT: Oh, I don't care when
7 we do them as long as it's not Friday afternoon
8 at 5:00 o'clock. I have other things to do
9 Friday afternoon.

10:49:46 10 MR. CORY: Could we possibly sit
11 down with your scheduling clerk and try to work
12 out a timetable for them, and if it turns out we
13 don't need them, we don't need them?

14 THE COURT: That will be great.

10:49:58 15 MR. CORY: Secondly, on the
16 conferences, Your Honor, would you be opposed to
17 having some conference lines set up so some folks
18 who are out of town could just call in?

19 THE COURT: That would be fine.
10:50:08 20 We can do that. Even if we do it in the
21 courtroom, I have a telephone where we can do all
22 of that on the bench.

23 MR. CORY: Your Honor, do you
24 intend to use a special master or a --

10:50:18 25 THE COURT: Not yet.

1 MR. CORY: And do you intend to
2 suspend any of the local rules so we know what
3 your position is on that?

4 Obviously, with respect to the number of
10:50:34 5 interrogatories, we might need you to -- we
6 probably can get an agreement with the defendant.

7 THE COURT: Whatever y'all can
8 agree to is fine with me. If you can't agree,
9 submit -- we can talk about it at the monthly
10:50:46 10 conferences. You give me your suggestions; you
11 give me your suggestions. And if you disagree,
12 you put in there why you disagree. And I'll look
13 at them and make that decision. But yeah. If
14 you -- yeah. You can agree to how ever many you
10:51:02 15 want to.

16 MR. CORY: And I guess that
17 brings --

18 THE COURT: And I do not refer
19 discovery to magistrate judges at all. I never
10:51:08 20 have, and I won't. I don't know how I can figure
21 out what the case is about if I'm not involved in
22 discovery disputes.

23 MR. CORY: If we have a question
24 and need to call the Court, do we need to call
10:51:20 25 and ask for whom? Who do we ask for?

1 THE COURT: That depends on what
2 kind of question. If it is a scheduling
3 question, you need to ask Tammi. She is my
4 courtroom deputy. Or Barbara, my secretary, will
10:51:32 5 know it, too. And if it is a legal question, you
6 should really, technically speaking, ask me and
7 have the other side on the phone, as well.

8 MR. CORY: Obviously, we wouldn't
9 do that ex parte, Your Honor.

10 I guess the only other question I had was:
11 If we do, for example, agree to a proposed order
12 and we agree on 18 or 19 of the matters but we
13 can't agree on the 20th, it's okay for us to put
14 plaintiffs' position, defendant's position and
10:51:54 15 brief that?

16 THE COURT: Yeah. That happens
17 all the time.

18 MR. CORY: All right.

19 THE COURT: Do you have any
10:52:02 20 questions?

21 MR. PETROSINELLI: Joe
22 Petrosinelli, Your Honor.

23 Nothing more from Pfizer.

24 THE COURT: Okay. Where are y'all
10:52:08 25 going to meet? In here or the jury room?

1 MR. HASTON: We're going to meet
2 over at my office.

3 THE COURT: Are you going to come
4 to some kind of proposal today, you think?

10:52:20 5 MR. PETROSINELLI: I don't think
6 so, Your Honor. I think we have so many issues
7 to go through we --

8 THE COURT: How long do you think
9 it's going to be?

10:52:28 10 MR. CORY: You tell us.

11 THE COURT: No. No. No. No.
12 Really, I'm serious.

13 MR. PETROSINELLI: Well, Mr. Cory
14 and I talked about this or emailed about this, I
10:52:38 15 guess, last night.

16 I think we thought that, given the number
17 of people involved and the number of issues, if
18 we came back to Your Honor with a proposed --
19 hopefully a complete agreement but, if not, then
10:52:50 20 what we just discussed, here's our agreement and
21 here's some issues we can't agree on within three
22 weeks, that that would be realistic.

23 THE COURT: That's fine.

24 MR. CORY: Your Honor, I guess I
10:53:00 25 misunderstood. I thought we were going to try to

1 get the discovery matter resolved in three weeks,
2 but we could probably get you an order about some
3 of the matters we discussed here today --

4 MR. PETROSINELLI: Sure.

10:53:12

5 THE COURT: Yeah. That's what I
6 was talking about. And you can put in that order
7 that you agree you will submit a discovery order
8 within three weeks or by the time we have the
9 next conference. Monthly conference.

10:53:20

10 But I mean, wait with this order today
11 until at least they get their luggage.

12 MR. CORY: Why don't we try to get
13 you an order within a week of what we discussed
14 today and a discovery order three weeks?

10:53:32

15 THE COURT: That's good. Hang on
16 just a minute. I need to ask Tammi something.

17 (Discussion off the record.)

10:53:50

18 THE COURT: What do you prefer in
19 terms of monthly status conferences? Do you want
20 Tuesday, or do you have a day that's better? Or
21 do you care?

22 MR. HAHN: Just selfishly, Your
23 Honor, for those that travel, earlier in the week
24 is usually better because you get home easier
10:54:00 25 than trying to get home on Fridays.

1 MR. CORY: Your Honor, do you have
2 an opposition to doing it in the afternoon for
3 those who want to try to get here?

10:54:08

4 THE COURT: No. Afternoon is
5 fine.

6 MR. CORY: For me, it's just two
7 blocks.

8 MR. HASTON: That works for us, as
9 well. Tuesday afternoons.

10:54:14

10 THE COURT: Let's do Tuesday. And
11 you don't have to put in the order as a result of
12 today whether it is an a.m. conference or a p.m.
13 conference. You can just let me know. But let's
14 do monthly conferences on a Tuesday and put in
15 the order when you want to start. Because it
16 could be if you start four weeks from now, you
17 could propose the discovery proposal that day as
18 opposed to three weeks. You know, four weeks or
19 three, what's the difference?

10:54:38

20 MR. CORY: Should we call Tammi to
21 confirm the dates available to you?

22 THE COURT: She's going to make
23 them available. I mean, I'm just going to mark
24 my calendar in advance and move whatever I have
10:54:46 25 if I have anything. I'll just move it that day.

1 So you don't have to -- I mean, I think you have
2 enough to do worrying about your own calendars.
3 So don't worry about mine. It will be fine.

4 MR. CORY: Thank you.

10:54:58

5 THE COURT: Anything else? Okay.
6 All right. Thank you for coming.

7 (The Proceedings were concluded at
8 approximately 10:55 a.m. on January 25, 2010.)
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C E R T I F I C A T E

I, the undersigned, hereby certify that the foregoing pages contain a true and correct transcript of the aforementioned proceedings as is hereinabove set out, as the same was taken down by me in stenotype and later transcribed utilizing computer-aided transcription.

This is the 5th day of February of 2010.

Cheryl K Powell

Cheryl Renae King Powell, CCR, RPR, FCRR
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