

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA
3 ORLANDO DIVISION

4 Case No.: 6:21-md-03006-RBD-DAB

5 In Re: Tasigna (Nilotinib) Products Liability Litigation

6 ROBERT MERCED, ROBERT WITT, TERESA GUSTIN,
7 PAMELA GUSTIN, CHARLOTTE DEAN, RANDY POITRA,
8 DOUGLAS ISAACSON, JEFFREY GIANCASPRO,
9 RONALD HURD, ALLEN GARLAND,
10 ANNETTE SCHIMMING, ESTATE OF GERALD MIELKE,
11 DEBRA CRAIG, CURTIS PEDERSON, BRUCE BECKER,
12 SHEILA COLELLA, RONALD TONGE, STEPHEN LALLY,
13 ROBIN DAVIS, ROGER BURKE, BILLY MILLER,
14 LISA PINSON, EMILY RILEY, MARY ELLEN GALE,
15 POLLY HARRIS, GREGORY FITCH,
16 TIMOTHY BRANDREIT, RONALD BAYACK, THE ESTATE
17 OF TERRY CAVINS, SHELLY CAVINS-SAUER,
18 KEVIN MCMAHON, WESLEY O'SHIELDS,
19 CHRISTINE KIRSCHBAUM, and BRUCE CASTON,

20 Plaintiffs,

21 v.

22 NOVARTIS PHARMACEUTICALS CORPORATION,

23 Defendant.
24 _____/

25 Orlando, Florida
August 5, 2022
2:01 P.M. - 2:36 P.M.

26 **TRANSCRIPT OF DISCOVERY HEARING**
27 **BEFORE THE HONORABLE DAVID A. BAKER**
28 **UNITED STATES MAGISTRATE JUDGE**

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Also Present:

Charna L. Gerstenhaber
Jennifer L. Lamont
Eric D. Meyer
Novartis Pharmaceuticals
Corporation In-House Counsel

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P R O C E E D I N G S

(Call to order of the court at 2:01 P.M.)

THE COURT: The clerk will call the case.

THE COURTROOM DEPUTY: Case No. 6:21-md-3006,
In Re: Tassigna Products Liability Litigation.
Counsel, please make your appearances for the record,
beginning with the plaintiffs.

MR. OXX: Christopher Oxx for the plaintiffs.

MR. BIGGS: Harrison Biggs for the plaintiffs.

MS. WICHMANN: Lawana Wichmann for the plaintiffs.

MR. SILVERMAN: Raymond Silverman on behalf of the
plaintiffs. Good afternoon, Your Honor.

MR. REISSAUS: Andrew Reissaus for Novartis
Pharmaceuticals Corporation.

MR. JOHNSTON: Robert Johnston for Novartis.

MS. SHIMADA: Elyse Shimada for Novartis.

MR. REISSAUS: We also have in-house counsel from
Novartis on the line: Eric Meyer, Jennifer Lamont, and
Charna Gerstenhaber.

THE COURT: All right. I set this hearing largely
because -- well, because you notified me there was a dispute,
and we've got about five weeks left of discovery, so I wanted
to get this resolved as quickly as we can.

And I guess I identify three main issues as discussed
in your papers. So I see them as Defendant's objections to how

1 the plaintiffs are trying to proceed with their requested
2 discovery. So I'll hear first from the defendants.

3 **MR. REISSAUS:** Thank you, Your Honor. Just to -- the
4 three disputes that all -- I will address are -- the first is
5 the primary dispute, which is the designation of testimony from
6 fact witnesses who were deposed prior to the issuance of
7 Plaintiffs' 30(b)(6) notice. And then the remaining two
8 objections have to do with topics that seek testimony regarding
9 foreign regulatory activity and regarding an alleged duty to
10 add a boxed warning to the U.S. prescribing information. I'll
11 take those in order.

12 The issue with the designation of testimony provided
13 by witnesses who have been deposed already in this MDL,
14 provided -- because back in February, on February 7th and again
15 on April 13th, Mr. Johnston got up in front of Plaintiffs and
16 the Court at the status conferences and raised the need to have
17 a timely Rule 30(b)(6) notice, and we pointed out that there
18 would be problems if it came in late in the discovery period.

19 Now, Plaintiffs made a decision to withhold their
20 notice until May 27th, and as a result numerous important fact
21 witnesses whose work directly relates to six of the seven
22 topics in the notice have already been deposed. The gaming of
23 this process is an end run to get a second or even a third or a
24 fourth bite at the apple with these witnesses. The timing of
25 the notice deprived NPC of the ability to prospectively

1 designate these folks as 30(b)(6) witnesses before they were
2 deposed.

3 There are four witnesses at issue. The -- all of
4 their depositions occurred before Plaintiffs' original notice
5 on May 27th, and for each of these four witnesses, their work
6 aligns with these topics for the time periods that we've
7 designated them, and we've agreed to produce people to fill
8 additional time periods and aspects of the notice that might
9 not be covered by these folks. Plaintiffs have not said what
10 they would ask differently to these folks if they were produced
11 again for deposition or if new witnesses were produced, and
12 nothing about the answers that they provided has been
13 identified as inadequate.

14 So the four witnesses are Neil Gallagher, who was the
15 global program head during the 2014 to 2016 time period that's
16 covered by the notice, and this is Topics 5, 6, and 7 for him.
17 He is a former employee who we certainly would have designated
18 had we had this notice in hand before his deposition. He's now
19 a chief science officer at another pharmaceutical company. We
20 can certainly -- could ask him to appear again. I strongly
21 suspect he would tell us no. He's not under our control. But,
22 again, Rule 30(b)(6) allows us to designate anyone of our
23 choosing who would be an appropriate witness to testify on the
24 topics in the notice, and Dr. Gallagher is.

25 The second witness is Karen Habucky. She has been

1 deposed now for -- on three different days by Mr. Elias, and
2 she was, again, someone whose role puts her in a spot where she
3 is the right person to testify on these topics, Topics 5, 6,
4 and 7, again. She -- as global program regulatory lead for
5 Tasigna, she was involved with communications with FDA and with
6 foreign regulators, namely, Health Canada, which Plaintiffs
7 have focused on in their questioning of Ms. Habucky and others.
8 And later she served as U.S. medical strategy -- medical
9 affairs strategy lead for Tasigna, and she was involved very
10 closely with Topic 2 during that time. She was involved with
11 the preparation of a draft briefing, which is really the
12 subject matter that underpins that topic in Plaintiffs' notice.
13 She's an appropriate and correct witness for it. She's been
14 deposed multiple times now, and it would be appropriate to
15 designate her testimony here.

16 The final two are U.S. marketing custodians,
17 David Domsic and Michael Petroutsas. They served at different
18 times in U.S. marketing leadership roles for Tasigna; and,
19 obviously, that makes them appropriate because of the work they
20 were doing to testify about what Novartis was doing with regard
21 to marketing and promotion with Tasigna during their time on
22 the team, and that is what their depositions were about.

23 The -- what we have proposed to do here to designate
24 the prior testimony of these witnesses, who were deposed prior
25 to Plaintiffs issuing this notice, is appropriate and in line

1 with the case law. We've -- would provide a lengthy string
2 cite in Footnote 2 on page 8 of our brief. And that testimony
3 recognizes, where the witnesses were asked questions on the
4 topic and answered those questions and are appropriate
5 witnesses to designate, it's okay to do it after the fact. And
6 the case law that Plaintiffs cite just doesn't have bearing on
7 and doesn't override those cases in that lengthy footnote.

8 The -- two of the cases that they cite, including this
9 Court's opinion in the *Prater* case, did not even involve a
10 defendant that offered to designate testimony from a witness
11 who had already been deposed. Rather, the defendants there
12 moved to quash a 30(b)(6) notice. That's not what we're doing
13 here. There is case law to support quashing this notice, but
14 that is not the position we've taken. Instead, we have
15 proposed to designate the witnesses who were in role and
16 appropriate folks for these topics on those -- their portions
17 and to fill in the remaining gaps with an additional witness.

18 The cases that Plaintiffs cite also rely on a prior
19 version of Rule 26, before proportionality was integrated into
20 the rule explicitly, and that really is an underpinning of our
21 argument here, is that the discovery that's being sought is
22 unnecessarily burdensome and -- both to Novartis and the
23 witnesses, and it shouldn't be allowed here. The risk of
24 duplication is hard, and the cases, including *Dongguk*
25 *University* and the banks cases that we cite, outline how

1 Rule 30(b)(6) is not a tool to allow duplicative discovery.
2 It's not for duplicating questions that were previously asked.

3 And, again, the plaintiffs here -- the real purpose of
4 Rule 30(b)(6) is when you get a situation where a parade of
5 witnesses are unable to answer questions because they're the
6 wrong people. You can't find the guy to depose to give you the
7 facts that you need to develop the case. That isn't what's
8 going on here in this litigation.

9 We -- Plaintiffs had a 30(b)(6) deposition on
10 corporate structure. They had six prior depositions of NPC
11 witnesses, including multiple 30(b)(6) witnesses from prior
12 cases, and tens of millions of pages of records and documents.
13 They got the right people in the chair. They just chose to
14 hold the 30(b)(6) notice.

15 And, again, Plaintiffs say they would like to ask
16 questions differently -- they might have asked questions
17 differently, but they haven't put any substance to that.

18 With regard to the remaining two objections, the --
19 the foreign regulatory topic, we -- and the alleged duty to add
20 a boxed warning, we agree with Plaintiffs that the question of
21 admissibility at trial is not the question for here today.
22 What the question is is whether proportionality considerations
23 should limit the plaintiffs' ability to seek burdensome
24 discovery here where it's unlikely to move the needle because
25 the evidence is unlikely to be admissible at trial.

1 So with regard to a boxed warning, Plaintiffs have a
2 topic in their notice about NPC's decisions with regard to
3 warning for Tasigna. What was the medical evidence? What was
4 the safety evidence? And what did you propose to FDA and what
5 happened? But to have a topic that seeks to ask why or why
6 didn't you ask for a boxed warning is -- it's really an end run
7 to seek a legal conclusion about the regulatory framework and
8 the topics should be struck.

9 With regard to foreign regulatory activity, which is
10 in both Topics 6 and 7, it is -- that discovery is not
11 necessary here where this is about U.S. labeling, and we
12 have -- Your Honor, you've heard the argument on this point
13 previously with search terms. The difference here today is
14 that we're looking -- Plaintiffs are looking to require
15 Novartis to prepare a witness or multiple witnesses to testify
16 about regulatory activities in Europe and in Canada, and that
17 is a different sort of burden to take someone away from their
18 work at Novartis Pharmaceuticals Corporation to prepare to be
19 able to testify about activities that were taken by the local
20 company in Canada, which is a different entity than NPC, and
21 likewise with Europe. Those are different people, different
22 work. What matters is the U.S. labeling in this litigation.
23 And based on that burden, we're asking that the Court limit
24 those -- that aspect of the deposition as well.

25 Your Honor, if you have any questions, I'm happy to

1 address them.

2 **THE COURT:** Where do we stand in terms of time limits?

3 **MR. REISSAUS:** Plaintiffs have some time left. I
4 believe they're around 55 or 60 hours on the record right now
5 with questioning.

6 **THE COURT:** And the three witnesses, other than
7 Mr. Gallagher -- are they all still employed or affiliated with
8 Defendant?

9 **MR. REISSAUS:** No, Your Honor. Only Ms. Habucky is a
10 current employee. The other three are former employees.

11 **THE COURT:** Let me -- let me hear from Plaintiffs.

12 **MR. OXX:** Thank you, Your Honor. Chris Oxx on behalf
13 of the plaintiffs.

14 Your Honor, nothing about the discovery that
15 Plaintiffs seek here is duplicative. The bottom line here,
16 Your Honor, is that a 30(b)(6) deposition and a fact witness
17 deposition are markedly different. As this Court has held and
18 as -- is the precedent of this circuit, a deposition pursuant
19 to 30(b)(6) is not the same as fact witness testimony.
20 Under --

21 **THE COURT:** Well, we all understand that. Let me ask,
22 why have you delayed so long to get your designation out?
23 These issues were known before you filed suit.

24 **MR. OXX:** So, Your Honor, I don't agree with
25 Defendant's characteristic -- characteristic that we delayed

1 significantly in getting these notices out. We waited until a
2 reasonable time, after we had adequate document production, to
3 analyze the documents and determine which topics we wanted to
4 question about. These --

5 **THE COURT:** Well, you had -- you had enough ability to
6 go ahead and depose these -- the witnesses that Defendant now
7 says are their 30(b)(6) people.

8 **MR. OXX:** Well, quite frankly, Your Honor, given the
9 time frames that we had to complete fact discovery, we had no
10 choice. I mean, ideally, we would have preferred to have
11 waited until document production was completed before we took
12 any depositions, but that just wasn't an option given the
13 timing in which NPC took to complete document production and
14 the deadline that we had to complete fact discovery. We had to
15 get started. We had to get started with the fact witnesses.

16 And I'm not aware of nor has NPC pointed out any rule
17 that requires Plaintiffs to issue their 30(b)(6) notice prior
18 to issuing fact witness --

19 **THE COURT:** No. But, logically, it would have made
20 sense. You know, I start from the proposition that the party
21 seeking discovery is the master of their notice and the party
22 responding is the master of and bound by its designated
23 representatives. And I also start from the general proposition
24 that -- obviously, there's a difference in how you prepare your
25 questioning and the purpose of a 30(b)(6) versus a fact

1 deposition, but, you know, people are people, and questions are
2 questions. And there is, again, a logical problem with saying,
3 "All right. Ask all your questions of this fact witness,"
4 knowing that -- to use, let's say, a basketball analogy, that
5 you're down by two and you take a two-pointer. Well, if you'd
6 known you were down by three, you would have taken a three.
7 And some scoring change happens afterwards. There's a little
8 element of that here. I understand that.

9 But what -- what is it that you want from these people
10 that you didn't ask? Give me an idea.

11 **MR. OXX:** Well, Your Honor, it would be difficult to
12 lay out the entire line of questioning that we would intend to
13 raise with these witnesses, but there are certainly additional
14 documents that were not covered with these witnesses. There's
15 additional lines of questioning that weren't covered with these
16 witnesses on these topics.

17 NPC has not requested here that we be precluded from
18 asking the same questions that we asked to those witnesses.
19 They've asked that we be barred from asking questions about the
20 entire time period that those witnesses worked on Tassigna
21 regardless of whether or not their testimony covered that time
22 period for those topic areas. So their ask isn't "Don't
23 retread the same ground you did with those witnesses," "Don't
24 ask those witnesses about the same documents," or "Don't ask
25 those witnesses the same questions." Their ask is "You had

1 your chance to ask those witnesses about these topics, so now
2 you're barred from their entire time period that they worked on
3 Tassigna whether or not that was covered or not."

4 You know, that those topics were touched on during
5 those depositions should not act as a bar to any further
6 questioning about them in a 30(b)(6) environment. I can
7 somewhat understand Your Honor's point about re-asking
8 identical questions, but that's not what NPC has requested
9 here. They've attempted to bar us from an entire time period
10 of questioning.

11 **MR. REISSAUS:** May I respond briefly, Your Honor?

12 **THE COURT:** Well, I'm not sure Mr. Oxx is finished.
13 He didn't cover the other two topics, and I'm not sure he was
14 done with this one.

15 **MR. REISSAUS:** I'm sorry, Your Honor.

16 **MR. OXX:** Sure. I will just point out, Judge, that
17 the case law that Novartis has cited in support of the
18 proposition that they're able to retroactively designate
19 witness testimony as 30(b)(6) testimony all comes from outside
20 of this circuit. Not a single case is from the
21 Eleventh Circuit, and the case law cited in Plaintiffs' brief
22 that stands for the opposite proposition is all from this
23 circuit.

24 And NPC wrongly characterizes the cases that Plaintiff
25 cites as not covering a case where the defendant asked for a

1 retroactive designation. The *Castle-Foster* case out of the
2 Southern District of Georgia involves that exact circumstance,
3 and the defendants' request to do so was denied.

4 Moving on to the other topics, Your Honor, as to the
5 foreign discovery issue, you know, it's Plaintiffs' position
6 that this issue has largely already been briefed before the
7 Court. You know, in the context of search terms, Plaintiffs
8 argued that the foreign regulatory entities should be included
9 as search terms, and the Court agreed, and documents were
10 produced using those search terms. It's a foreseeable and
11 logical result that those documents could lead to deposition
12 testimony, and the activities of Novartis in the foreign realm,
13 especially with regard to Health Canada, is highly relevant to
14 this litigation.

15 You know, as the Court is aware, one of Plaintiffs'
16 major claims here is that the label in Health Canada is a much
17 stronger label than the one in the United States and contains a
18 much stronger warning than the U.S. label. You know, that
19 label supports Plaintiffs' failure to warn claims here.

20 As far as the issue regarding the boxed warning, we
21 simply disagree with NPC's assertion that inquiry into why NPC
22 did not add a black box warning is preempted here. Plaintiffs
23 cite cases from the Middle District of Florida in their
24 briefing that say otherwise. Specifically, we are allowed to
25 inquire into why they did not go to the FDA and request a black

1 box warning.

2 In addition, one note on Topic 7, NPC in their briefing
3 asked the Court to strike Topic 7 in its entirety based only on
4 the black box issue. However, Topic 7 also seeks testimony
5 regarding the stronger warning in the warnings and precautions
6 section of the Canadian label and does not simply limit it to
7 the black box warning. So there's more to Topic 7 than that
8 one issue.

9 Thank you, Judge.

10 **THE COURT:** Tell me how -- I'm not going to inquire
11 about prior litigation, but in this case how much time have you
12 spent deposing each of these four witnesses that we're
13 principally concerned with today?

14 **MR. OXX:** Judge, I would say, on average, each of
15 those depositions was around five hours -- four to five hours.
16 I believe Ms. Habucky's may have been around six hours, but the
17 other three were four to five.

18 **THE COURT:** And you -- you dodged my question a little
19 bit about what else you want to know from these witnesses. I
20 wasn't asking for all your lines of questioning or all your
21 questions. But what's your anticipation as to how long you
22 would need with each witness?

23 **MR. OXX:** Your Honor, I don't imagine we would need
24 more than a couple hours on each topic.

25 **THE COURT:** Each topic for each witness?

1 **MR. OXX:** Well, there's six topics -- or seven topics
2 total.

3 **THE COURT:** 7 times 2 is 14, times 4 is 56.

4 **MR. OXX:** Oh, no, no. Each -- I'm sorry, Judge. So
5 each -- presumably, each witness is going to be there to
6 testify about one or two topics. So I was saying for each
7 topic, you know, we would need a couple hours, meaning 14 hours
8 total across all of the witnesses.

9 **THE COURT:** All right. Let me hear back from
10 Defendant.

11 **MR. REISSAUS:** Your Honor, I'd like to point out that
12 the -- the subject matter of these seven topics were in the
13 complaint at filing. Health Canada has been on their mind from
14 the start. There's no surprise there. The idea that doctors
15 might want to switch patients from Gleevec to a more
16 efficacious drug, Tassigna, and marketing related to the
17 scientific data on that has been a part of Plaintiffs'
18 complaint. And the idea that there should be a boxed warning
19 on the label in the United States based on what happened in
20 Canada -- that has been their theory of the case from the very
21 first case.

22 And Plaintiffs just now clarified -- they made clear
23 and said their goal is to say that because there is a boxed
24 warning in Canada, there should be one in the U.S. That is not
25 an admissible -- that is not a theory of liability that is

1 going to work. It doesn't. You can't say FDA should have done
2 something because Health Canada did something. That's
3 inadmissible.

4 The -- it is hard for us to prepare additional
5 witnesses if we don't know what the gaps Plaintiffs think are
6 still out there are. I mean, Ms. Habucky, Dr. Gallagher, the
7 U.S. marketing folks -- they're the right people. They can
8 answer the questions. We assumed Plaintiffs asked the things
9 they wanted to know about, and if there's more and it's
10 different, we'll -- we can prepare witnesses better if we know
11 what's different, but we still don't know even after this
12 hearing today.

13 I do want to point out I don't think I can get
14 Dr. Gallagher to show up again. He -- he was not happy to be
15 deposed the second time in this MDL and --

16 **THE COURT:** Well, are you going to be producing him at
17 trial?

18 **MR. REISSAUS:** I'd love to convince him. I can't tell
19 you I'd be able to.

20 **THE COURT:** Where is he physically?

21 **MR. REISSAUS:** He's in Chicago. He -- he appeared for
22 deposition in New Jersey --

23 **THE COURT:** Undoubtedly, he considers he has better
24 things to be doing. I wouldn't doubt that.

25 **MR. REISSAUS:** Correct.

1 **MR. OXX:** Judge, if I may just point out, Defendants
2 have no obligation to produce Dr. Gallagher. It's a 30(b)(6)
3 notice. They never produce anyone that they -- that they
4 choose to prepare --

5 **THE COURT:** Well, they have an obligation to produce
6 the best witnesses to respond to your categories, and, you
7 know, there's always a lot of play in that and judgment and all
8 sorts of logistics, everything else, and judge about who makes
9 a good witness, who has -- you know, all the things that make
10 trial lawyers successful if they do it right. So I understand
11 that.

12 **MR. JOHNSTON:** Your Honor, can I -- can I address that
13 real -- just real quick? Two seconds?

14 I have the right to select the person I want to select
15 or my client wants to select.

16 **THE COURT:** That's what I'm saying. I agree with --

17 **MR. JOHNSTON:** I don't have to choose the person Chris
18 has to -- Mr. Oxx has to. So thank you.

19 **THE COURT:** I agree with that.

20 **MR. OXX:** Sure, but not --

21 **THE COURT:** I don't have any doubt about that.

22 **MR. OXX:** -- if he's not going to show up.

23 **MR. JOHNSTON:** Yes, but he --

24 **THE COURT:** Well --

25 **MR. JOHNSTON:** He did show up previously, and if you'd

1 noticed it ahead of time, we could have dealt with those --

2 **THE COURT:** No. De, de, de, de.

3 **MR. JOHNSTON:** -- topics while he was there.

4 **THE COURT:** I understand that argument. All right.

5 **MR. REISSAUS:** Your Honor, I have two very brief
6 things.

7 **THE COURT:** Yeah. Keep going.

8 **MR. REISSAUS:** The -- while it may be theoretically
9 possible to prepare someone else on these topics, the question
10 is, under the case law that we have cited, is it appropriate to
11 designate fact witnesses who testified on those topics
12 considering the burden to prepare people who were not in those
13 roles? So I can't -- if I can't get Dr. Gallagher to come
14 back, I have to find somebody brand new who can learn up his
15 stuff. That's a burden that's unnecessary here, and that's --
16 that's where the proportionality factor really comes into play.

17 And, finally, I do want to point out that we do cite
18 to the *Rollins* case in the Eleventh Circuit, and two out of the
19 three cases that Plaintiffs cite on the proposition that a
20 defendant had trouble doing what they wanted to do on the
21 30(b)(6) notice -- two out of the three of those did not
22 involve offering to adopt prior testimony as the designation.
23 Only a single one did. And a district court opinion, even if
24 it's in the Eleventh Circuit, does not control here. Again,
25 the weight of the authority, far in favor of doing this where

1 the facts line up like they do here. Thank you.

2 **THE COURT:** All right. I'm correct, am I not, that
3 Judge Dalton has made no ruling on the issue of preemption as
4 it relates to the boxed warning?

5 **MR. OXX:** Correct.

6 **THE COURT:** So -- all right. Well, I was hoping I was
7 going to just rule here and let you get -- spoil your weekends
8 by worrying about what I just said. Instead, I think I'm going
9 to spoil my weekend and think about this some more, which
10 probably will also spoil your weekends, not knowing exactly
11 what I'm going to do. But I hope -- certainly hope to get
12 something out Monday, and if anybody feels inclined to bring it
13 up at our conference with Judge Dalton, take your chances on
14 that.

15 I will note Judge Harz was invited to join us. She
16 was unavailable today on short notice. But she told me to
17 proceed without trying to reschedule. So I did have a
18 conversation with her about -- just about that, about timing.

19 So I'm going to take it under advisement over the
20 weekend and try to get you an order out on Monday, and we'll go
21 from there.

22 **MR. JOHNSTON:** Your Honor, can I ask you one unrelated
23 question?

24 **THE COURT:** Sure. I was going to ask you one.

25 Okay. Good. I'm sorry. I didn't mean to interrupt.

1 We -- Mr. Reissaus, unfortunately, tested positive for
2 COVID, so we were wondering -- and there was actually an ask
3 from at least some lawyers on the plaintiffs' side about doing
4 Wednesday virtually. How would we -- I know you don't speak
5 for Judge Dalton, but do you have any advice as to how -- the
6 best way to proceed to sort of investigate that option would
7 be?

8 **THE COURT:** Well, as you may have perceived, of the
9 two federal judges on this case, one is happier to do Zoom than
10 the other, and I would say that doesn't just apply to this
11 case. Since I took over for Judge Kelly in January, I've done
12 dozens of these, and Judge Dalton doesn't like them. Not to
13 say he hasn't done them, but we -- we view them differently.
14 If you'd like, I will inquire, because if you file a motion,
15 he'll consider it, but you're going uphill.

16 Now, COVID is COVID. When -- I was covering for one
17 of my colleagues who came back from a trip COVID positive, so I
18 took over his duty calendar. You know, we -- we cope. We all
19 cope. Unfortunately -- most people who are even testing
20 positive, fortunately, are not terribly symptomatic. Not to
21 say some aren't but -- or at least for a little while, and
22 that's one reason why I like Zoom. It just gives us a chance
23 to avoid that and to appear when you shouldn't be in person
24 with people.

25 So, anyway, I'll make an inquiry, and we'll get word

1 out to you whether it's worth your while to file a motion or
2 whether --

3 **MR. JOHNSTON:** We appreciate that, Your Honor. We
4 understand that you don't have the final say, but any -- any
5 help would be -- as to how to proceed -- I mean, some of us can
6 be there, but I was going to have Mr. Reissaus probably
7 handle -- well, I'm not really sure exactly what we're going to
8 talk about on Wednesday, but if it's about discovery, I was
9 planning to have Mr. Reissaus handle it, assuming he's able to.

10 So, anyway, thank you for, you know, taking that into
11 consideration, and I'm sorry I interrupted you before you --

12 **THE COURT:** That's okay.

13 **MR. JOHNSTON:** -- asked your other question.

14 **THE COURT:** I just wanted to throw out, generally --
15 I've got your -- a proposed agenda and got your report,
16 obviously, that led to this hearing. How are things going
17 generally otherwise? Just --

18 **MR. REISSAUS:** Your Honor, we have --

19 **THE COURT:** -- not to be binding on anything here, but
20 what's the vibe?

21 **MR. REISSAUS:** I have -- we're -- we're working
22 through the work, as we have been. There's -- there's a few
23 scheduling things on a couple depositions that are out there
24 where we proposed some dates to Plaintiffs, and we're working
25 through that. Hopefully, we'll get those pinned down; and, you

1 know, based on your ruling on this -- on the 30(b)(6) notice,
2 we'll have folks prepared and offer dates for them as well.

3 **THE COURT:** All right. If I -- I forgot the last time
4 we talked, and it actually doesn't really affect this case
5 because I got specially assigned to it before I started
6 covering for Judge Kelly. But Judge Kelly has officially
7 retired, so I've -- I've inherited all of his docket now with
8 some help from one of my colleagues in Iowa, who's helping me
9 mostly remotely, just so you know what I'm up to. And that
10 will be true -- I suspect I will keep this case till -- till we
11 finish it in the district court because Judge Dalton asked me
12 to last year, even before Judge Kelly was -- was having his
13 issues.

14 So a little bit of what's going on with the court,
15 we're now advertising for a new magistrate judge. If you know
16 of anybody who wants to apply, it's open; and for what it's
17 worth, it's a pretty good job.

18 Anyway, so that's what's going on. We'll see you-all
19 next week. I'll get your ruling out, I hope, on Monday, and
20 we'll see you one way or another on Wednesday.

21 All right. We are in recess.

22 (Proceedings concluded at 2:36 P.M.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from the Zoom electronic sound recording of the proceedings in the above-titled matter.

s/Heather Suarez
Heather Suarez, RPR, FCRR, CRR
U.S. Official Court Reporter

08/29/2022
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