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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

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IN RE: PRADAXA)	3:12-md-02385-DRH-SCW
(DABIGATRAN ETEXILATE))	
PRODUCTS LIABILITY ACTION)	MDL No. 2385
_____)	

This Document Relates to:

ALL CASES

TRANSCRIPT OF PROCEEDINGS
STATUS CONFERENCE
MAY 2, 2014
BEFORE THE HONORABLE DAVID R. HERNDON
CHIEF UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiffs: Michael A. London, Seth A. Katz,
Roger C. Denton, Mikal C. Watts, Tor A. Hoerman,
Mark R. Niemeyer, Steve Davis

For the Defendant: Dan H. Ball, Beth S. Rose,
Paul W. Schmidt, W. Jason Rankin, Tom Della Croce

Court Reporter:	Laura A. Esposito, RPR, CRR
	U.S. District Court
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Proceedings recorded by mechanical stenography;
transcript produced by computer.

1 **(Court convened)**

2 THE COURT: We have quite a few items on the
3 agenda, so we're going to go ahead and convene the monthly
4 conference for the Pradaxa MDL No. 2385. Seth Katz and
5 Dan Ball are at the podium, it would appear. So first item
6 on agenda you'd like to talk about, gentlemen?

7 MR. KATZ: Your Honor, Seth Katz for the
8 Plaintiff's Steering Committee.

9 First item is: Outstanding discovery request from
10 Michelle Kliewer deposition. That's been resolved. And
11 kind of as part of a trickle down issue to the the chambers
12 preconference, the PSC served our eighth set of
13 interrogatories and our first request to admit. We asked
14 the Court to shorten the time, and the ultimate time agreed
15 to shorten was 15 days from today.

16 THE COURT: The second item on the agenda,
17 Mr. Ball, I think that was?

18 MR. SCHMIDT: May we take one item out of order?

19 THE COURT: Sure, absolutely.

20 MR. SCHMIDT: If Mr. London and I could briefly
21 address Item 7.

22 Your Honor has ruled on the issue of the motion
23 regarding timing of RE-LY review results. We had some
24 questions in chambers as to how it applied. On our end, we
25 understand that the provision directing us to provide

1 documents within five days of completion of the report
2 applies to our full document set, which creates challenges,
3 which we're working to do. And Your Honor also said that if
4 we require or wish to seek relaxation as to certain classes
5 that are hard to produce in that timeframe, then we need to
6 do that, and so we will obviously comply with that.

7 On the Plaintiffs' side, I understood that they
8 said that they would hold -- they would produce reports as
9 due, that they would hold out opinions on this specific
10 issue and cover those in their supplement once the documents
11 were produced.

12 MR. KATZ: Right. Our understanding is that the
13 Court, in essence, reduced the prior ten days of giving
14 Boehringer time to make their discovery production to five
15 days, while still giving us the report as soon as it's
16 available.

17 And the other aspect that Mr. Schmidt mentioned is
18 that we will be producing our expert reports. We have all
19 the experts that we're going to tender on May 8th; however,
20 experts that are going to be opining on the missed leads in
21 the RE-LY study will give their opinions on all other
22 issues. Their opinions on the missed leads in RE-LY will be
23 disclosed for the first time in the supplemental disclosure
24 that's due to be made after we receive the discovery.

25 MR. SCHMIDT: The only other thing I would say,

1 Your Honor, is we've tried to keep the Court updated on
2 where this process stands. We've appreciated the
3 confidentiality Your Honor has afforded to this process and
4 so I gave Your Honor information in chambers subject to that
5 confidentiality, with the PSC there, of course. We're
6 working as hard as we can to get this done by May 7th, to
7 get the documents produced as quickly as possible, and if
8 there's categories, as Your Honor said, that we identify
9 that are more challenging in terms of those five days, we'll
10 come back to the Court.

11 THE COURT: Right. Very good. Thanks,
12 Mr. Schmidt.

13 MR. SCHMIDT: Thank you, Your Honor.

14 THE COURT: Okay. Mr. Katz, I think we're on
15 No. 2. I don't know whether you're going to take that.

16 MR. KATZ: We are on to No. 2. I'm going to let --
17 there are several issues that were discussed regarding
18 Higgins. I think that generally they've either been
19 resolved or we will await formal motion by Boehringer with
20 regard to an issue relating to pathology recuts.

21 MR. BALL: Okay. So here's where we stand. The
22 first issue in Higgins was related to the deposition of
23 Dr. Dickerman. That has been substantially delayed in
24 getting the deposition done. I was advised, while we were
25 in the prehearing conference, that it's now been set for

1 May 8th at noon or so. I will just say, I still don't have
2 any e-mail or notification of that officially, and I would
3 like that, number one.

4 Number two, on that, I would also like the -- I
5 think the Court ordered that the name of the lawyer
6 representing Dr. Dickerman be supplied to us. And number
7 three, that because it's going to be made, if there is to be
8 any reference to Dr. Dickerman's testimony in any of the
9 Plaintiff expert reports, that that will be done within
10 three business days of the deposition, and it will be
11 limited to one or two experts, if any. And the Plaintiffs
12 said they didn't think there would be any supplementation of
13 any of their reports because of that, but if it occurs,
14 that's the parameters that were agreed to.

15 MR. KATZ: That's fine, Your Honor. If it does
16 need to occur -- and again, the Plaintiffs don't envision it
17 is what I'm told -- three days is fine, and obviously it
18 would be limited to a very discrete number of experts.

19 MR. BALL: The next issue on *Higgins* involves a
20 discussion about pathology slides, some photographs taken by
21 us and some recuts taken by the -- or arranged for by the
22 Plaintiffs. There was a spirited debate about that, and the
23 Plaintiffs -- the Defendants will file a motion asking for
24 certain information about the circumstances surrounding the
25 recuts and the Plaintiffs will respond within ten days of

1 receipt.

2 MR. KATZ: We await anxiously await their motion,
3 Your Honor.

4 THE COURT: I'm sure.

5 MR. BALL: The third area on Roman Numeral II is
6 that the primus pretrial order setting forth the motion
7 deadlines, etc., has been agreed to by the parties and will
8 be submitted to the Court for consideration forthwith.

9 THE COURT: Very good.

10 MR. BALL: On Roman Numeral III, this was
11 resolution of a part of Case Management Order No. 50
12 relating to attorney's fees. That matter has been resolved
13 by the parties and the parties will submit a minute order
14 reflecting that that is no longer an issue.

15 MR. KATZ: We agree.

16 THE COURT: Very good.

17 MR. KATZ: No. 4 is the preservation of BIPI
18 starter kits. This is a new version of a starter kit that
19 Boehringer's starting to use. They've asked the PSC if we
20 have any objection to, when they collect the old version,
21 that they have permission to destroy them, and the agreement
22 we've reached is that if the starter kit comes back from the
23 sales representative unaltered, we have a template, and it
24 can be destroyed. If it comes back with any highlighting,
25 marking, or any alteration from its original state, those

1 starter kits will be preserved. In the event that it's from
2 a sales representative whose file has to be produced, it
3 will be produced at the relevant time.

4 And the last piece of the agreement is that these
5 starter kits have either a pill or a series of pills of
6 Pradaxa in them, and the company will be removing the pills
7 upon receipt back from the sales representative before they
8 preserve any that would have to be preserved or produced.
9 The PSC is okay with that. The indication is that the
10 company will be removing it. If the starter kit came back
11 with the pills already removed, they'll let us know that if
12 it ever has to be produced, and that the removal of any
13 pills will not alter the authenticity or any evidentiary
14 aspect of any starter kits that are returned.

15 *MR. DELLA CROCE:* The only correction to that --
16 Seth is aware of this -- is actually they have a vendor who
17 removes the pills according to regulatory guidelines.

18 *MR. KATZ:* The pills will be removed by the vendor.
19 If Your Honor would like us to submit something in the
20 minute order, Tom and I can get together; otherwise, we're
21 happy to have this record be sufficient.

22 *THE COURT:* If you want to submit it, that's fine;
23 otherwise, this record will be --

24 *MR. KATZ:* Then we'll just let the record stand as
25 the memorialization of the agreement.

1 MR. DELLA CROCE: Agreed, Your Honor.

2 THE COURT: No. 5?

3 MR. KATZ: No. 5, report on the sales rep files,
4 relates to the approximately 300 additional sales rep files
5 that were late in being placed on the litigation hold that
6 came up, I think two conferences ago. And Your Honor
7 ordered certain information be disclosed to the Plaintiffs
8 Steering Committee about it. We've done our analysis on
9 that information. I know that Mr. Hoerman had been talking
10 with Eric and Beth about Boehringer providing a little bit
11 more information on that as it relates to Plaintiffs whose
12 doctors these were -- whose reps these called on, and we're
13 expecting that that information be produced to us next week.

14 MR. HUDSON: That's correct.

15 THE COURT: Thanks, Mr. Hudson. Anything else on
16 that?

17 MR. HUDSON: No, Your Honor.

18 THE COURT: Okay. No. 6?

19 MR. HUDSON: No. 6. Eric Hudson, Your Honor, on
20 Plaintiff Fact Sheets. We want to report to the Court two
21 things: One, we've been going through the PFS deficiency
22 process for a long time now. Starting to have a few cases
23 where things have not been resolved and we're engaging in
24 final meet-and-confers on those. And also, we've seen what
25 I would generally describe as kind of a downturn in the

1 quality of information being provided in certain blocks of
2 Plaintiff Fact Sheets, including dates of treatment for the
3 alleged injury.

4 We're embarking on a round of deficiencies on
5 those, but, you know, we may be coming back to the Court on
6 those if they're not resolved, and we would hope that we
7 don't have to do deficiencies every time for information
8 like that.

9 THE COURT: All right.

10 MR. KATZ: Your Honor, on that, the PSC has offered
11 to help in any way we can. We stand behind the fact sheet
12 process. We know its importance in the litigation. To the
13 extent that defense counsel needs our help in trying to
14 enforce compliance, we're happy to provide it if we can.

15 THE COURT: Yeah. Plaintiff Fact Sheets are
16 critical to the viability of the litigation in many, many
17 respects. I would encourage everybody to work hard to be
18 thorough in completing the Plaintiff Fact Sheets. We've
19 done No. 7 already. No. 8?

20 MR. BALL: Yes. That is the -- we had a motion
21 concerning the filing under -- not filing under seal of the
22 RE-LY issue -- the RE-LY motion that has now been placed
23 under seal per Court order of yesterday, and the Plaintiffs
24 have been ordered to respond within 14 days to that motion.

25 THE COURT: No. 9?

1 MR. KATZ: No. 9: BII custodians who have revoked
2 their consent since their custodial files were produced in
3 the MDL. That's an issue that came up with a state court
4 case, with regard to a state court case, and there are three
5 custodians who I guess have -- are from BII and have revoked
6 their consent to make their custodial files available:
7 Gabriele Merdes, Andreas Clemens, and a Ms. Heising.

8 MS. ROSE: Ranier Heising.

9 MR. KATZ: Mr. Ranier Heising. Hearing about it in
10 the state court case was the first we've heard about it. We
11 need to speak with Ms. Rose about what ramifications it
12 plays both in state courts that are cooperating with the PSC
13 and if there's any impact for discovery in the MDL, which
14 we're told at this point we do not believe there should be.

15 MS. ROSE: At this point I don't believe that
16 there's any impact on the MDL, but I will confer with
17 Mr. Katz and his colleagues, and if there's an issue, we can
18 report that to the Court.

19 THE COURT: Thanks, Ms. Rose.

20 The last item, expert deposition schedule?

21 MR. BALL: Yes. The present expert deposition
22 schedule is very tight, and also there's a presumption built
23 in that the Plaintiffs go first and then Defendant's expert
24 second, and there have been some discussions about
25 attempting to modify that schedule to make it more workable.

1 And what the parties have agreed is there will be a
2 meet-and-confer process on that promptly, and if we reach an
3 impass, then we may be asking for the Court's involvement in
4 that to resolve that impass.

5 MR. KATZ: We'll work on it on a witness-by-witness
6 basis. Hopefully there won't be an issue as we get down the
7 road.

8 THE COURT: All right. So that's all the items on
9 the agenda.

10 The next conference will be June the 3rd, 3:30.

11 MR. KATZ: Thank you, Your Honor.

12 THE COURT: Okay. Thanks. We're adjourned.

13 ***(Court adjourned)***

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REPORTER'S CERTIFICATE

I, Laura A. Esposito, RPR, CRR, CCR(MO), Official Court Reporter for the U.S. District Court, Southern District of Illinois, do hereby certify that I reported in shorthand the proceedings contained in the foregoing 11 pages, and that the same is a full, true, correct, and complete transcript from the record of proceedings in the above-entitled matter.

Dated this 5th day of May, 2014.
