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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 *February 23, 2010
LITIGATION *Birmingham, Alabama
*1:00 p.m.

TRANSCRIPT OF MONTHLY 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

1
2 THE COURT: Good afternoon. This
3 is CV09-2039. And this is the Chantix Products
4 Liability Litigation MDL Number 2092. And this
13:00:46 5 is a monthly status conference. And I would like
6 for everyone who is present in the courtroom to
7 identify themselves. And then afterwards, the
8 ones that I have called in to identify themselves
9 for the record, as well. And can the telephone
13:01:02 10 people hear me?

11 THE COURTROOM DEPUTY: Counsel,
12 can you hear the judge?

13 THE COURT: I'll speak up. Go
14 ahead and identify yourself.

13:01:18 15 MR. CORY: Ernie Cory for the
16 plaintiffs.

17 MR. HAHN: Blair Hahn for the
18 plaintiffs, Your Honor.

19 MS. SUTTON: Tara Sutton for the
13:01:24 20 plaintiffs.

21 MR. DRAKE: Jack Drake, liaison
22 counsel for plaintiffs.

23 MR. SUGGS: David Suggs for
24 plaintiffs.

13:01:38 25 (Inaudible.)

1 THE COURT: Hang on. Who was the
2 first on the telephone? Who was the first one on
3 the telephone?

4 MR. FERRELL: This is James
13:01:48 5 Ferrell at Taylor & Associates for the
6 plaintiffs. I don't know if I was first, but I'm
7 on the phone.

8 MS. HEACOX: I might have been
9 first. Catherine Heacox from The Lanier Law
13:01:58 10 Firm.

11 MR. GROSSMAN: Marc Grossman for
12 plaintiffs.

13 MR. LOPEZ: Ramon Lopez and
14 Matthew Lopez from Lopez McHugh on behalf of the
13:02:10 15 plaintiffs.

16 MR. FISHER: Clint Fisher of Hanly
17 Conroy for plaintiffs.

18 MS. (Inaudible)... and Jennifer
19 Gonzalez from Morelli Ratner.

13:02:28 20 MS. (Inaudible)... from Audet &
21 Partners for the plaintiffs.

22 MS. BURKE: Beth Burke, Richardson
23 Patrick for the plaintiffs.

24 MR. BOYNTON: Thomas Boynton for
13:02:40 25 the plaintiffs.

1 THE COURT: Is that all?

2 THE COURTROOM DEPUTY: Is that all
3 the counsel that's on the phone? Has everyone
4 stated their names for the plaintiffs? Hello?

13:03:10 5 THE COURT: For the defendants who
6 are present in the courtroom, please state your
7 names.

8 MR. PETROSINELLI: Joe
9 Petrosinelli for the defendant.

13:03:16 10 MR. BROWN: Good afternoon, Your
11 Honor. Loren Brown for Pfizer.

12 MR. HASTON: Trip Haston for
13 Pfizer.

14 MR. JOHNSON: Andy Johnson for
13:03:24 15 Pfizer.

16 MR. HOLIAN: Matt Holian for
17 Pfizer, Your Honor.

18 MR. JOINER: John Joiner for
19 Pfizer.

13:03:28 20 THE COURT: Okay.

21 THE COURTROOM DEPUTY: Can counsel
22 for the defendants that are on the phone now
23 state their names, please, one at a time?

24 MR. PETROSINELLI: I don't believe
13:03:40 25 there are any for the defense on the phone.

1 THE COURT: Nobody else? Okay. I
 2 have an issue with -- I don't have an issue with
 3 you, Mr. Drake, but I got a notice of filing
 4 from -- with respect to liaison counsel --
 13:04:02 5 everybody. And I have not permitted that. I
 6 don't have any discussion with anyone prior to
 7 the conference we had in January or today about
 8 everybody in your firm being authorized to
 9 substitute each other as liaison counsel. I
 13:04:20 10 don't have any proof that some of these people
 11 have been involved in MDL before.

12 And I know that you stood in for
 13 Mr. Whatley at the original conference in
 14 January. And you're obviously here today.
 13:04:32 15 Mr. Whatley needs to get his act together. If he
 16 wants to be here, he needs to be here.
 17 Otherwise, he doesn't need to be here; I need to
 18 have you substituted for him if he's not going to
 19 be liaison counsel.

13:04:46 20 MR. DRAKE: I think that's likely
 21 what we'll do.

22 THE COURT: I will be delighted to
 23 have you instead. I've known you for a long
 24 time.

13:04:52 25 MR. DRAKE: Thank you.

1 THE COURT: I have a proposed
 2 joint agenda for the conference day. And the
 3 first thing I have on the proposed agenda is a
 4 report by the parties regarding the status of the
 5 litigation in both federal and state courts,
 6 including efforts to coordinate the litigation
 7 between federal and state courts. And who wishes
 8 to give me that report?

13:05:04

9 MR. PETROSINELLI: Your Honor, Joe
 10 Petrosinelli for Pfizer. Just a quick report. I
 11 think, as the Court knows, we have two
 12 single-plaintiff state cases. One in Missouri
 13 and one in Chicago. I believe the Court may have
 14 contacted the judges in those cases.

13:05:16

15 What I understand the status is that in
 16 Missouri, the case has essentially been continued
 17 for a status conference sometime, I believe, in
 18 April. And so I think the idea would be once a
 19 plan -- discovery plan gets entered in this case,
 20 it would be presented to the counsel and the
 21 Court in that case. And they would hopefully
 22 join it. And if they don't, they will tell us
 23 that they have a problem with it. But I think
 24 that's on track for coordination, hopefully.

13:05:32

13:05:46

25 In Chicago , I understand there's still

13:05:56

1 some pretrial motions practice going on. And
 2 that that case is a while before entering into
 3 any kind of merits-based discovery. And
 4 hopefully the same thing would happen there; that
 13:06:12 5 is, once we have a plan here, that would be
 6 presented to the Court and the counsel in that
 7 case and hopefully they will coordinate with us.

8 And in New York, of course, we still have
 9 not heard from the Court in New York. And
 13:06:30 10 therefore, there is no judge yet assigned to that
 11 case. I think we all expect that's going to
 12 happen fairly soon. But it hasn't happened yet.

13 I would note that, as Your Honor may have
 14 seen in the discovery here, the federal/state
 13:06:48 15 liaison counsel who Your Honor appointed last
 16 time has committed to support whatever plan we
 17 enter here in the proceeding in New York whenever
 18 that gets set up. And so, again, we hope that
 19 will be soon. And that way we will have a judge
 13:07:00 20 in New York who we can speak to about it. And
 21 that's, I think, what the status is.

22 THE COURT: Okay. I will state
 23 for the record that I contacted both the judge in
 24 Missouri and the judge in Chicago. And the judge
 13:07:16 25 in Missouri, whose name is William L. Syler,

1 called back and said that he was inclined not to
2 do anything unless the parties agreed. And I
3 asked counsel for both sides in this case to
4 contact counsel for plaintiff and counsel for
13:07:30 5 defendant respectively to see if they would
6 agree. And I assume, from what you just said,
7 that it's been postponed for another status
8 conference until they see what we do?

9 MR. PETROSINELLI: That's correct,
13:07:42 10 Your Honor.

11 THE COURT: Now, with respect to
12 the case in Chicago, I also called Judge Thomas
13 Quinn. And he has never returned my phone call.
14 So as a result of him never returning my phone
13:07:54 15 calls, I asked counsel for plaintiff and lead
16 counsel for either side to call counsel in those
17 cases. But it was my understanding that there
18 would not be a case management conference until
19 June the 23rd of this year. So I suggest that
13:08:10 20 you -- if we do end up with some orders in this
21 and whatever else happens between now and June
22 that you forward that to counsel in that case in
23 Chicago and then see if they are agreeable to go
24 along with us.

13:08:26 25 MR. CORY: Your Honor, I assume

1 both those plaintiffs' lawyers that I spoke to
2 are anxious to see what we put together here and
3 more than likely are willing to work with our
4 plan.

13:08:38 5 THE COURT: All right. Let me go
6 to Item Number 3 because that's simple. The
7 confidentiality agreement and protective order,
8 you all have suggested -- filed a joint
9 suggestive protective order and confidentiality
13:08:58 10 agreement. And I didn't see any dispute between
11 the parties with respect to that order; is that
12 correct?

13 MR. PETROSINELLI: That is
14 correct, Your Honor.

13:09:04 15 THE COURT: Now, I just need a
16 motion. I can't just -- I have to have a
17 motion -- a joint motion from the parties for the
18 entering of a joint protective order. And then I
19 will do it. But I can't do it without a motion.

13:09:16 20 MR. CORY: Yes, ma'am. We will
21 have one to you by tomorrow morning, Your Honor.

22 THE COURT: You can do it orally,
23 and I will be glad for it to reflect upon oral
24 motion.

13:09:28 25 MR. CORY: We would like to make a

1 joint oral motion for you to approve the
2 protective orders before you.

3 MR. PETROSINELLI: We join the
4 order.

13:09:40

5 THE COURT: I will get it fixed to
6 where it is not a proposed order anymore. And I
7 guess you figured out from my docket clerk, which
8 I apologize because I didn't tell you, that
9 proposed orders cannot be filed. Notice that a
10 proposed order has been submitted to the Court
11 can be filed. But not proposed orders. Because
12 it's confusing to anybody who reads the docket
13 sheet. Okay.

13:09:54

14 Let's go to the Item Number 2, which is a
15 discovery plan that has been submitted by the
16 parties. I have some questions. Let me get it
17 out and look at it.

13:10:08

18 As far as I can tell, that's Document
19 Number 18, scope and applicability. And look at
20 Page 8. I understand what the plaintiff is
21 proposing in Number 5. On or before June the
22 1st, 2010, defendant shall produce custodial
23 files regarding Chantix for the 30 individuals
24 who were identified in the list of 30 witnesses
13:11:16 25 previously provided by Pfizer to plaintiffs' lead

1 counsel. And then on or before July 1st, 2010,
2 defendant shall produce the remaining documents
3 responsive to plaintiffs' master written
4 discovery list. Defendant's initial production
13:11:36 5 of documents shall include documents generated on
6 or before July 31st, 2009. Black box label
7 change -- I assume that's the date that the black
8 box label was put into effect.

9 MR. PETROSINELLI: Actually, Your
13:11:48 10 Honor, the date was July 1st, 2009. The date the
11 label went into effect.

12 THE COURT: Is that a misprint,
13 then? Did you mean to refer to the date that the
14 black box was changed?

13:11:56 15 MR. PETROSINELLI: No. I think --

16 THE COURT: I'm asking the
17 plaintiff. This is his --

18 MR. PETROSINELLI: Oh, I'm sorry.

19 MR. CORY: No, ma'am. It's not a
13:12:02 20 misprint. That's the date that we're using as
21 the date that they arbitrarily decided to cut our
22 production of documents which corresponds
23 basically with the --

24 THE COURT: And you don't have a
13:12:14 25 problem with that?

1 MR. CORY: No, ma'am.

2 THE COURT: Okay. Then let's go
3 to the defendant's suggestion. In Paragraph 10,
4 you suggest that beginning July the 1st, 2010 and
13:12:28 5 ending September 1st, 2010, to make a long story
6 short, the 18 -- the custodial files we've got in
7 Chantix for 18 current or former Pfizer employees
8 medical and safety departments who were
9 identified in the list of 30 witnesses would be
13:12:48 10 produced. And then beginning October 1st, 2010,
11 and ending December 1st, the 12 remaining
12 witnesses.

13 First of all, I want to know why
14 defendants want to wait until July the 1st as
13:13:02 15 opposed to June the 1st, suggested by the
16 plaintiff.

17 MR. PETROSINELLI: Your Honor, Joe
18 Petrosinelli again. I think the reason why that
19 date -- we suggested that date is because from
13:13:14 20 now, actually being next week, through July the
21 1st, we're going to be producing the -- what I
22 call the database documents; that is, between --
23 starting next week until July the 1st, we're
24 going to be producing what I call the database
13:13:52 25 documents which are four -- really four separate

1 databases full of all the scientific data and
2 essentially entire regulatory file. All of our
3 communications with FDA about Chantix through a
4 certain date; that is, the July 31st, 2009 date.
13:14:08 5 And so that's what we were going to do for the
6 next 90 to 120 days. And then we were going to
7 begin immediately with the production of
8 custodial files.

9 So that's why -- the database stuff from
13:14:22 10 now until July 1st and then starting on July 1st,
11 the custodial files. That was the rationale for
12 the July 1st date.

13 THE COURT: Well, you don't say
14 anything about database files in here. You just
13:14:36 15 say custodial files.

16 MR. PETROSINELLI: No, Your Honor.
17 If you look -- if the Court would look at
18 starting on Page 6, which is -- and this is the
19 part that's been agreed by the parties.

13:14:48 20 THE COURT: Yeah.

21 MR. PETROSINELLI: If you look,
22 starting on Page 6, Paragraph C1 and then over to
23 7C2, Three, and Four, those are the database
24 files that I'm talking about. And if you see --

13:15:02 25 THE COURT: Yeah. But I'm talking

1 about -- okay. I see that.

2 MR. PETROSINELLI: In other words,
3 those files would be rolled out, starting next
4 week. And if you see the --

13:15:16 5 THE COURT: And you say you can't
6 do the custodial files for the 18 people in
7 addition to those before July the 1st?

8 MR. PETROSINELLI: Well, two
9 things, Your Honor. Just so the Court --

13:15:28 10 THE COURT: What's the difference
11 between the custodial files and the database
12 files?

13 MR. PETROSINELLI: That's what I
14 was going to try to -- the database files are all
13:15:38 15 the various scientific data that the company has
16 on Chantix from the clinical trial data, all the
17 adverse events that have been reported, plus the
18 entire regulatory file, which essentially is
19 every communication between Pfizer and the FDA
13:15:54 20 regarding Chantix, which these are voluminous.

21 THE COURT: Right.

22 MR. PETROSINELLI: These are
23 terabytes or gigabytes -- I'm not an electronic
24 discovery expert, but there are a lot of
13:16:10 25 documents. Those are the database files.

1 Custodial files are shorthand I think that
2 we've used for the files of individual Pfizer
3 employees, mostly email files, who have had
4 responsibility for Chantix.

13:16:24 5 So you have databases which are really
6 these global collections of documents, mostly
7 scientific data and communications with the FDA.
8 And then you have individual people -- their
9 email files. Those are the --

13:16:36 10 THE COURT: Now I understand that.
11 And the database files and the communications,
12 the regulatory files, you're going to produce by,
13 at the latest, May 17th, 2010, pursuant to
14 agreement?

13:16:54 15 MR. PETROSINELLI: Right. We're
16 going to start next week. And we're going to
17 roll that through -- May 17th through the date of
18 July 31st, 2008 because that's the date -- and
19 then over the next month and a half, we're going
13:17:08 20 to supplement that a year forward through July
21 31st, 2009. And that takes us to July 1.

22 THE COURT: So you picked July
23 because you want to finish that up before you do
24 the custodial --

13:17:20 25 MR. PETROSINELLI: That's exactly

1 right, Your Honor.

2 THE COURT: First of all, who are
3 the other 12 -- I understand the 18 people might
4 be some medical safety people, from just looking
5 at it.

13:17:28

6 MR. PETROSINELLI: That's correct.

7 THE COURT: Who are the other 12?

8 MR. PETROSINELLI: They would be
9 regulatory people. And they would be sales and
10 marketing people. And the reason, Your Honor,

13:17:34

11 just so the Court understands why we sort of
12 structured it that way, is because I think the

13 Court understands our view of prioritizing

14 general causation discovery. And if -- the

13:17:50

15 plaintiffs have stated they want to get some

16 documents from the company and depose some

17 witnesses from the company relating to those

18 issues. And in our judgment, those would be

19 medical and scientific people. It is a

13:18:04

20 scientific question.

21 Sales and marketing people and regulatory

22 people wouldn't really have anything to do, in

23 our view, with the general causation issue. And

24 so we're going to give those documents to the

13:18:14

25 plaintiffs, but we just have structured it so

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1 those are at the end and not at the beginning.
2 And that's -- but that's who those other 12
3 people are.

4 THE COURT: Yeah. I notice you
13:18:24 5 say on Page 7 of your memorandum that you just
6 don't want to do those until after the plaintiff
7 has provided expert reports. And you also say on
8 Page 6: Neither emails nor testimony or fact
9 witnesses are what science rely on to evaluate
13:18:50 10 the way the cause and effect relationship exists
11 between exposure to a medication and the
12 occurrence of a specific medical outcome.

13 Now, I -- where did you get that from? No
14 emails or testimony of -- depends on what you
13:19:04 15 call fact witnesses. I'm not sure what you call
16 fact witnesses. We all tried to figure that out.
17 So what are you talking about when you say, fact
18 witnesses?

19 MR. PETROSINELLI: Your Honor,
13:19:14 20 what we meant by that is this: The issue of
21 general causation --

22 THE COURT: No. I want you to
23 answer my question: What do you refer to when
24 you talk about common fact witnesses?

13:19:24 25 MR. PETROSINELLI: Talking about

1 Pfizer employees who -- whose testimony would be
2 relevant to only general common issues. Not any
3 specific plaintiff.

4 So doctors, for example, or sales and
13:19:40 5 marketing people or regulatory people whose
6 testimony would be relevant to issues of general
7 applicability to all plaintiffs and not any
8 specific plaintiff. That's what we mean by fact
9 witnesses.

13:19:52 10 THE COURT: Okay. And you don't
11 think any of those emails -- I mean, emails from
12 regulatory people to Pfizer doctors and safety
13 people and emails between safety people and
14 doctors within Pfizer are relevant to the
13:20:08 15 causation issue?

16 MR. PETROSINELLI: The plaintiffs
17 are going to get those before their general
18 causation expert reports. Under our schedule,
19 they get those all by September 1. So the way
13:20:18 20 that we proposed it is that they will get the
21 email files of all the medical, the 18 medical
22 and scientific witnesses we've identified by
23 September 1. And they would have from --

24 THE COURT: Yeah. I understand
13:20:32 25 what you're proposing. I'm trying to find out

1 why.

2 MR. PETROSINELLI: Because if --
3 in our judgment, there is a threshold issue in
4 this case, which is: Is there any scientific
13:20:42 5 evidence that Chantix can cause the various
6 affects that the plaintiffs are -- have alleged.
7 That's general causation.

8 THE COURT: Well, let me ask you
9 this and interrupt you, if you don't mind.

13:20:52 10 MR. PETROSINELLI: Sure. Not at
11 all.

12 THE COURT: There are so many
13 different injuries alleged by all these various
14 people. Some have said they had just -- without
13:21:04 15 using a complicated term -- mental issues or got
16 mental issues as a result of it. Some estates
17 have alleged that they died as a result of
18 suicide as a result of taking Chantix. Some lost
19 vision, allegedly, as a result of taking Chantix.
13:21:24 20 I think some allege headaches as a result of
21 taking Chantix. I mean, there's so many
22 different injuries that have been alleged in all
23 of these cases as having been caused by the
24 product that -- are you telling me that all of
13:21:38 25 this -- general causation of all of these

1 injuries can be done without any other deposition
2 except the deposition of -- the database and
3 the -- yeah. The database basically is what
4 you're saying and maybe the other 12 people?

13:22:02 5 MR. PETROSINELLI: No. What I'm
6 saying is the databases, the 18 medical people's
7 files, and the depositions of those people.

8 THE COURT: And that's enough?

9 MR. PETROSINELLI: That is enough
13:22:10 10 for the question of general causation; that is,
11 it's a scientific question. Does the product --
12 can the product cause these various injuries?
13 And in fact, Your Honor, the very reason why we
14 think it's important to do that early in the
13:22:24 15 litigation is for what you've just said.

16 There's such a wide range of injuries
17 alleged here -- totally different injuries.
18 Mental injuries, physical injuries, all sorts of
19 injuries -- that the Court -- we think that it
13:22:38 20 will streamline this litigation if the Court
21 takes an early -- relatively early -- we're
22 talking about a year from now under our proposal
23 when the plaintiffs' expert reports would be due.
24 Takes an early look at whether there is
13:22:52 25 scientific evidence to support a claim of

1 causation as to all the injuries that the Court
2 just mentioned.

3 Because if there isn't, it's a way to
4 narrow the case. If there is, there is. But I
13:23:02 5 think that -- and we cited to Your Honor some
6 provisions of the complex litigation manual,
7 other MDLs that have recently done this --

8 THE COURT: And I agree with you
9 that general causation is the threshold issue we
13:23:16 10 have to decide in this case first. And I said
11 that at the beginning, but I'm not so sure it can
12 be done -- I totally disagree with you that it
13 can be done only by looking at that.

14 I mean, if I were a plaintiff, I would
13:23:28 15 want to see, for example, a person who had tried
16 to quit before -- smoking before and successfully
17 quit it for, let's say, a period of five or six
18 years. And started back, falling off the wagon,
19 started back smoking, and then this time he or
13:23:48 20 she decided, by golly. I'm going to stick to it
21 this time. I'm going to take Chantix and I'm
22 going to -- and then he commits suicide -- now, I
23 can't see how you can eliminate some of -- I'm
24 not saying that that particular plaintiff's
13:24:00 25 testimony should be taken before you have general

1 experts, but you have to have some facts to give
2 the experts other than just the literature, the
3 science, and the correspondence with FDA.

4 MR. PETROSINELLI: That is what
13:24:18 5 we're offering the plaintiffs. We're saying you
6 can get all the -- what I call the database files
7 which will get everything Your Honor just said
8 because they'll get all the adverse event reports
9 Pfizer has ever received about this medication.
13:24:34 10 They'll get all the communication Pfizer ever had
11 with the FDA about this medication. They'll get
12 all the clinical trial data Pfizer has ever had
13 about this medication. Then they'll get all the
14 custodial files of the medical and scientific
13:24:46 15 witnesses who have looked at the science at
16 Pfizer about this medication. And they'll get to
17 depose those people all before they have to come
18 up with a report that is a scientific report or
19 presumably would have a scientific conclusion
13:25:00 20 about causation.

21 The only thing -- the only thing that
22 we're saying should be put off until after the
23 plaintiffs get their -- have their expert reports
24 due are depositions of sales and marketing and
13:25:12 25 regulatory people. That's it . Everything else

1 we're saying they can have before a general
2 causation expert report, even though, I must be
3 frank with Your Honor, I don't think all that is
4 necessary to come up with a report on general
13:25:24 5 causation. But they asked for it. And we said
6 fine. They're getting all of that.

7 THE COURT: Well, then explain to
8 me why you suggest on Page 23 that plaintiff
9 shall designate general causation expert on or
13:25:38 10 before February 2011 but you want to start taking
11 plaintiffs' depositions -- not just bellwether
12 plaintiffs but plaintiffs' depositions, their
13 prescribing physicians' depositions, and treating
14 physicians and family members and other
13:25:54 15 third-party witnesses beginning December 10th --
16 I mean, December 1, 2010?

17 Why should you take those depositions if
18 it's not necessary for the plaintiff to use it
19 for his expert that he has to come forward with
13:26:06 20 by February the 1st?

21 MR. PETROSINELLI: The answer is
22 we don't need to. The plaintiffs put in their --

23 THE COURT: Why are you putting it
24 in there, then? Why do you want to say -- come
13:26:14 25 back later on and say, by golly, you ordered that

1 we can take those depositions by that time and
2 we're going to stick to it. We want them now.

3 MR. PETROSINELLI: Two reasons.

4 THE COURT: So you can
5 cross-examine the plaintiffs' expert, right?
13:26:24

6 MR. PETROSINELLI: No. Two
7 reasons. One, because the plaintiffs had
8 suggested in their plan that December 1st, 2010
9 be a date on which depositions of bellwether
10 plaintiffs can occur.
13:26:36

11 And Two, one of the things -- and maybe we
12 misunderstood the Court. But when we were at the
13 first status conference, we thought Your Honor
14 had said that you wanted discovery to proceed on
15 sort of two tracks; that is, a general causation
13:26:48 16 track and also getting cases worked up --
17 specific plaintiff cases worked up so that we
18 could select bellwether plaintiffs early.

19 We don't need that. And if the Court --
13:27:00 20 I'm happy to say we can push that date back
21 really as far as we want. That date is
22 insignificant to us. We don't need that. The
23 plaintiffs don't need that. So if that's
24 something that is concerning the Court, we can
13:27:14 25 take that off the calendar. Because really, we

1 don't --

2 THE COURT: You don't even talk
3 about bellwether plaintiffs. You just talk about
4 plaintiffs, period.

13:27:22 5 MR. PETROSINELLI: Right.

6 THE COURT: And I'm a little
7 confused about that, too, because I thought we
8 talked about when and what method we were going
9 to use by designating the bellwether plaintiffs.
10 But you may not be able to designate who is going
11 to be the bellwether plaintiffs before you have
12 taken several depositions of plaintiffs.

13 MR. PETROSINELLI: Right. We're
14 happy to take that off the calendar. That has no
15 relationship to what we're giving them before
16 their general causation expert reports.

17 THE COURT: All right. Now, what
18 makes you think that -- well, I know what you
19 think. Explain to me why you think that sales
20 representatives, pharmaceutical reps, marketing,
21 and their correspondence between themselves and
22 what directions they've been getting from Pfizer
23 and FDA could not be possibly relevant to general
24 causation.

13:28:14 25 MR. PETROSINELLI: Right.

1 Remember, now, under our plan, Your Honor, we're
2 giving them those documents.

3 THE COURT: I understand that.

4 MR. PETROSINELLI: Before their
13:28:20 5 expert reports are due.

6 THE COURT: You don't think they
7 should be allowed to take the deposition?

8 MR. PETROSINELLI: I don't. And
9 the reason is this: To me, it is a simple test.
13:28:30 10 I think to myself: What could a sales and
11 marketing person say that would be relevant to
12 the issue -- a scientific question; that is, does
13 the medication cause scientifically these adverse
14 health effects? There's nothing.

13:28:42 15 THE COURT: Well, let me just ask
16 you: What if the pharmaceutical rep goes to a
17 doctor's office -- I'm just trying to understand
18 it -- and promotes the product. And the doctors
19 say, "I'm sorry. You know, I can't do that
13:29:00 20 because I've had some problems with my patients.
21 And I can't -- you know, it is not a good
22 product. You ought to let them know up high."
23 And the rep goes back, and in a conference call,
24 they have those big huge conference calls or in
13:29:14 25 an email, he or she writes back and says, "hey,

1 look. I've been informed that this is a problem.
2 Have y'all checked that out? I don't want to go
3 back to that doctor's office and say there's no
4 problem. I want to be proactive. I want to be
13:29:26 5 able to tell them there's not a problem; they've
6 checked it out. Help me out with it." And let's
7 say there's an email back from somebody, saying,
8 "yeah. We're aware of those problems. But we
9 don't have to worry about them or --" I'm not
13:29:38 10 saying that's what -- let's just say worst case
11 scenario.

12 MR. PETROSINELLI: Worst case,
13 right.

14 THE COURT: They would need that.

13:29:46 15 MR. PETROSINELLI: Your Honor,
16 that may be relevant to a lot of other things in
17 their claims, like, their failure-to-warn claim
18 or something. It's not relevant to the
19 scientific question of does this product cause
13:29:56 20 this injury. That is a scientific question that
21 is driven by scientific data. There is no expert
22 in the world that, in giving an opinion on
23 causation, would rely on an email from one person
24 to another or --

13:30:10 25 THE COURT: Let me just tell you

1 this: What if the answer is not "we know there's
2 a problem, but there's nothing to worry about"?
3 What if the answer is: "We have tested the
4 product; it has X chemical, Y chemical, Z
13:30:20 5 chemical. We have tested all the other things
6 that are in it. And those chemicals cannot cause
7 those injuries, so go back and tell your doctor
8 that we have tested all of those and those -- the
9 way our product is made up, that product cannot
13:30:38 10 cause that. They must have been caused by
11 something else."

12 And let's say there's something about the
13 products -- I mean, the chemicals that are
14 actually in the product that says, this is what
13:30:48 15 we have done. It doesn't work on the -- doesn't
16 work on the brain with respect to the dopamine,
17 blah, blah, blah.

18 Let's just say there is a fact email about
19 what it's actually made of and the research that
13:31:02 20 went into it as a response to that rep. Wouldn't
21 that be relevant?

22 MR. PETROSINELLI: Two responses.
23 Yes. They're going to get that because that
24 response would come from a medical person. So
13:31:12 25 they're going to get that file, and they're going

1 to be able to depose that medical person who
2 wrote that email.

3 THE COURT: What if it's not a
4 medical person that wrote it?

13:31:22 5 MR. PETROSINELLI: Well, if it's
6 not a medical person, then it suggests, Your
7 Honor, that it really isn't relevant to general
8 causation because then it has nothing to do with
9 science.

13:31:28 10 THE COURT: Well, what if a
11 non-medical person within Pfizer had that
12 information from Pfizer medical people and sent
13 it back to the rep?

14 MR. PETROSINELLI: Your Honor, I
13:31:36 15 think it's still not relevant to the scientific
16 question of general causation.

17 THE COURT: Okay. All right. Let
18 me hear from the plaintiffs.

19 MR. CORY: Your Honor --

13:31:44 20 THE COURT: I mean, I've read what
21 you filed, obviously.

22 MR. CORY: Your Honor, we have a
23 lot of things we could talk about with respect to
24 this issue. And I guess what I'm going to do, if
13:31:54 25 it's all right with the Court, I'm going to let

1 Dave Suggs start off with our presentation on why
2 we disagree with the plaintiffs. And I want
3 Blair, his partner, to introduce Dave to you and
4 tell you a little bit about him. He's a lot
13:32:12 5 smarter than I will ever be, I guess.

6 MR. HAHN: Blair Hahn, Richardson
7 Patrick. Dave can answer any of the specific
8 questions you have. We thought it might be
9 instructive to the Court just to understand who
13:32:26 10 Mr. Suggs is. He is with my firm for the last 25
11 years. He has specialized in the discovery of
12 pharmaceutical mass torts. That's all he's done.
13 And the list includes Dalkon Shield, Copper-7,
14 L-Tryptophan, Albuterol, Norplant, diet drugs,
13:32:44 15 PPAs, Dytrexil, Heparin. So he is our expert,
16 Your Honor. Mr. Suggs.

17 THE COURT: All right. Go ahead.

18 MR. SUGGS: Your Honor, is the
19 microphone up here live?

13:32:54 20 THE COURT: I think so.

21 THE COURTROOM DEPUTY: Yes, ma'am.

22 MR. SUGGS: Your Honor, we believe
23 that the plaintiffs' plan incorporates what Your
24 Honor said you wanted at the last hearing, first
13:33:02 25 focus on getting the discovery common to all

1 cases from Pfizer and whatever third parties are
2 appropriate. And then next after getting that
3 discovery, there should be a bifurcation of
4 general causation discovery and bellwether
13:33:14 5 plaintiffs' specific discovery.

6 Now, to accomplish those, we propose that,
7 first, we need all the documents. We need all
8 the documents. We don't just need what they say
9 we need. I'm sorry, but we don't trust Pfizer.
13:33:26 10 We want to see it all.

11 Then we propose that after getting the
12 documents, we file the usual practice of having
13 that discovery -- depositions followed by generic
14 expert depositions, and generic -- pardon me.
13:33:38 15 Generic expert liability and generic expert
16 causation depositions. And let me be clear about
17 those terms. Because I think there's been some
18 confusion here. Or I may be confusing.

19 When I'm talking about generic experts,
13:33:52 20 I'm talking about an expert who will provide
21 opinions regarding either general causation
22 and/or general liability.

23 And when I refer to general causation, the
24 question there, I agree with defense counsel, is
13:34:04 25 whether Chantix can cause particular types of

1 injuries to anyone. And with respect to general
2 liability, in this case like almost every other
3 drug case, it's going to come down to: What was
4 Pfizer's duty to warn? When did they know that
13:34:18 5 they had an issue and when did they actually warn
6 about it?

7 Now, on the other hand, Pfizer's proposed
8 a complete document production not until March 1,
9 2011. That's almost a year from now.

13:34:28 10 THE COURT: Well, I'm just going
11 to tell you all the dates -- just going to tell
12 you right now all the dates are going to be
13 shortened. Every one of them. I mean, you stood
14 here less than a month ago and told me: A year
13:34:40 15 and a half from now, we're going to try these
16 cases. And I'm already at the end of 2011, and
17 that's almost two years from now.

18 MR. SUGGS: I'm glad to hear that,
19 Your Honor.

13:34:50 20 THE COURT: Don't worry about
21 that. I'll set the time.

22 MR. SUGGS: The main problem that
23 we have with the defense plan, first, they're
24 forcing us to designate our experts before we
13:35:00 25 have all the cards on the table. And then after

1 we've designated them, then they're going to give
2 us some more documents and --

3 THE COURT: I understand what
4 defendant's theory is. I want to know what you
13:35:08 5 have to say about why some of those documents are
6 necessary.

7 MR. SUGGS: Well, Your Honor, in
8 every case I've ever been involved in, there have
9 been documents produced from custodial files that
13:35:18 10 address both generic causation and also generic
11 liability facts. It is a mix.

12 For example, one of the documents that
13 we -- from the Zyprexa litigation that we
14 attached to our brief was a document that was
13:35:34 15 generated in 2000 that was a labelling proposal.
16 It wasn't the scientific document. Didn't come
17 from the files of a scientific person. It came
18 from this global products labelling committee
19 files, which would be another custodial file,
13:35:50 20 where they were talking about changing the
21 labelling because they had found a three-fold
22 increase in the risk of hyperglycemia with the
23 drug in Zyprexa users as compared to placebo.

24 That was the only evidence we ever saw.
13:36:04 25 Well, it was the first evidence we saw from the

1 company as to that kind of risk. And it wasn't
2 in a scientific document. It wasn't in the
3 database. And it sure wasn't in what they had
4 provided the FDA. The stuff that they give the
13:36:16 5 FDA, that is thoroughly scrubbed, cleaned, tied
6 up with a ribbon before they ever send it out the
7 company door.

8 Where you get the really disclosing stuff
9 is in the internal emails going on. And it's not
10 always -- we're not talking about getting
11 custodial files of everyone either. I mean,
12 they've identified 18 people who they say are the
13 scientific folks that we need to be concerned
14 about.

13:36:38 15 Well, you know, I'm not sure if that 18 is
16 going to stand up. We may, after we get into
17 this, see we need another ten or 20 folks who
18 they didn't happen to have on their list.

19 THE COURT: Now, I thought they
13:36:48 20 had given you 30 people. I know they wanted to
21 split them up in 18 and 12.

22 MR. SUGGS: 18 was the scientific
23 folks.

24 Another problem that we have here is not
13:37:16 25 only with respect to the number of documents and

1 the number of --

2 THE COURT: Wait. We were at the
3 middle of the 18 and the 12.

4 MR. SUGGS: The 18 -- at least
13:37:24 5 they say that's medical folks.

6 THE COURT: But you want all 30?

7 MR. SUGGS: We want them all. We
8 want all the documents before we start taking
9 depositions of anybody.

10 THE COURT: Well, I want to make
11 sure I'm hearing you right. You're not just
12 saying you want the depositions of the 30 and the
13 documents from the 30; you also might find that
14 you want more documents --

15 MR. SUGGS: Well, as we go on,
16 Your Honor --

17 THE COURT: -- from other people?

18 MR. SUGGS: As we go on, we may
19 find out when we look at the documents from John
13:37:50 20 Smith that he had a lot of communications with,
21 you know, Jane Doe and Jane Doe isn't on their
22 list. It may turn out that we may need some
23 folks as we go down. Another problem --

24 THE COURT: Where did you have
13:38:02 25 that covered in your proposal?

1 MR. SUGGS: I don't believe it's
2 actually specifically --

3 THE COURT: I didn't think so
4 either.

13:38:06 5 MR. SUGGS: But we would assume we
6 would be able to come back to the Court and upon
7 showing of good cause, you know, demonstrate the
8 need for something else.

9 But another thing --

13:38:12 10 THE COURT: Not so fast.

11 MR. SUGGS: I'm sorry.

12 THE COURT: Not so fast.

13 MR. SUGGS: Okay.

14 THE COURT: Do you have it in
13:38:16 15 there?

16 MS. SUTTON: Yes.

17 THE COURT: Where is it?

18 MR. HAHN: Page 8, Your Honor,
19 plaintiffs' proposal, Number --

13:38:30 20 THE COURT: Supplemental
21 production? Okay.

22 MR. HAHN: Number 6, Your Honor.

23 THE COURT: Number 6?

24 MR. HAHN: I believe that's right.

13:38:40 25 THE COURT: Oh, okay. That's when

1 you talk about your master -- I got you. All
2 right. Go ahead.

3 MR. SUGGS: Another problem I
4 wanted to point out to Your Honor was that we
13:38:50 5 have a big dispute with defendants as to the
6 cutoff period for documents. They don't want to
7 produce any custodial files to us after July,
8 2008, which is a year before the black box
9 warning. We need to have those documents at
13:39:06 10 least up through the black box warning and
11 preferably as recently as we possibly can.

12 A lot of those custodial files will deal
13 with why it was that they were required to have a
14 black box warning, the science behind that, what
13:39:22 15 the FDA said to folks about that in Pfizer. Also
16 too, Your Honor, we know that there are studies
17 going on conducted and sponsored by Pfizer that
18 started after September -- probably after July,
19 2008. And we need to find out what those studies
13:39:42 20 are and what they're about.

21 If I can hand this up to Your Honor -- you
22 got a copy for them? This is a document, Your
23 Honor, from -- it is a printout of a web site
24 from the U.S. National Institute of Health. And
13:40:08 25 it refers to a study apparently sponsored by

1 Pfizer entitled Assessing Neuropsychiatric
2 Symptoms, Including Depression, Anxiety,
3 Irritability, and Suicidal Thoughts or Behavior
4 in Subjects Quitting Smoking on Varenicline,
13:40:22 5 Tartrate, or Placebo.

6 And apparently, this was last updated in
7 September 14, 2009. It's well after the cutoff
8 date that they want to have for us with respect
9 to custodial files. And I can't imagine a study
13:40:40 10 that may be more relevant -- at least needs to be
11 considered by everybody -- than at least the
12 title of this would indicate.

13 THE COURT: And when was that
14 done?

13:40:48 15 MR. SUGGS: Well, apparently it's
16 completed -- this --

17 THE COURT: It was at least
18 updated by September 14?

19 MR. SUGGS: September 14, 2009.

13:40:56 20 THE COURT: And you want the
21 document --

22 MR. SUGGS: Related --

23 MR. CORY: Your Honor, under their
24 plan, they wouldn't have to give us that
13:41:04 25 document.

1 THE COURT: Well, I understand
2 that. I know that your proposed -- but I'm not
3 seeing -- I didn't see anything in the
4 defendant's proposal that referred to Number 7 on
13:41:20 5 Page 8 and that plaintiffs' proposal, which is
6 defendant's initial production of documents shall
7 include documents generated on or before July
8 31st, 2009 (black box label change). And I
9 didn't see any limit on time.

13:41:40 10 MR. SUGGS: I believe there is
11 with respect to the custodial files, Your Honor.

12 MR. CORY: With respect to
13 custodial files, Your Honor, the defendant's
14 position is it's 2008. July 1, 2008 is when
13:41:52 15 they'll stop production of documents related
16 to --

17 MR. SUGGS: Your Honor, what we're
18 proposing in Paragraph 8 is that the parties
19 agree to meet and confer concerning supplemental
13:42:02 20 production of defendant's documents generated on
21 or after August 1, 2009 and on or before December
22 31, 2009. So we want to have the documents --
23 the custodial files up through that period of
24 time, Your Honor.

13:42:18 25 THE COURT: I understand that.

1 But where do you see defendant limiting it to --

2 MR. PETROSINELLI: Your Honor, in
3 fact, we haven't -- counsel is incorrect. We
4 would agree to produce the custodial files
13:42:32 5 through July 31st, 2009.

6 THE COURT: Yeah. That's what I
7 thought. Because it's not addressed in the
8 proposed order.

9 MR. SUGGS: I apologize, Your
13:42:40 10 Honor. I was under the mistaken assumption
11 apparently it was only through 2008.

12 MR. CORY: Your Honor, here's our
13 point: They want to give us the documents up and
14 to the point of the black box warning.

13:42:50 15 THE COURT: Right.

16 MR. CORY: Any documents after the
17 black box warnings they don't want to give us.

18 Our position is a lot of the important
19 documents that are going to be coming to the
13:42:58 20 company are going to be coming after the black
21 box warning. And we agreed amongst ourselves, as
22 a compromise, just give us the remaining
23 documents through 2009 and we will leave that as
24 a good cutoff date unless we come back to the
13:43:14 25 Court with good cause. It's not --

1 THE COURT: Well, let me just tell
2 you: I read this as not having participated in
3 any discussions between the two of you, the two
4 sides. But I don't see anything in defendant's
13:43:26 5 proposal regarding custodial files -- I don't see
6 anything that refers to either July 31st, 2009,
7 which is what you propose in Number 7, or
8 anything that says the parties agree to meet and
9 confer, which is your proposal. I don't see
13:43:46 10 anything where the defendant says we won't do
11 that. I mean, it's not in here. Was that just
12 an oversight?

13 MR. PETROSINELLI: No. No.
14 Mr. Cory is correct; that his Number 7 and 8 --
13:44:00 15 we don't have any problem with Number 7 and 8.
16 Seven, we are agreeing to produce our initial
17 production through July 31st, 2009. And we're
18 agreeing to meet and confer concerning a
19 supplemental production. That was never an
13:44:12 20 issue.

21 THE COURT: So you're willing
22 to -- assuming that you can have a meeting and
23 confer and to produce custodial files up through
24 December 31st, 2009?

13:44:22 25 MR. PETROSINELLI: No. There is

1 some custodial files as to which, for example,
2 people stopped working at the company in early
3 2009. So we wouldn't produce a supplemental --

4 THE COURT: No. No. I understand
5 that.

6 MR. PETROSINELLI: But we wanted
7 to meet and confer with them about which
8 individual we're talking about. That's why we
9 agreed to meet and confer.

10 THE COURT: Okay. Is that an
11 issue here, then, from the plaintiffs' side?

12 MR. CORY: It's not an issue
13 anymore, Your Honor. I didn't know they would
14 agree to meet and confer.

15 MR. SUGGS: Glad we cleared that
16 up, Your Honor. I apologize if I muddied the
17 waters.

18 THE COURT: Well, I just didn't
19 read it the way you read it. Maybe you're a
20 little too antagonistic to start off.

21 MR. SUGGS: It could well be, Your
22 Honor.

23 As we see it in a nutshell, the problems
24 we have with Pfizer's plan is that it forces our
25 experts to develop their opinions about the facts

1 before all the cards are on the table.

2 And if that happens -- and, by the way, I
3 should point out, too, that some of these experts
4 that we're going to have for general causation
13:45:18 5 are also going to talk about general liability.
6 Because what they're going to be able to do is
7 testify, yes; Chantix can cause certain injuries
8 to people. But on the liability side, they're
9 also going to testify, if they have access to the
13:45:34 10 facts and the custodial files, that Chantix --
11 pardon me. That Pfizer had evidence --
12 sufficient evidence of an association between the
13 drug and the injury that a warning should have
14 been issued back at thus-and-such time.

13:45:48 15 Now, if we split this up into just solely
16 general causation and have a separate whole track
17 for generic liability and we're talking about the
18 same expert, that means we're going to be having
19 supplemental reports and supplemental depositions
13:46:04 20 of the same expert --

21 THE COURT: Supplemental Daubert
22 motions which I will have to hear.

23 MR. SUGGS: It will be a mess.

24 THE COURT: Stop. Stop. I have a
13:46:12 25 question. Do you think it is necessary for you

1 to -- or plaintiffs to get any depositions of any
2 plaintiffs prior to your designating your expert,
3 general causation expert?

4 MR. SUGGS: I don't believe so. I
13:46:32 5 think we ought to have that, in fact, be a
6 separate track.

7 THE COURT: Okay. All right. So
8 you just want everything Pfizer has in terms of
9 custodial files and data and scientific files
10 through July 31st, 2009, and after that date,
11 meet and confer?

12 MR. SUGGS: Yeah.

13 THE COURT: All right. Okay.
14 Before you have to --

15 MR. SUGGS: Before we have to
13:46:58 16 designate our experts. We want all the cards on
17 the table.

18 MR. CORY: Well, Your Honor, one
19 other point, we also think it's important that we
13:47:06 20 get all the documents before we start deposing
21 their witnesses. The last thing we want to do is
22 depose a witness, say, in July or August and then
23 ultimately find out a month later that we get a
24 supplemental production of documents and we
13:47:18 25 missed information and will be in a situation

1 where we may want to re-depose a witness. So I
2 think for efficiency, we need all the documents,
3 evaluate them one time, take one fact deposition
4 of their witnesses, and be done with that
13:47:36 5 witness. I think that's the most efficient way
6 to do it.

7 THE COURT: But you want to have
8 all those documents that you're claiming here,
9 and you want to be able to take the depositions
13:47:44 10 of the witnesses that either authored or had
11 something to do with those, if you desire to do
12 that, prior to designating your expert?

13 MR. CORY: Right.

14 THE COURT: I got you.

13:47:54 15 MR. CORY: To the extent they have
16 any relevant testimony, we want to get it one
17 time.

18 MR. HAHN: Your Honor, if I may
19 add, we're talking about 40 million documents is
13:48:02 20 what they've told us they're going to produce.
21 So we're going to need ample time to look at all
22 those documents before we start taking
23 depositions.

24 THE COURT: Well, I understand.
13:48:10 25 And you don't want me to say that you've got to

1 do it tomorrow.

2 MR. HAHN: Yes, ma'am. We'd
3 proposed nine months from when we got all the
4 documents until our experts were designated -- we
13:48:18 5 thought we could do all the depositions and look
6 at all the documents in that time period. That
7 was our original proposal, which I think is
8 ambitious, but I think we can do it.

9 MR. SUGGS: Your Honor, if you
13:48:30 10 don't have any further questions, I'll move back
11 to the table.

12 THE COURT: That's fine. Thank
13 you.

14 MR. SUGGS: Thank you.

13:48:38 15 THE COURT: All right. Let me go
16 back to Mr. Cory.

17 MR. CORY: Yes, ma'am.

18 THE COURT: You have on Page 12 --
19 we're talking about depositions now. Not
13:48:46 20 production of documents. Just depositions of
21 common fact witnesses currently or formerly
22 employed by Pfizer, including any depositions
23 blah, blah, blah may commence April 1st, 2010.
24 Depositions of witnesses selected for trial -- do
13:49:06 25 we need to have that in this management order?

1 MR. CORY: Your Honor, I think
2 until such time as the parties meet and confer
3 and develop a bellwether pattern to present to
4 you, we don't need to put that in there.

13:49:18 5 And with respect to my Number 12, the
6 April 1 commencement date, just so that you're
7 clear, the idea behind that is if we thought
8 prior to the production of documents we wanted to
9 take a 30(b)(6) deposition of someone just to get
13:49:32 10 some general information, we might do it. But --
11 and I need to confer with my co-counsel on it,
12 but if they give us the documents, as they say
13 they're going to give us, we're going to be
14 plenty busy that we're not going to have time to
13:49:46 15 take a 30(b)(6) deposition for a while.

16 So I realistically believe that if we
17 start getting the documents, we're going to be
18 busy until we're ready to take witnesses. It
19 will probably be late summer before we're ready
13:49:58 20 to start taking depositions. Agreed, Joe?

21 MR. PETROSINELLI: Yeah. I think
22 that's right.

23 THE COURT: All right. Now, do
24 you want to take any plaintiffs' depositions
13:50:04 25 before plaintiff puts up their expert?

1 MR. PETROSINELLI: No.

2 THE COURT: Can I leave all that
3 out about plaintiffs' depositions and bellwether
4 and we can come back and talk after we've had the
13:50:18 5 issue of general causation and liability experts?
6 I understand what you're talking about generic
7 liability and generic causation. I hadn't
8 thought about the same expert doing both, but
9 that makes sense.

13:50:30 10 MR. CORY: Your Honor, we're so
11 convinced that we're going to win on the general
12 causation theory --

13 THE COURT: That you don't want to
14 wait?

13:50:36 15 MR. CORY: -- that we would like
16 to -- we have no problem further along as far as
17 developing a bellwether track and moving forward
18 with taking depositions.

19 THE COURT: Can I put that in a
13:50:48 20 separate order?

21 MR. CORY: Yes, ma'am.

22 THE COURT: Would you have any
23 problem with me developing that?

24 MR. CORY: No, ma'am.

13:50:56 25 THE COURT: Now, what I might do

1 is -- just because I'm not sure I have enough
2 input from y'all and I understood about this
3 enough before today to draft that -- I will draft
4 it. And I will suggest to send -- suggest a
13:51:16 5 proposal and then you make your comment on it.

6 MR. CORY: Your Honor, if you will
7 give us some ideas about what you're thinking
8 about doing, maybe Joe and I can sit down and
9 save you the effort of doing it and try to -- and
13:51:26 10 put it on us instead of you.

11 THE COURT: Okay. I won't do it
12 right this minute, but I will let you know.

13 MR. CORY: Yes, ma'am.

14 THE COURT: You might feel -- I
13:51:34 15 have a feeling you feel safer if you and Joe do
16 it than if I do it.

17 Okay. Let's see. I thought there was one
18 more thing that you had in there. Okay.

19 There was an issue about the privilege
13:52:14 20 log. And I think that -- I'm just going to tell
21 you: I'm going to adopt plaintiffs' proposal on
22 the privilege log.

23 MS. SUTTON: Thank you, Your
24 Honor.

13:52:22 25 THE COURT: That probably makes

1 sense. That's what the privilege logs are for.

2 Let me get back to my agenda. What I plan
3 to do is go through your proposed pretrial order,
4 with the clarification I've gotten here today,
13:52:36 5 and see about working out compromises between the
6 two sides' suggestions with respect to request
7 for production and depositions of the Pfizer
8 people and then work out a -- hopefully a
9 compromise on the experts and Daubert motions and
13:52:54 10 then have a separate track for -- it may be in
11 the same order. I don't know. We'll see. About
12 the bellwether plaintiffs. Document -- that's
13 Number 4 on the agenda.

14 Is there anything else that needs to be
13:53:08 15 said about discovery?

16 MR. HAHN: Your Honor, Blair Hahn.
17 We're a little confused at this side of the table
18 as to what you're expecting from us at this
19 point. Are we waiting for you to produce --

13:53:18 20 THE COURT: I'm not expecting
21 anything else from y'all. I'm going to sit back
22 with my law clerk with what you've said here
23 today and why you have the desires you have that
24 you put in and try to figure out what would be
13:53:32 25 fair to both sides and do -- I'm going to

1 modify -- I'm not going to sign off on what you
2 proposed. I can assure you I'm going to sit down
3 and modify.

4 But if I decide to put nothing in about
13:53:42 5 bellwether in this -- bellwether plaintiffs in
6 this, I may call on you and say, hey, do a
7 separate proposal for discovery on the bellwether
8 plaintiffs' cases.

9 MR. HAHN: Thank you.

13:53:54 10 MR. CORY: Thank you.

11 THE COURT: Did you have anything
12 else on the discovery issue, Pfizer?

13 MR. PETROSINELLI: No, Your Honor.
14 I think we're fine.

13:54:02 15 THE COURT: Okay. Document
16 production protocol --

17 MR. CORY: Your Honor, if I might,
18 we really don't have an issue there. As you can
19 imagine, with 40 million documents likely being
13:54:16 20 produced, we're having to hire a third-party
21 vendor -- we're in the process of negotiating --
22 that should probably get done this week. And I
23 think that Joe and I probably can get together
24 and get that resolved and get something back to
13:54:28 25 you shortly, Your Honor.

1 THE COURT: Okay.

2 MR. CORY: Thank you.

3 THE COURT: Is that right, Joe?

4 MR. PETROSINELLI: Yes, it is,

13:54:34 5 Your Honor.

6 Mr. Cory just reminded me, too: One thing
7 on the plan -- our folks -- not he and I, but our
8 folks are still working out some of the exhibits
9 to the plan, like, the fact sheets. We didn't
10 give those to the court. They are voluminous. I
11 think we'll be able to work through those. But
12 he and I will work those out. And those will be
13 attached to whatever plan we have.

14 THE COURT: All right. Then
13:54:58 15 there's the MDL 2092 web site. I had Naomi Kipp,
16 my permanent law clerk, work on that. And we
17 came up with -- there's a web site. And it is
18 Minnesota U.S. Courts.gov MDL. If you go to the
19 Minnesota District Court's regular home page,
13:55:28 20 there is an MDL button that you just push on.
21 And it has who the judge is. And it has a list
22 of what is on the web site. It has an
23 introduction about what the litigation is about.
24 It has copies of all orders. And I think it has
13:55:50 25 who to contact -- actually, it has introduction

1 orders, special masters' orders -- we don't have
2 that -- forms, contacts, which I think is
3 important, calendar reports, transcript filing
4 and viewing in ECF/PACER, disclaimers, local
13:56:04 5 rules, PACER-related sites, and so on.

6 I think the three most important -- four
7 most important are the introduction, the orders,
8 the contacts, and maybe transcripts is what -- if
9 you go any other way where -- and I notice
13:56:18 10 there's some -- like, the Fen-Phen cases, there
11 is a www.Fen-Phen1203.com. That's a wholly
12 separate issue that is not -- web site that's not
13 maintained by the Court.

14 And then we had one where -- in a Vioxx
13:56:40 15 where it is maintained by the Court but due to
16 the fact it has Vioxx first, the Court has to pay
17 for it separately from what else the Court pays
18 for. This one that the Minnesota District Court
19 did is free to the Court. And I'm all for
13:56:54 20 anything that's free. I guess you all are, too.

21 So would y'all look at that and see if
22 that's something you can work with and then just
23 get me back suggestions about what you think else
24 should be on there?

13:57:08 25 MR. CORY: Yes, ma'am.

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1 MR. PETROSINELLI: Yes, Your
2 Honor. That sounds good.

3 THE COURT: I mean, there is a
4 really nice short introduction about what this
13:57:16 5 is -- what the litigation is about. And I think
6 it's real important that every order is in there
7 and the contacts. That's the most -- if you want
8 more on there, let me know.

9 I don't think summaries are particularly
13:57:32 10 good because whoever makes the summaries might be
11 subject to making mistake. I think it's better
12 just to have the direct orders in there and then
13 go from there.

14 Is there anything else we need to take up?

13:57:42 15 MR. CORY: I think we're done,
16 Your Honor.

17 MR. PETROSINELLI: No, Your Honor.

18 MR. CORY: You got something?

19 MR. HAHN: We have potential date
13:57:50 20 changes for court hearing. A and B. We had
21 suggested to the Court last time that the 1:00
22 o'clock hearing would work better for travel.
23 And we're now of the opinion that a morning
24 hearing would work better for travel if it would
13:58:02 25 work with the Court.

1 THE COURT: Okay. I want you to
2 know that May the 20 -- the last Tuesday in May,
3 whatever that is, is going to be changed.
4 Because that's two days after my daughter's
13:58:16 5 wedding. And I have company from Europe, and I'm
6 not going to have MDL in the middle of that. So
7 that's going to be changed. And I'll get you a
8 date real soon instead of that.

9 MR. CORY: I'm two days past my
13:58:30 10 son's wedding, and I'm still recovering.

11 MR. PETROSINELLI: Your Honor, the
12 conference for March, the last Tuesday in March
13 is the 30th. That's a week where, just from
14 surveying the group, a lot of us have kids of
13:58:42 15 school age who are on spring break and are going
16 on vacation. And we wondered whether the Court
17 could do the Tuesday before; that is, March 23rd.

18 THE COURT: Do you have my
19 calendar?

13:58:56 20 THE COURTROOM DEPUTY: I have
21 mine.

22 THE COURT: Yours is fine.

23 (Discussion off the record.)

24 THE COURT: Yeah. I am wide open
13:59:48 25 on March the 23rd. I don't know how that

1 happened, but that's fine. What time?

2 MR. PETROSINELLI: Well,
3 consistent with what Mr. Hahn said, could we do
4 it in the morning at 10:00 a.m.?

13:59:56 5 THE COURT: Yeah. If that's okay.

6 MR. HAHN: That would be great,
7 Your Honor. That way we can get out early
8 afternoon and go home.

9 THE COURT: Okay. Let's look
14:00:04 10 at -- we might as well look at May. The one in
11 April would change to -- it would change to 10:00
12 on April the 27th.

13 MR. PETROSINELLI: That's correct,
14 Your Honor.

14:00:30 15 MR. CORY: Your Honor, do you want
16 to skip May, do it June?

17 THE COURT: I don't want to do it
18 the week before the wedding either, I can tell
19 you. We can do it June the 1st at 10:00 if
14:00:42 20 that's what you want to do.

21 MR. CORY: June the 1st?

22 THE COURT: Yeah. It's right
23 after Memorial Day. I don't know if that's a
24 problem.

14:00:50 25 MR. CORY: That's the Tuesday

1 after Memorial Day.

2 MR. HAHN: That would be a problem
3 for travel.

4 MR. CORY: What about Wednesday?

14:00:58 5 THE COURT: Wednesday will be
6 fine. It's wide open. Is that okay?

7 MR. PETROSINELLI: Yes, Your
8 Honor.

9 THE COURT: 10:00 o'clock.

14:01:06 10 MR. CORY: June 2nd.

11 THE COURT: All right. Thank you.
12 I'll get you something. And if I get in doubt,
13 I'm going to just call y'all or send you
14 something by email.

14:01:14 15 MR. HAHN: Thank you, Your Honor.

16 (The Proceedings were concluded at
17 approximately 2:01 p.m. on February 23, 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 31st day of May of 2010.

Cheryl K Powell

Cheryl Renae King Powell, CCR, RPR, FCRR
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