

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

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IN RE: : MDL NO. 07-MD-1871
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AVANDIA MARKETING, :
SALES PRACTICES AND : Philadelphia, Pennsylvania
PRODUCTS LIABILITY : July 3, 2012
LITIGATION : 9:32 a.m.

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TRANSCRIPT OF HEARING
BEFORE THE HONORABLE CYNTHIA M. RUFE
UNITED STATES DISTRICT JUDGE

- - -
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1 (The following was heard in open court at
2 9:32 a.m.)

3 THE COURT: Good morning, everyone.

4 ALL: Good morning, Your Honor.

5 THE COURT: Let's take roll call. Who do we
6 have here on behalf of the plaintiffs' steering
7 committee? Mr. Zonies.

8 MR. ZONIES: Your Honor, Joe Zonies on behalf
9 of the advisory committee. With me is Tom Cartmell and
10 Vance Andrus also with the committee.

11 Bryan Aylstock sends his regards, as does
12 Steve Corr who could not be here today, and again Dr.
13 Zonies is in the courtroom.

14 THE COURT: And Dianne Nast?

15 MR. ZONIES: Dianne Nast, we found her, was
16 in the hallway going back to visit with the Court.

17 THE COURT: Very good. On behalf of the
18 Heninger Garrison firm?

19 MR. SACHS: Your Honor, again Robert Sachs
20 and my associate, Jason Tucker from Shrager, Spivey &
21 Sachs here in Philadelphia for Heninger Garrison Davis.

22 THE COURT: And I understand the video
23 conference is set up and we have someone named Mr.
24 Garrison on the other end?

25 MR. SACHS: Lou, are you in the other room?

1 MR. GARRISON: Yes, I'm here.

2 MR. SACHS: Okay. Can you go sit in that
3 chair so we can all see you, please?

4 MR. GARRISON: Considering I am in the one
5 that they told me to sit in, let me see. Is this it?

6 THE COURT: That is a better one.

7 MR. SACHS: You are much better over there.

8 MR. GARRISON: Okay.

9 MR. SACHS: If you move a little bit to your
10 right you will be more centered on the screen that we
11 see.

12 THE COURT: That's just about perfect, Mr.
13 Garrison, thank you.

14 MR. GARRISON: Thank you.

15 THE COURT: I'll get back to you in a moment,
16 Mr. Garrison. May I know who is here on the record,
17 because I do have eyes, for GSK?

18 MR. ZUCKER: Yes. Good morning, Your Honor.
19 Ken Zucker representing GlaxoSmithKline.

20 MS. GUSSACK: Nina Gussack, Your Honor.

21 THE COURT: Good morning.

22 MS. GUSSACK: Good morning.

23 THE COURT: Would you like to sit up with Mr.
24 Zucker?

25 MS. GUSSACK: I think I would, Judge, thank

1 you.

2 THE COURT: Thank you. Now, we are ready to
3 proceed. I would like to ask first, because I do have
4 concern, how is your father, Mr. Garrison?

5 MR. GARRISON: Thank you very much, Your
6 Honor. He is been transported to the nursing home and
7 now he is in a nursing home, so hopefully he will
8 continue to improve. Thank you for asking, Your Honor,
9 I appreciate that.

10 THE COURT: Well, you're welcome. We missed
11 your presence yesterday. We did not expect that you
12 would not be here, sir. We could not admit the
13 affidavit in your place. Counsel on behalf of the
14 plaintiffs' steering committee agreed that we could
15 proceed today by video conference.

16 It is most important that we address the
17 important matters that are here, notwithstanding the
18 difficulties that you have in your family, and everyone
19 else actually has family commitments, but they are no
20 quite the same as what you are going through. So, the
21 Court does have care and concern, I want you to know
22 that.

23 MR. GARRISON: I appreciate that.

24 THE COURT: All right. So, where are we?

25 MR. SACHS: Your Honor, may I make a brief

1 offer of proof that I think will, I hope, expedite
2 matters somewhat? Robert Sachs again on behalf of the
3 Heninger Garrison Davis firm.

4 In consultations with counsel yesterday after
5 we adjourned for the day, and Mr. Garrison is prepared
6 today to acknowledge a couple of important matters.

7 First is the jurisdiction of this Court based
8 on his endorsement of the form PTO 10 protective order,
9 even though the form that he signed is the PTO 10
10 protective order which has language which you will
11 acknowledge submits this case to this Court's
12 jurisdiction.

13 Secondly, he is prepared to acknowledge
14 that under PTO 70, because the PTO 10 protective order
15 was signed, that he will authorize the release of the
16 seven percent common benefit contribution for the fees
17 of the Heninger Garrison cases. That seven percent is
18 currently residing in a qualified settlement fund in
19 Alabama.

20 So, for obvious reasons I think that will
21 shorten to a large extent, but we are prepared to go
22 through that testimony with Mr. Garrison so that the
23 Court has a record on which to find, of course.

24 But, I hope that will at least curtail these
25 proceedings somewhat at this point.

1 THE COURT: In other words, Mr. Garrison on
2 behalf of his clients and his firm is now agreeing, in
3 fact, stipulating that all of his cases, did I hear
4 that correctly, all of his cases are subject to the
5 seven percent assessment?

6 MR. SACHS: Yes, Your Honor, because that's
7 the way the common benefit fee is collected. It is
8 seven percent on all, is it 503 or 504 cases, Lou?

9 (No response heard.)

10 MR. SACHS: All of the cases, though, and we
11 intend it to mean all of the cases.

12 THE COURT: All right. I think we should get
13 affirmation on the record, and if this is the sum and
14 total of the stipulations and agreements I would like
15 to know what else the PSC thinks is necessary, because
16 we do have to have a record upon which to accept this
17 agreement.

18 I believe that this will be a final ruling if
19 there is no counter to this evidence. Mr. Zonies, go
20 ahead.

21 MR. ZONIES: Your Honor, I would appreciate
22 the opportunity to visit with my co-counsel, but I
23 think after taking the evidence we will have a better
24 sense of whether or not that satisfies us.

25 We appreciate the offer of proof, and

1 assuming the evidence comes in in that fashion I would
2 then suspect that we may be able to catch earlier
3 flights.

4 THE COURT: Let's work on it.

5 MR. ZONIES: Depending on what else the Court
6 would like.

7 THE COURT: Let's work on it, because if
8 there's an admission to what I just heard, the
9 acknowledgement of the endorsement, the signature, et
10 cetera, and further, no argument to the contrary that
11 these agreements cause Mr. Garrison's cases and his
12 firm's cases, all 503 or 504 of them, whatever that may
13 be, to be subject to the MDL's jurisdiction and the
14 assessment of the common fund at seven percent on each
15 of those cases.

16 That would seem to ratify the position of the
17 PSC. But, we'll let you confer with your colleagues as
18 to whether or not anything else is necessary.

19 In any event, we'll have Mr. Garrison sworn.
20 We accept your offer of proof, let's proceed.

21 MR. SACHS: Your Honor, may I request the
22 Court's permission just to question the witness from
23 counsel table?

24 THE COURT: Yes, you may.

25 MR. SACHS: Thank you.

1 WILLIAM GARRISON, Respondents' Witness,
2 Sworn.

3 COURTROOM DEPUTY: Please state your full
4 name and spell your last name for the record.

5 THE WITNESS: William Lewis Garrison, Jr.

6 THE COURT: You may proceed.

7 DIRECT EXAMINATION

8 BY MR. SACHS:

9 Q Mr. Garrison, you have just stated your name for
10 the record. Would you state your title within your law
11 firm, sir?

12 A I am a shareholder of Heninger Garrison Davis, LLC.

13 Q And where is that firm based, sir?

14 A Our primary office is in Birmingham, Alabama. We
15 have offices here in Atlanta where I am now, New York,
16 and New Jersey.

17 Q Sir, did your firm represent plaintiffs in
18 litigation against GSK regarding drug product liability
19 for the drug Avandia?

20 A We did.

21 Q And sir, where were those cases ultimately filed?

22 A The cases that were filed were all filed in state
23 court in Alabama.

24 Q And to your knowledge, sir, have those cases now
25 been settled with GSK?

Mr. Garrison - Direct

10

1 A The ones that were eligible for settlement under
2 GSK's criteria have been settled. The ones that were
3 not have not been settled.

4 Q Of course. For those settled cases was there a
5 settlement fund created, identified as a qualified
6 settlement fund?

7 A There was initially a settlement fund created for a
8 qualified settlement fund that we established in
9 Jefferson County, Alabama for 679 claimants.

10 After the vetting process established by GSK
11 that ultimately whittled down to 503, and then we had a
12 couple of dual-rep issues, and now the number -- and
13 Mr. Zucker can confirm, but I believe it's 502.

14 So, that is our total settlement number of
15 claimants right now.

16 Q And without giving any confidential numbers that
17 your firm has agreed with GSK to not express in open
18 court in any manner other than in a sealed document,
19 would you explain where the settlement funds are at
20 this time for those cases you have just identified?

21 A Well, the funds that have not been disbursed -- I
22 mean, all of the seven percent money is still in the
23 bank, First Commercial Bank which is based in
24 Birmingham.

25 Some of the money, of course, pursuant to our

Mr. Garrison - Direct

11

1 fulfillment of our obligations of the MSA has been
2 distributed. But, all of the money, the common benefit
3 money has been withheld

4 Q Mr. Garrison, in conjunction with your
5 representation of clients, in particular under the
6 caption of Shirley Battle as personal representative of
7 the estate of Philip Battle, et al, Cert Court of
8 Jefferson County, Alabama, Case Number CV-2009-903739,
9 did you stipulate to the entry of a protective order
10 along with counsel for GSK, Joseph P.H. Babington?

11 A I did, I signed it.

12 Q And sir, as part of signing that are you aware that
13 there was, and we will offer the stipulated protective
14 order as Exhibit Garrison 1 in just a moment, as part
15 of that, sir, are you aware that the order from the
16 court recites that it was the protective order that was
17 entered in In Re: Avandia marketing, sales practices
18 and products liability litigation MDL Number 1871?

19 A Yes.

20 Q Sir, this stipulated protective order also recited
21 that "Counsel for plaintiffs and defendants have signed
22 and executed the endorsement of protective order that
23 is also attached to this stipulated protective order."

24 Is it your acknowledgement -- do you
25 acknowledge today that you also signed that endorsement

Mr. Garrison - Direct

12

1 of the protective order?

2 A Yes, that would be my signature that's on there.

3 Q Sir, do you also agree that the endorsement of that
4 protective order contains the following sentence on
5 page 17?

6 "I agree to be subject to the jurisdiction of
7 the United States District Court for the Eastern
8 District of Pennsylvania for the purposes of any
9 proceedings relating to enforcement of the order."

10 A Yes, it does.

11 Q Sir, having signed that protective order which is
12 attached to the stipulated order which we are going to
13 offer today as Exhibit Garrison 1, are you also aware
14 that this Court's pretrial order 70 contained a
15 paragraph 3(b) that defines covered claims to include
16 those where attorneys who executed the endorsement of
17 protective order attached to pretrial order number 10,
18 those are covered claims under PTO 70?

19 A I am certainly aware of that now.

20 Q Sir, given that those items that I have just gone
21 over with you, both the language in the stipulated
22 protective order, which adopted in its entirety PTO 10,
23 and the language of PTO 70, are you prepared at this
24 time to represent to this Court that you will authorize
25 the release of the seven percent common benefit fund

Mr. Garrison - Direct

13

1 contribution for the 503 cases from the Heninger
2 Garrison firm that you've identified today?

3 A Yes. I will do whatever I have to do to get those
4 funds, the seven percent released and transferred to
5 whatever the account Judge Rufe deems necessary.

6 MR. SACHS: Nothing further on behalf of the
7 Heninger Garrison Davis firm.

8 THE COURT: Thank you. Mr. Zonies, do you
9 have any cross-examination for Mr. Garrison?

10 MR. ZONIES: May I take a moment with my
11 co-counsel, Your Honor?

12 THE COURT: Yes, you may. I will also be
13 asking GSK if they have any questions to pose.

14 MR. ZONIES: Thank you.

15 (Pause in proceedings.)

16 MR. ZONIES: Your Honor, the consensus of the
17 committee is that in part we would ask the Court that
18 if that is sufficient information I would make an offer
19 of proof that we can demonstrate the use in a number of
20 ways of other MDL work product beside Mr. Garrison's
21 discussion about using PTO 10, which obviously was work
22 product as he has acknowledged.

23 There are other pieces of work product that
24 we can demonstrate if the Court would find that
25 necessary or helpful in the Court's jurisdictional

Mr. Garrison - Cross

15

1 A Good morning, Mr. Zonies, how are you?

2 Q I'm doing well. I was about to say I'm Mr. Zonies,
3 but it appears you know that. Mr. Garrison, you have
4 been involved in mass tort litigation for a number of
5 years, isn't that true?

6 A Yes, sir.

7 Q And you have an understanding that document such as
8 PTO 10, the protective order in this case that were
9 negotiated and created by this PSC, it takes a
10 significant amount of work on the PSC's behalf and on
11 GSK's behalf to negotiate such documents before they
12 are finalized, isn't that true?

13 A Yes, sir, I can.

14 Q And you would say that that's also true, for
15 example, for something like the tolling agreement that
16 was utilized by you on behalf of your clients in this
17 case, as well?

18 A Are you asking me my opinion on how much time that
19 took to negotiate the tolling agreement? I just don't
20 know how much time it took.

21 Q And your use of the tolling agreement in this case,
22 Mr. Garrison, was in response to discovery from GSK to
23 your clients, is that fair?

24 A Well, we filed, I think there was 71 cases in state
25 court, and then we reached an arrangement with GSK that

Mr. Garrison - Cross

16

1 we would toll a lot of those cases, and rather than
2 just kind of jumble up the docket, and that's what we
3 did. That's my understanding of how it wound up that
4 we ended up tolling some of our cases.

5 Q Correct. Initially, you tolled 172 of your
6 clients' cases, correct?

7 A I think that sounds right.

8 Q That's from the affidavit you filed in this Court
9 yesterday, yes?

10 A Yes, sir.

11 Q And you have stated in that affidavit that you did
12 not have knowledge that execution of those tolling
13 agreements on behalf of your clients would trigger PTO
14 obligation, that's what you stated in you affidavit,
15 correct? I'm sorry, PTO 70 assessment obligation.

16 A I think what I said was it's some of those, and I
17 believe about half of my tolling agreements were
18 executed before PTO 70 even came into place.

19 Q I understand. So, your position with regard to
20 those half were that you didn't have knowledge that
21 that might trigger an assessment, correct?

22 A Well, I didn't have knowledge because PTO 70 had
23 not been entered yet on that number of cases.

24 Q I understand. PTO 7, however, had been entered.
25 Did you review PTO 7 which approved the tolling

Mr. Garrison - Cross

17

1 agreements prior to utilizing the tolling agreements?

2 A Sir, all we did was execute the tolling agreements
3 that were sent to us by GSK. Again, we were all in
4 state court in Alabama and I didn't go review the MDL
5 docket for Avandia. So, no, sir.

6 Q So, then you were not aware at the time that PTO 7,
7 which approved the form of the tolling agreement,
8 stated as follows.

9 "As the form of tolling agreement represents
10 the combined efforts and work of the plaintiffs'
11 steering committee, all parties are placed on notice
12 that those availing themselves of its provisions,
13 together with all of those parties otherwise subject to
14 the jurisdiction of this multi-district litigation,
15 shall be subject to such common benefit assessment, if
16 any, as this Court may order in the future."

17 A No, sir, I didn't get into how and why the tolling
18 agreement came into place, I just reviewed it and
19 signed it.

20 Q And PTO 7 the, sir, you don't know that was entered
21 on June 9th, 2008?

22 A No, sir, I did not.

23 Q Putting all attorneys who used the tolling
24 agreement that was negotiated and worked on, and as the
25 Court stated in PTO 7 was "The work of common benefit

Mr. Garrison - Cross

18

1 attorneys in this litigation putting all such attorneys
2 and their clients on notice that use of that tolling
3 agreement would subject them potentially to a common
4 benefit assessment." You did not know that?

5 A I didn't know it. I don't think the tolling
6 agreement itself referenced that PTO, but in any event,
7 I did not review the -- like I said, I did not review
8 the MDL pleadings or website to ascertain any
9 background about how the tolling agreement came into
10 place.

11 Q You will say that that was available on the Court's
12 website, it did not even require ECF access, correct?

13 A I assumed it was available. I just didn't feel
14 that since I was trying to keep my cases in state court
15 I didn't feel that I needed to try to consult the
16 website.

17 Q Now, you have stated earlier that you indeed
18 executed the endorsement to PTO 10, correct?

19 A Yes, sir.

20 Q You executed to endorsement to PTO 10, or at least
21 the court-approved that stipulated PTO 10 on or about
22 April 30th of 2010, correct?

23 A I believe that's correct.

24 Q Now, your execution of PTO 10 was in response to
25 your earlier service of discovery on GlaxoSmithKline,

Mr. Garrison - Cross

19

1 correct?

2 A Well, the attorneys for GSK would not provide any
3 documents to me until I signed the -- or agreed to use
4 a protective order that was being used in the MDL. I
5 was told that explicitly by them and that there was no
6 negotiation on that point.

7 Q And on January 28th of 2010, the same year that you
8 settled your cases, you served discovery on GSK on
9 behalf of all of your clients, correct?

10 A Well, on behalf of the clients that had been filed,
11 yes, sir.

12 Q And in response, as you stated, GSK offered to
13 provide you with a duplicate of PTO 10 to execute in
14 order to get that discovery, correct?

15 A They not only offered, they demanded it.

16 Q And --

17 A That's the only way they would give me any
18 documents.

19 Q You needed that discovery, sir, to make it more
20 likely that you, as an attorney for their clients,
21 could pursue their cases more effectively and push
22 forward to a better resolution for your clients,
23 correct, that's why you served that discovery in
24 January?

25 A Yes, sir, I served it just for the same reasons

Mr. Garrison - Cross

20

1 that we all try to get their documents. Unfortunately,
2 I never got any.

3 Q But, the purpose of your serving that discovery in
4 January was to get the discovery and their documents,
5 correct?

6 A Oh, yes, sir, sure.

7 Q For the benefit of your clients?

8 A That was my goal.

9 Q Now, in response, upon execution of PTO 10 did GSK
10 produce those documents to you?

11 A No, sir, they kept dragging around and they never
12 would produce them.

13 Q Now, the documents you were seeking, do you have
14 any sense of how GSK determined which documents it was
15 required to produce under your agreement?

16 A Well, I don't have my discovery right now. I know
17 it was quite voluminous. But, at one point they had
18 agreed to put everything on, I believe, a hard drive.

19 We kept going back to them saying when's this
20 going to be produced, and then they wanted to charge us
21 for the hard drive, but they never got it to us.

22 So, I don't know what documents they had on
23 there and whether or not there was ever, in fact, a
24 hard drive because it was never produced to us.

25 Q So, you don't --

Mr. Garrison - Cross

21

1 A But, we were trying to get the documents, sir.

2 Q You don't know, for example, if the documents that
3 GSK was about to produce to you if you had executed PTO
4 10 were documents that were gathered and given to the
5 MDL in response to the PSC's discovery request, you
6 don't know if that's what those documents were,
7 correct?

8 A Well, I never saw the documents, so I don't know
9 what the documents were. I do know that at least they
10 referenced to me in e-mails that they were producing
11 some part or perhaps --

12 I don't know what portion of the documents
13 were produced in the MDL, but I believe my discovery
14 requests may have been more expansive, to include
15 things that may not have been produced in the MDL.

16 But, to answer your question, I don't know
17 where the documents were because I never got them.

18 Q And you don't know, for example, whether those
19 documents included documents that the PSC fought for
20 over six months to get the documents de-privileged, you
21 don't know whether or not those documents were coming
22 to you, right?

23 A Sir, I wish I had seen the documents, but they
24 never gave them to me.

25 Q And you --

Mr. Garrison - Cross

22

1 A So, I never got them for signing the PTO.

2 Q And you don't know that those documents included
3 documents that the PSC extensively briefed on the issue
4 of privilege, held multiple hearings in front of
5 Special Master Shestack regarding privilege, and that
6 the special master issued a ruling and recommendation
7 after those hearings, correct?

8 A Mr. Zonies, I have no way of knowing. Again,
9 because I didn't see the documents.

10 Q So, you similarly have no way of knowing whether or
11 not it included documents that subsequently were the
12 subject of an appeal to this Court over Special Master
13 Shestack's ruling and recommendation, and that that was
14 fully briefed and argued before this Court, and that
15 this Court issued an order about those documents,
16 correct?

17 A Mr. Zonies, I don't what the documents were.
18 Again, I have no idea, I never got them.

19 Q And you don't know whether or not it included the
20 nearly 90 percent of those privileged claim documents
21 that were eventually de-designated, correct?

22 A I'm sorry, sir, I couldn't -- de-designated what?

23 Q That the documents --

24 A I couldn't understand.

25 Q The privileged designation on the documents were

Mr. Garrison - Cross

23

1 subsequently removed and those documents became part of
2 the documents in this MDL?

3 A I don't know. I wish I could answer that because I
4 wish I had seen them, but I never did.

5 Q And to get those documents all you had to do was
6 sign PTO 10, correct?

7 A It wasn't that easy, apparently, because I never
8 got them.

9 Q Well, you agreed to execute PTO 10 and it was filed
10 in April. You subsequently, on behalf of yourself and
11 your clients, filed a motion to compel production of
12 those documents, is that correct?

13 A Yes, sir, because they kept dragging around. They
14 wouldn't give them to us even though I signed that
15 protective order.

16 Q And on July 7th, 2010, you filed a motion to compel
17 production of those documents, correct?

18 A If that's what the record reflects yes, sir. I
19 know we did file a motion to compel because they would
20 not produce them.

21 Q Correct. In that motion to compel you stated as
22 follows. "Through a series of telephone calls and
23 e-mails GSK agreed to produce all discovery and
24 documents which has been conducted in the MDL, which
25 consists of approximately 13 million pages."

Mr. Garrison - Cross

24

1 Does that sound like something you would have
2 put in that motion to compel, sir?

3 A Yes, sir.

4 Q "And prior to producing the documents," the motion
5 continues, "GSK required plaintiffs' to consent to
6 stipulated protective order which was exactly like the
7 one entered by the federal court in the MDL
8 proceedings." That's also in your brief on July --
9 your motion on July 7th, 2010, correct?

10 A Yes, sir.

11 Q You believe this was a valid factually and legally
12 sound motion, correct?

13 A Mr. Zonies, they kept telling me they were going to
14 produce the documents. They never did. I wanted
15 whatever documents I could get. I knew I had signed
16 the MDL protective order, and I tried to get the
17 documents. I tried, but they wouldn't produce them to
18 me, so I filed a motion to compel.

19 Q And as you --

20 A And they had told me there were 13 million or
21 some-odd pages, and that's what I was trying to get.

22 Q And as you stated earlier, you wanted those
23 documents and that discovery to put you and your
24 clients in a better position in the litigation, to
25 prosecute or settle the litigation, correct?

Mr. Garrison - Cross

25

1 A If I had any documents from whatever source,
2 whether it was MDL or documents that weren't produced
3 in the MDL that were in my discovery request, I thought
4 that would help me litigate our cases.

5 Q And here we're talking about the 13 million pages
6 that were generated in this MDL. You would have found
7 those very beneficial to you to prosecute or settle
8 your cases with GSK if you were able to get all those
9 documents, yes?

10 A You cut out a little bit there, Mr. Zonies, but I
11 think I got where you're going. Yes, sir, I would hope
12 I would, that's why I was trying to get them.

13 Q In fact, you have represented in your affidavit in
14 this case that ten days later on July 17th of 2010 you
15 received the first draft of the master settlement
16 agreement, ten days after you filed your motion to
17 compel production of those documents, correct?

18 A Well, in fact, we had been negotiating settlement
19 with GSK even in June and, you know, we had already
20 agreed on the numbers and the per case average of the
21 cases.

22 It had to be right about the same time we
23 filed that motion. So, that's my recollection, because
24 I know I got the first draft of the MSA from Ken on
25 July 17th and, of course, there had to be, you know, at

Mr. Garrison - Cross

26

1 least some lag time between the time we struck our deal
2 and the time we got that. So, we never did get the
3 documents, and then we settled our cases.

4 (Pause in proceedings.)

5 MR. ZONIES: Your Honor, may I approach to
6 deliver to the Court a copy of that motion to compel?

7 THE COURT: Yes, please.

8 MR. ZONIES: And move it into the record.

9 THE COURT: Has Mr. Sachs seen it?

10 (Pause in proceedings.)

11 THE COURT: Thank you. PSC-1?

12 MR. ZONIES: PAC-1, plaintiffs' advisory
13 committee, Your Honor.

14 THE COURT: Thank you.

15 (Pause in proceedings.)

16 BY MR. ZONIES:

17 Q Mr. Garrison, I think we've established that you
18 utilized on your behalf and the behalf of your clients
19 the MDL negotiated and entered tolling agreement, yes?

20 A We used the tolling agreement, yes, sir.

21 Q That you utilized on behalf of yourself and your
22 clients the MDL negotiated and entered PTO 10, correct?

23 A I'm not quite sure what you mean on PTO 10, Mr.
24 Zonies.

25 Q Well, that was drafted by the MDL and negotiated by

Mr. Garrison - Cross

27

1 the MDL with GSK, and you utilized that on behalf of
2 yourself and your clients, correct?

3 A Are you talking about the tolling agreement?

4 Q No, PTO 10, the protective order to seek documents?

5 A Oh, yes, sir. Yes, sir, I'm sorry, correct.

6 Q That's --

7 A We did sign it. Unfortunately, to no avail, but we
8 did.

9 Q Okay.

10 A I did.

11 Q And there were actually other documents from this
12 MDL that were negotiated by the PSC and GSK that you
13 utilized on your behalf and on behalf of your clients,
14 correct?

15 A Such as?

16 Q For example you, in response to GSK's discovery on
17 your clients, you utilized the plaintiffs' fact sheets
18 that were negotiated and created in this MDL, and you
19 downloaded those from this MDL's website to utilize
20 those plaintiffs' fact sheets in response to GSK's
21 discovery in your clients' cases, correct?

22 A Well, again, that was a recommendation that GSK's
23 lawyers made to us rather than just go through all the
24 usual discovery, and interrogatories, and requests for
25 production.

Mr. Garrison - Cross

28

1 They suggested why don't you guys just answer
2 the fact sheets that we had agreed to use in the MDL,
3 and we did.

4 Q You did, in fact, do that, correct?

5 A At their insistence. At their insistence yes, sir,
6 we did.

7 Q And you, in fact, downloaded those in an editable
8 format from this Court's website in order to utilize it
9 in your cases, correct?

10 A Now, Mr. Zonies, I can't tell you how we got them.
11 That could have been the way we got them, but I don't
12 know how we got those.

13 Q That answer is --

14 A I don't remember that.

15 Q -- above your pay grade, you weren't filling them
16 out?

17 A I hope that was below my pay grade, but I just
18 can't recollect. I'm not trying to evade your
19 question, I just don't know how we got those fact
20 sheets, I don't.

21 Q I understand. But, you would admit that those were
22 the fact sheets that were negotiated and agreed to in
23 this MDL by the PSC and GSK, yes?

24 A We are in agreement on that, yes, sir.

25 MR. ZONIES: If I may have a moment, Your

Mr. Garrison - Cross

29

1 Honor?

2 THE COURT: You may.

3 (Pause in proceedings.)

4 MR. SACHS: Can we have just one minute?

5 THE COURT: Of course.

6 (Pause in proceedings.)

7 MR. ZONIES: May I approach, Your Honor? We
8 have a substitution on what was handed to the Court.

9 THE COURT: Yes, you may. Mr. Sachs, I
10 haven't forgotten that you wanted to move a document
11 in, as well.

12 MR. SACHS: Thank you, Your Honor.

13 (Pause in proceedings.)

14 MR. ZONIES: So, Your Honor, we also would
15 move for admission of the motion to compel by GSK,
16 wherein the plaintiffs' fact sheets that were utilized
17 by the firm were attached, and also the -- we would
18 join Mr. Sachs in the offer on the stipulated
19 protective order, as well.

20 MR. SACHS: Permission to approach, Your
21 Honor, to deliver the stipulated protective order to
22 the Court?

23 THE COURT: Yes, thank you.

24 MR. ZONIES: Also, Your Honor, we would move
25 as PAC -- let's do this in order. PAC-2, the Pretrial

Mr. Garrison - Cross

30

1 Order Number 7.

2 (Pause in proceedings.)

3 MR. ZONIES: PTO 7 being the pretrial order,
4 Your Honor, that contains the language about the
5 tolling agreement representing the common benefit work,
6 and putting attorneys and clients on notice of the
7 assessment associated with the use of that.

8 (Pause in proceedings.)

9 MR. ZONIES: Your Honor, as to PTO 70 we
10 would just ask that the Court take notice that that is
11 in the court record.

12 THE COURT: We can.

13 MR. ZONIES: Thank you. We will supplement
14 with the motion to compel of GSK containing the
15 plaintiffs' fact sheets as PAC-3, as soon as we find
16 it.

17 THE COURT: All right. I haven't seen that
18 myself. All right. With that, are there any
19 additional questions?

20 MR. ZONIES: That's it for us, Your Honor.

21 THE COURT: Thank you. I would like to ask
22 GSK to pose any questions it might deem appropriate.

23 MS. GUSSACK: We have no questions, Your
24 Honor.

25 THE COURT: Thank you. You will have a

Mr. Garrison - Cross

31

1 chance at redirect.

2 MR. ZONIES: May I approach with the motion
3 to compel, Your Honor?

4 THE COURT: Yes.

5 (Pause in proceedings.)

6 MR. ZONIES: So, to summarize what has been
7 proffered, Your Honor, we have Heninger Garrison
8 Exhibit 1, which is the stipulated protective order
9 entered in the court in Alabama containing PTO 10.

10 PAC-1, which is the motion to compel of
11 Heninger Garrison in Alabama, seeking to compel
12 production of the 13 million pages of discovery from
13 the MDL.

14 PAC-2, which is Pretrial Order Number 7,
15 containing language about notice of a potential
16 assessment associated with the use of the tolling
17 agreements.

18 Then, PAC-3, which is the motion to compel of
19 GSK attaching fact sheets generated from this MDL used
20 by Mr. Garrison on behalf of his clients.

21 We would move for admission of all of those
22 on the PAC side.

23 THE COURT: Any objection, Mr. Sachs?

24 MR. SACHS: No objection, Your Honor.

25 THE COURT: All right. Those PSC documents

Mr. Garrison - Cross

32

1 are, therefore -- there's no objection from GSK, I
2 assume?

3 MS. GUSSACK: No, Your Honor.

4 THE COURT: All right. They are admitted,
5 along with the Heninger Garrison's 1 document, that is
6 the stipulated protective order and endorsement.

7 (Plaintiffs' Exhibit PAC-1, motion to compel,
8 PAC-2, PTO 7, and PAC-3, motion to compel, are admitted
9 into evidence.)

10 (Respondents' Exhibit Garrison 1, protective
11 order, is admitted into evidence.)

12 MR. ZONIES: Thank you, Your Honor.

13 THE COURT: All right. With that, Mr. Sachs,
14 do you have any redirect?

15 MR. SACHS: Very briefly, Your Honor.

16 THE COURT: Proceed.

17 REDIRECT EXAMINATION

18 BY MR. SACHS:

19 Q Mr. Garrison, you have been asked a number of
20 questions about MDL documents used in your Alabama
21 litigation. Sir, when you filed your cases in Alabama
22 what steps were taken by GSK regarding the court in
23 which those cases would be pending?

24 A You cut out, I'm sorry, Rob. Just very briefly,
25 what steps were taken what?

Mr. Garrison - Redirect

33

1 Q By GSK regarding the court in which those cases
2 would be pending, and to the point, without leading you
3 too much, was there an effort at removal to federal
4 court?

5 A Well, there was never an effort to remove at that
6 point because at the time there was a case in the
7 Eleventh Circuit, Lowery versus Alabama Power Company,
8 that enabled us to keep the cases in state court.

9 Now, there was a lot of activity by GSK to
10 get us to, you know, try to admit that the amount of
11 controversy was over \$75,000, so that was a subject of
12 a lot of motions.

13 There were also a lot of motions and hearings
14 about severance, because we had filed them in certain
15 venues. We would try to push them in these venues.

16 So, there was certainly efforts by GSK, in
17 fact a significant amount of efforts by GSK to, I
18 guess, defeat our strategy of keeping cases at state
19 court.

20 Of course, they were not successful, but they
21 certainly tried, although they knew that if it was
22 removed under the present, at that time the Lowery v
23 Alabama Power case, they would be remanded. So, they
24 never did remove them.

25 Q I want to be abundantly clear about a point you've

Mr. Garrison - Redirect

34

1 made several times. Despite having signed a protective
2 order that was given to you by GSK, was there any
3 negotiation of the terms of that protective order, by
4 the way?

5 A No, I questioned it. Whether or not that's
6 something that they needed, and they were insistent on
7 that, that if we wanted to get the documents we would
8 have to use the protective order that was used in the
9 MDL.

10 Frankly, you know, I reviewed the terms of
11 the protective order. I mean, the terms were fine, and
12 so it didn't matter to me whether it was produced in
13 the MDL or not. I was just trying to get documents.
14 So, no, they wouldn't negotiate it.

15 Q My point exactly. Mr. Zonies has asked you about
16 the protective order and asked you about your
17 experience in other mass court litigation, was that
18 protective order very similar, in terms of the types of
19 documents that would be considered protected documents,
20 to what you had seen in the many other mass torts in
21 which you had worked?

22 A Well, I can only answer by stating that given my 30
23 years of law practice, and probably the last 15 to 20
24 doing mass tort and pharmaceutical litigation, there's
25 usually a tolling agreement which is very similar to

Mr. Garrison - Redirect

35

1 one that was done in the Avandia litigation.

2 There is usually one in every case. Not all
3 the time, but I certainly have seen them and used them
4 before.

5 Q How about the protective order? When you reviewed
6 that when it was proposed to you by counsel for GSK did
7 you find that that protective order, as well, was very
8 similar to ones you have seen in many other mass torts
9 in your 15 to 20 years of experience handling cases
10 like that?

11 A Sure, it's very similar to the ones that I am doing
12 right now. Yes, sir, very similar.

13 Q And you continue to be actively involve din mass
14 tort litigation?

15 A I certainly do.

16 Q Have you been privileged, sir, to be named by the
17 court to serve on plaintiffs' steering committees in
18 other MDLs?

19 A Well, presently I am on the plaintiffs' steering
20 committee in the Kugel Hernia Mesh MDL pending before
21 the Honorable Mary Lisi up in the District Court of
22 Rhode Island. Also, on the Levaquin MDL pending in the
23 District Court of Minnesota.

24 MR. SACHS: Nothing further. Thank you, Mr.
25 Garrison.

Mr. Garrison - Redirect

36

1 THE WITNESS: Thank you.

2 THE COURT: Anything further, Mr. Zonies?

3 MR. ZONIES: Quickly, Your Honor.

4 REXCROSS-EXAMINATION

5 BY MR. ZONIES:

6 Q Mr. Garrison, you spoke of motions to sever and to
7 dismiss a number of cases in Alabama, do you recall
8 that?

9 A Yes, sir.

10 Q In fact, those cases were indeed severed and
11 dismissed, and those cases are the ones where you used
12 the tolling agreement, correct?

13 A I know there was some cases severed. I think there
14 was one sent to Greene County, Alabama, and there was
15 another one sent to Montgomery County, Alabama, and I
16 think we ultimately agreed with that.

17 But, you know, and then we dismissed a lot of
18 them because we targeted five or six that we wanted to
19 push. So, we agreed to dismiss the rest of them and
20 put them on tolling agreements, yes, sir.

21 Q Correct, you dismissed them and then utilized the
22 tolling agreement to protect the statute for those
23 cases, correct?

24 A Well, that's what they offered to do, so that's
25 what we agreed to do.

Mr. Garrison - Recross

37

1 Q And there's an MDL assessment in Kugel Mesh and
2 Levaquin, correct?

3 A There's an assessment, but of course no
4 distributions have been made yet.

5 Q But, you are aware that in MDLs and mass tort
6 litigation typically there is also an assessment,
7 yes?

8 A Oh, yes, sir, sure.

9 MR. ZONIES: Nothing further, Your Honor.

10 THE COURT: Does GSK have any follow-up
11 questions?

12 MS. NAST: No, Your Honor.

13 THE COURT: Was there anything to ask Mr.
14 Garrison about concerning the referral source of cases,
15 because once we lose him I don't want to reconvene.

16 MR. SACHS: I'm happy to cover that, Your
17 Honor. Let me just pull out the affidavit.

18 THE COURT: I'm not telling counsel what to
19 do, direct, or redirect, or cross. I just want to be
20 sure that we have a complete record of what is
21 essential here.

22 MR. SACHS: With permission to proceed again
23 on behalf of the Heninger Garrison firm, Your Honor?

24 THE COURT: Please, Mr. Sachs, you may
25 proceed.

Mr. Garrison - Recross

38

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REDIRECT EXAMINATION

BY MR. SACHS:

Q Mr. Garrison, sir, one of the referral sources for the Avandia cases which you have filed was an attorney names Jesse Ferrer, F-E-R-R-E-R, from the law firm of Ferrer, Poirot, P-O-I-R-O-T, & Wansbrough from Dallas, Texas, is that correct, sir?

A Yes, Jesse sent us a number of cases.

Q Sir, do you have any reason to dispute the fact that of the cases you've settled with GSK, 295 of the cases he referred to you were ultimately included in your firm's Avandia settlement group?

A That's true. Of the present settlement number, 295 are referrals to us from Jesse Ferrer.

Q Sir, are you now aware that while attending an American Association for Justice convention in July of 2010, Attorney Ferrer executed a protective order that is the form of protective order of PTO 10?

A Yes, from the documents that we've seen, on July 10th, 2010, which was essentially right about the time we got our settlement done in principle, Jesse was at an AAJ convention sitting in a seminar.

Before they put materials on the screen he insisted that everybody in that room sign this document that he signed. It is my understanding he signed it

Mr. Garrison - Redirect

39

1 and they just took it up, and that was the end of that.

2 So, when I had asked Jesse whether or not he
3 ever agreed to anything to pay MDL fees, he told me no,
4 he had just forgotten that he ever signed such a
5 document because he didn't -- a copy was not provided
6 to them.

7 Q Sir, let me be very clear about this, because of a
8 filing that we filed on behalf of your firm, did assert
9 that your firm was not aware of anybody with a fee
10 interest in your cases having signed such a protective
11 order.

12 Subsequent to our filing before this Court
13 you have, in fact, now seen documents that were
14 provided by the PAC as a matter of fact, indicating
15 that Mr. Ferrer did, in fact, sign that on July 10th,
16 2010, is that correct, sir?

17 A Yes, sir. None of our referring attorneys to our
18 knowledge had ever signed anything agreeing to pay any
19 assessment to the PSC, and when we had asked that
20 question of Mr. Ferrer he responded to us that he had
21 not signed any such thing.

22 In fact, it wasn't until we were produced --
23 until the endorsement of the PTO was produced that he
24 signed on July 10th, that was the first knowledge we
25 certainly ever had.

Mr. Garrison - Redirect

40

1 In fact, Jesse confirmed that he had
2 forgotten he even signed such a thing because of the
3 circumstances under which it was signed.

4 Q And just so it's clear from the chronological order
5 of how this happened, because I've asked you this
6 series of questions about Attorney Ferrer out of the
7 sequence of the other things that happened.

8 Where in the sequence of your negotiations
9 and the motions you were filing against GSK did that
10 happen, is it before or after you actually had an
11 agreement as to the number with GSK?

12 A Well, we reached an agreement with GSK through its
13 agent, I suppose, Mike Rosen, in early July where we
14 agreed what the settlement number would be for our 679
15 cases, and also the per case average for what that
16 would be.

17 Then, of course, what followed was I suppose
18 Mr. Rosen got in touch with GSK and then Ken Zucker
19 sent us the first draft of the master settlement
20 agreement on July 17th.

21 In fact, if you look at that first draft of
22 the master settlement agreement that we received on
23 July 17th and compare it to our file version, which was
24 achieved some few months later, very few terms were
25 changed, and certainly no substantive terms were

Mr. Garrison - Redirect

41

1 changed.

2 Q Sir, to your knowledge was there any interaction
3 whatsoever with Jesse Ferrer regarding any information
4 that had been presented to him at that AAJ convention
5 regarding privileged documents at any time before you
6 reached your settlement in principle with GSK?

7 A Absolutely not.

8 Q All right.

9 A I had no idea Jesse had even attended such a
10 seminar, and no, he didn't give us any information
11 whatsoever.

12 MR. SACHS: Nothing further on behalf of the
13 Heninger Garrison firm, Your Honor.

14 THE COURT: Thank you. Redirect.

15 MR. ZONIES: Thank you, Your Honor. I will
16 start by moving for admission of the endorsement of
17 protective order 10 executed by Mr. Ferrer as PAC-4.
18 May I approach, Your Honor?

19 THE COURT: Yes. Thank you.

20 (Pause in proceedings.)

21 THE COURT: Any objection, Mr. Sachs?

22 MR. SACHS: Sorry, Your Honor, I should have
23 risen before. No objection.

24 THE COURT: It is admitted.

25 (Plaintiffs' Exhibit PAC-4, endorsement, is

1 admitted into evidence.)

2 REXCROSS-EXAMINATION

3 BY MR. ZONIES:

4 Q Mr. Garrison, you on behalf of your firm and
5 clients, had set the resolution of the assessment issue
6 for a motions hearing in Alabama, correct?

7 A We had tried to do that, yes, sir.

8 Q And that court eventually entered an order
9 continuing that hearing generally, correct?

10 A It did.

11 Q And as part of that order, the court stated that
12 "To answer the question before this Court as to whether
13 or not the claim inventory represented by Heninger
14 attorneys are subject to PTO's common benefit
15 assessment.

16 "This Court is of the opinion that this
17 question should only be considered and answered by the
18 MDL Court in the Eastern District of Pennsylvania." Is
19 that what that court stated?

20 A I do not have an order here in front of me, Mr.
21 Zonies, but from my recollection that does sound
22 correct.

23 (Pause in proceedings.)

24 MR. ZONIES: We move for admission of that
25 order as PAC-5, Your Honor.

Mr. Garrison - Recross

43

1 MR. SACHS: No objection.

2 THE COURT: Thank you. It is admitted.

3 (Plaintiffs' Exhibit PAC-5, court order, is
4 admitted into evidence.)

5 MR. ZONIES: May I approach?

6 THE COURT: Yes.

7 MR. ZONIES: Thank you.

8 (Pause in proceedings.)

9 BY MR. ZONIES:

10 Q Are you prepared, Mr. Garrison, to dismiss that
11 with prejudice at this time?

12 A To dismiss what with prejudice?

13 Q The state court motion seeking that court's
14 findings on whether or not Heninger Garrison and his
15 clients are subject to the assessment?

16 A Well, I suppose that would be the result if I
17 agreed, which I've said I would do, transfer the seven
18 percent to whatever account Judge Rufe wants me to
19 transfer it to. So, that would moot that motion, in my
20 opinion.

21 Q You will agree to pull that motion down?

22 A The motion, any motion dealing with his
23 interpretation of whether or not I need to pay the
24 seven percent, yes, sir.

25 You know, this still is somewhat if a

Mr. Garrison - Recross

44

1 sticky-wicket with the state court having a qualified
2 settlement fund, but like I just testified to I am
3 certainly happy to transfer whatever that money is up
4 to your account and get it resolved through Judge
5 Rufe's --

6 THE COURT: Excuse me, Mr. Garrison, this is
7 the Judge. I don't think the camera is on me.

8 THE WITNESS: Yes, ma'am?

9 THE COURT: But, that's all right. I wanted
10 to just clarify something. As I read your QSF, at
11 least the pertinent part, releases of funds can be
12 authorized by joint signature of yourself, your firm,
13 and GSK, isn't that correct?

14 THE WITNESS: Yes, ma'am. Once we had the
15 original distribution that the judge signed off on,
16 then my recollection is, Judge Rufe, that there was an
17 order that was part of Judge Brown's order that any
18 future distributions we could just agree to between
19 ourselves, and we did not need the court's
20 involvement.

21 THE COURT: I think I read that, as well.
22 So, there is a way to mechanically take care of this
23 issue without further motioning any court, isn't that
24 the case?

25 THE WITNESS: In my understanding, yes,

Mr. Garrison - Recross

45

1 ma'am. I am willing to do it.

2 THE COURT: That would alleviate Judge Brown
3 from being in the position of having to enter an order
4 or enter rulings that would make the state court look
5 as if it was exercising some type of jurisdiction on
6 this issue, and in your position would that not be
7 preferable, at least for that court, given his order
8 entered June 27th?

9 THE WITNESS: Your Honor, yes, ma'am. What I
10 would prefer to do would just be a document signed by
11 my firm and Mr. Zucker agreeing to transfer whatever
12 the sum of money is.

13 THE COURT: All right. Thank you. Mr.
14 Zonies, I interrupted you.

15 THE WITNESS: Thank you.

16 MR. ZONIES: That's fine, Your Honor, I
17 appreciate that clarification on the Court's behalf.

18 BY MR. ZONIES:

19 Q Mr. Heninger, just to be clear -- I'm sorry, Mr.
20 Garrison, just to be clear, to have release of those
21 funds from that QSF there are two parties that must
22 agree those funds?

23 In other words, GSK must agree to release
24 those funds from the QSF in order for those funds to be
25 released, correct?

Mr. Garrison - Recross

46

1 A Yes, sir.

2 Q And absent GSK's action to release those funds, the
3 funds would not come out of that QSF, correct?

4 A I haven't figured a way to get the money without
5 GSK's authorization so far.

6 MR. ZONIES: Nothing more on that, Your
7 Honor.

8 THE COURT: Thank you.

9 MR. ZONIES: Thank you.

10 THE WITNESS: By the way, Mr. Zonies, there
11 is also a settlement administrator that was appointed
12 by Judge Brown. He may need to sign off on it.

13 I don't think so, but I don't want to just
14 say, you know, here in court that we just forget him.
15 But, I don't think he has to sign off on it, but we can
16 check that out.

17 MR. ZONIES: I'm not so sure the Court would
18 have jurisdiction over him, but I'm certainly confident
19 the Court would have the jurisdiction over GSK. So,
20 thank you for that clarification, Mr. Garrison.

21 THE COURT: Thank you. We agree with that
22 observation. Any redirect from GSK on this issue?

23 MS. GUSSACK: No, Your Honor.

24 THE COURT: All right. I'm sorry, I meant
25 cross. Any redirect?

Mr. Garrison - Recross

47

1 MR. SACHS: No, Your Honor, nothing further
2 at this time.

3 THE COURT: All right. Mr. Garrison, is
4 there anything else you would like to say before we
5 allow you to step down as a witness?

6 THE WITNESS: No, ma'am, but I do appreciate
7 your accommodation, Judge Rufe, and sorry to put you
8 out and have you come in to do this, and this is my
9 first video link. It's very interesting, to say the
10 least.

11 THE COURT: It does work.

12 THE WITNESS: It does.

13 THE COURT: Usually, we reserve it for
14 prisoners.

15 THE WITNESS: Whoops.

16 MR. SACHS: As your attorney I advise you not
17 to comment.

18 THE COURT: We find it helpful, especially
19 when managing MDLs to include as many counsel and even
20 parties across the country, because that is what we do.
21 We include, not exclude.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: We like to resolve cases. I hope
24 that the next time we interface it will be in a
25 different and on a different issue. But, I hope that

1 something is carried away from this, Mr. Garrison.

2 I think we could have reached this resolution
3 even without a hearing some time ago. I don't think it
4 had to involve two courts in two different
5 jurisdictions.

6 Nevertheless, Judge Brown, being the gracious
7 judge and I think astute judge that he is, recognized
8 that it was something that the MDL had to handle. I
9 hope that in the future we don't have these
10 misunderstandings, in any event.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: Thank you.

13 THE WITNESS: I thank you.

14 THE COURT: Good luck to you and your family.

15 THE WITNESS: Thank you, ma'am, I sure
16 appreciate it.

17 THE COURT: All right. You may stay where
18 you are because you are still participating as a party
19 while we conduct the remainder of this hearing.

20 Mr. Sachs, do you have anything else to
21 present?

22 MR. SACHS: We do not, Your Honor.

23 THE COURT: Thank you. Mr. Zonies, do you
24 have anything else to present?

25 MR. ZONIES: Your Honor, we are prepared to

1 put on for the Court testimony concerning the work of
2 the MDL over the entire span of the MDL.

3 But, we can't anticipate that the Court
4 understands most of it, if not all of it, in a summary
5 fashion if the Court so desires. If so, I would ask
6 for five minutes to just discuss with my co-counsel.

7 THE COURT: Let's take a recess, discuss it
8 with your co-counsel. A summary fashion would be
9 acceptable. I don't think we need the long version
10 today. We are in brief recess.

11 (Recess, 10:35 a.m. to 10:51 a.m.)

12 THE COURT: It's still good morning. Please
13 be seated. On behalf of the plaintiffs' advisory
14 committee?

15 MR. ZONIES: Your Honor, Joe Zonies. Your
16 Honor, upon further reflection and review of this
17 Court's order setting this hearing and discussions with
18 Mr. Sachs, we have determined that we believe that the
19 Court has sufficient information at this time to make
20 its determinations as limited in this Court's order,
21 which were, and I quote from the Court's order entered
22 on the 25th of June of this year. It states as
23 follows.

24 "The MDL Court will hold a hearing on the
25 interpretation and the application of PTO 70 to the

1 Heninger settlement on July 2nd.

2 "The hearing will include the development of
3 a factual record regarding whether any attorney with a
4 fee interest in the Heninger claims executed in the
5 endorsement of protective order attached to PTO 10, or
6 the participation agreement attached to PTO 70."

7 We believe at this time that the factual
8 basis for that is before the Court, and we would
9 suggest that in order to keep this being resolved in
10 the morning, that the PAC has no further evidence to
11 put on.

12 THE COURT: Thank you. Would GSK have any
13 evidence to present?

14 MS. GUSSACK: No, Your Honor.

15 THE COURT: Thank you. Back to you and your
16 rebuttal.

17 MR. SACHS: Of course not, based on the
18 presentation as the evidence has come in, Your Honor.

19 THE COURT: Thank you. The evidence is
20 closed.

21 We accept the position of all of the parties,
22 and I believe that is appropriate for the matter at
23 hand to enter a written ruling filed with the MDL and
24 on the website for all other participants and
25 interested parties to see.

1 So, we will do that as a matter of record. A
2 transcript of this proceeding will also be posted on
3 PACER. I think that's routine these days, unless there
4 is some reason not to. But, I can't see that reason
5 now.

6 I think that it is important to note on this
7 record now while we are all here together that although
8 the parties have concurred and agreed, in particular
9 the Heninger Garrison Davis, LLC firm and Mr. Garrison
10 himself, have agreed that this Court has the
11 appropriate jurisdictional base to address this matter.
12 That is, the assessment of the common fund, seven
13 percent or any number thereof.

14 I believe it is also important for the Court
15 to conduct its own inquiry. This hearing has provided
16 the Court with a factual basis to support that
17 concurrence by counsel and the parties.

18 We exercise the jurisdiction of the MDL
19 court, that is the federal court, and accept the
20 testimony of all parties and witnesses today, along
21 with the documents that have been presented by
22 agreement.

23 We find that Mr. Garrison and his firm's
24 cases, totaling 503 cases, are hereby subject to the
25 assessment on each case of the seven percent fee when

1 and as appropriate, that is with the signatures of both
2 Mr. Garrison and GSK, those funds can be released
3 forthwith, we would like to believe, to the settlement
4 fund conducted and monitored by Andy Chirls named as
5 the settlement administrator for the MDL.

6 So, they will be directed, those funds, to be
7 transferred by signature. I do not know what else
8 would be needed, but if the Jefferson County qualified
9 settlement fund needs more I will communicate with
10 Judge Brown if that is what they need, but I do not
11 think that is what they should need based on the joint
12 signature provision and Judge Brown's earlier order.
13 So, hopefully he will be spared.

14 I also direct that Mr. Garrison withdraw with
15 prejudice the pending motion before the Jefferson
16 County Court, and this ruling may not apply to all
17 matters involving the QSF and Jefferson County, but it
18 does matter and it does apply to the common fee
19 assessment that is due and owing to the MDL created
20 common fund. The disbursements thereafter will be
21 according to the orders that we have already
22 established.

23 Now, I would like to review the record to
24 make sure that further findings may be in order. We do
25 find and want to reiterate that attorneys who sign the

1 endorsement for Pretrial Order Number 10, which is a
2 confidentiality provision, the protective order, are
3 subjecting themselves and their cases, whether they are
4 referred out to other firms or not, to the MDL's
5 jurisdiction to determine these types of issues.

6 We also find that Pretrial Order Number 10,
7 the protective order and its endorsement work in
8 conjunction with PTO 70, and PTO 70 itself has a number
9 of provisions that would cause the MDL to exercise
10 jurisdiction over its enforcement. We are satisfied
11 that in this case there are several bases to enforce.

12 One problematic factual matter has been
13 brought to this Court's attention by the testimony of
14 Mr. Garrison. I'll tell you why it is problematic in a
15 moment. It's not problematic to my determination of
16 having jurisdiction, it's not problematic for my
17 determination of the seven percent assessment which has
18 been agreed to by Mr. Garrison on each and every one of
19 his settled cases.

20 It is that Mr. Garrison has represented that
21 he has settled these cases, now publicly and on the
22 record, without having any discovery documents. It is
23 hard for this Court to countenance that.

24 It is not that I don't believe Mr. Garrison,
25 it is that it is probably not the way I would hope that

1 cases are resolved. Too often I see inventories of
2 cases that are not really worked up past the plaintiff
3 fact sheet.

4 I hope that practice does not continue in
5 this or any other MDL. I know it exists out in the
6 world. I am not sure that it is the way that justice
7 is achieved. I know it is not common practice, but I
8 do see it happening.

9 It happens as a result of large inventories
10 of cases being handled. They can be handled by
11 appropriate resources and attorneys that devote those
12 resources and their firm to preparation of their cases
13 enough to know whether to settle or not.

14 But, I don't think it is a basis upon which I
15 will ever be able to say you don't owe the seven
16 percent or any part thereof because you didn't use
17 discovery.

18 I don't know how you represent anyone without
19 some understanding of the facts and, Mr. Garrison, you
20 and your firm are well-known in MDL circles. I believe
21 you prepare your cases better than that.

22 So, this is going to be a warning to all
23 those out there in MDL land and in any MDL that I have
24 anything to do with, that I expect attorneys will work
25 their cases and control the numbers of their

1 inventories to do so.

2 That's probably not on-point, as they say,
3 but it is an observation that I feel compelled to make
4 on the record. Is there anything anyone would like to
5 say?

6 MR. SACHS: No, Your Honor.

7 MR. ZONIES: Nothing, Your Honor.

8 MS. GUSSACK: No, Your Honor.

9 THE COURT: We are adjourned.

10 (Proceedings adjourned at 11:00 a.m.)

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I N D E X

RESPONDENTS' WITNESSES DIRECT CROSS REDIRECT RECROSS

William Garrison

By Mr. Sachs 9 32 38

By Mr. Zonies 14 36 42

PLAINTIFFS' EXHIBITS

ADMITTED INTO EVIDENCE

PAC-1 Motion to Compel 32

PAC-2 PTO 7 32

PAC-3 Motion to Compel 32

PAC-4 Endorsement 41

PAC-5 Court Order 43

RESPONDENTS' EXHIBITS

ADMITTED INTO EVIDENCE

Garrison 1 Protective Order 32

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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.

7-20-12
Date



Jeff Nathanson