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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
CASE NUMBER 6:21-md-3006

IN RE:

TASIGNA (NILETINIB) PRODUCTS LIABILITY LITIGATION

.....	:	
ROBERT MERCED, ET AL.,	:	
	:	
Plaintiffs,	:	
	:	Orlando, Florida
v.	:	June 13, 2022
	:	1:02 - 1:35 p.m.
NOVARTIS PHARMACEUTICALS	:	
CORPORATION,	:	
	:	
Defendant.	:	
.....	:	

TRANSCRIPT OF STATUS CONFERENCE

BEFORE THE HONORABLE ROY B. DALTON, JR.  
UNITED STATES DISTRICT JUDGE  
AND  
THE HONORABLE DAVID A. BAKER  
UNITED STATES MAGISTRATE JUDGE  
AND  
THE HONORABLE RACHELLE L. HARZ  
NEW JERSEY SUPERIOR COURT JUDGE

Court Reporter: Amie R. First, RDR, CRR, CRC, CPE  
Federal Official Court Reporter  
401 West Central Boulevard, Suite 4600  
Orlando, Florida 32801  
AmieFirst.CourtReporter@gmail.com

Proceedings recorded by Realtime Stenography.

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1 APPEARANCES:

2

3 Counsel for Plaintiffs:

- 4 Richard M. Elias
- 5 Christopher C. Oxx
- 6 Harrison M. Biggs
- 7 Lawana S. Wichmann

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9 Counsel for Defendant:

- 10 Robert E. Johnston
- 11 Andrew L. Reissaus

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P R O C E E D I N G S

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(Court called to order.)

THE DEPUTY CLERK: Case Number 6:21-md-3006,  
In Re: Tasigna Products Liability Litigation versus  
Novartis Pharmaceutical Corporation.

Counsel, if you could please state your  
appearances for the record starting with the plaintiff.

MR. ELIAS: Good morning, Your Honor. Richard  
Elias on behalf of the plaintiffs joined by Lawana  
Wichmann, Chris Oxx, and Harrison Biggs.

THE COURT: Good morning.

MR. JOHNSTON: Your Honor, Robert Johnston for  
Novartis with Andrew Reissaus.

THE COURT: Good morning.

I'll share with you all I started my day with an  
absolutely horrific sentencing this morning. So if there's  
such a thing as looking forward to my Novartis meeting, it  
happened today. So I just thought I would share that with  
you.

And I know that principally we've got on the  
docket some questions about the status of discovery and the  
plaintiffs' request for additional time in the scheduling  
order.

So, Mr. Elias, I think it might be most productive

1 if we start off and let me hear from you. Maybe flesh out  
2 for me a little bit of what's been accomplished to this  
3 point in time, what you anticipate doing going forward.

4 I know you have some things that are immediately  
5 in the hopper, but I'd really like to get a sense as to  
6 what your discovery plan is overall moving forward and it  
7 will help me to know what you've done up to this point in  
8 time.

9 MR. ELIAS: Yes, Your Honor.

10 So up to this point in time we are scheduling and  
11 taking depositions in haste. Since the last time we talked  
12 in April, we hadn't had a single deposition at that point  
13 in time. We were still working through those issues.

14 The parties have been working very well together  
15 in getting depositions scheduled. We've taken seven  
16 depositions to date. We have four -- or, actually, we have  
17 five -- four additional depositions that we've agreed to  
18 dates on. And there are five outstanding notices including  
19 the 30(b)(6) that we have at least noticed. We haven't  
20 agreed to dates as of yet.

21 So in terms of what has happened, that's where  
22 we're at.

23 THE COURT: Can I interrupt you with a question  
24 about the 30(b)(6).

25 MR. ELIAS: Yes.

1 THE COURT: Have you all had a chance to meet and  
2 confer about the topics on the 30(b)(6)? I'm sort of  
3 anticipating maybe some issues with respect to the 30(b)(6)  
4 and wondering if we could head those off a little bit, but  
5 maybe I'm imagining problems that don't exist.

6 MR. ELIAS: No, there will be problems with the  
7 30(b)(6).

8 We got a letter on Friday at the end of the day  
9 from Novartis addressing the six topics. We have not yet  
10 had a telephone call about it, which we will do.

11 The 30(b)(6), the biggest issue I see right now --  
12 of course, there's always objections on scope, and we'll  
13 work together to flesh out the scope and come to agreement.  
14 And I think we probably can. We have in the past.

15 The biggest issue right now on the 30(b)(6), not  
16 to get too far into the weeds but since you brought the  
17 topic up, is apparently Novartis wants to designate prior  
18 witnesses as their testimony as effectively the 30(b)(6)  
19 testimony, something that I can tell you from our side is  
20 not acceptable. We have not had a conversation about it  
21 with them yet but --

22 THE COURT: I don't want to litigate that point  
23 now. You all haven't even had a chance to meet and confer  
24 about it, and I know that you'll be in capable hands with  
25 Judge Baker if problems come up in terms of that.

1           I just wanted to get a sense of kind of where that  
2 was. And I think I know -- I have a flavor for it now in  
3 terms of where it's going.

4           MR. ELIAS: And we only have -- I think we've only  
5 noticed six topics. So in terms of the scope and narrowing  
6 it down, I'm confident we can do that.

7           THE COURT: Okay.

8           MR. ELIAS: So, Your Honor, the big issue -- and  
9 if you have any more questions about where we are and what  
10 we've done in discovery, I'm happy to answer those.

11           But I think, you know, the big issue right now is  
12 that we're 30 days out, and we don't have a complete  
13 document production yet. So Novartis still has I don't  
14 know how many documents but custodial files of four  
15 witnesses who we are going to notice.

16           And if we don't get an extension, we're going to  
17 notice them tomorrow so that we can be on time to meet the  
18 deadline. We don't even have their complete production  
19 yet.

20           With respect to four witnesses that we did notice  
21 -- and those are very senior executives: former head of  
22 oncology, former president of Novartis Pharmaceuticals  
23 Incorporated -- we just got production less than two weeks  
24 ago with 35,000 documents.

25           So we have a lot that we have to review to get

1 ready for those documents in addition to everything else  
2 that we're doing, and we also have documents that we don't  
3 have yet. There's also some noncustodial files that  
4 Novartis has represented won't be available until 45 days  
5 after the close of fact discovery, which is going to be  
6 after our expert discovery deadline.

7 We're not pointing fingers here. You know, it's a  
8 reality that's been presented to us. We do understand  
9 Novartis --

10 THE COURT: Well, I'll hear from Mr. Johnston, but  
11 what is your understanding of the stated reason for the  
12 timing of the release of those documents?

13 MR. ELIAS: My understanding -- and I'm not the  
14 one to talk about the technical issues -- is that there was  
15 technical issues in terms of getting those documents culled  
16 and put into a format that we can see. And Mr. Johnston  
17 can talk about it.

18 And Mr. Oxx would be the guy on my side who would  
19 have a little bit more understanding on the technical  
20 issue. But I think it's technical.

21 THE COURT: Okay. One other question I had in  
22 looking at your status report was this issue with respect  
23 to, I think, if I understood your papers correctly, that  
24 you all had originally not been able to locate certain  
25 documents and then when you inquired of Novartis they were

1 able to tell you that they were, in fact, produced and were  
2 in the production.

3 And if I've gotten that wrong, straighten me out.

4 MR. ELIAS: Well --

5 THE COURT: Help me understand that because I'm  
6 worried a little bit about whether or not you all have got  
7 your ducks in a row in terms of identifying what's actually  
8 being produced. So when you say you don't have all the  
9 production, it gives me a little uncertainty as to whether  
10 or not you don't have all the production or you don't  
11 really understand or have had a chance to develop an  
12 understanding of everything that you've gotten.

13 MR. ELIAS: And I understand that.

14 My understanding on that issue -- and, again, if I  
15 need to bring up somebody that has more detail on it, I  
16 can, but it was involving certain noncustodial documents.

17 We had -- Novartis had originally told us that  
18 they had produced all of the documents, and then there was  
19 an additional, I don't know, hundred thousand or so  
20 documents, if I have that correctly, that they did locate  
21 and that they did provide.

22 So my understanding is it's not we didn't  
23 understand what we didn't have. It's that there were  
24 additional documents that were produced.

25 THE COURT: Okay. Well, then, I misread it. I



1 thought -- maybe Mr. Johnston can correct me when he comes  
2 up. I thought -- and if you need to confer.

3 MR. ELIAS: I want to make sure what I'm saying is  
4 accurate.

5 THE COURT: I want to get accurate information.  
6 So it looked to me like that Novartis provided you with  
7 some Bates numbers. Hey, it's in there. Here's the  
8 number. Go look at it.

9 MR. OXX: I think I can quickly address it,  
10 Your Honor. Chris Oxx for the plaintiffs.

11 There was a subset of clinical trial-related  
12 documents that they were supposed to produce to us for  
13 essentially a group of 30 or so clinical trials. It was  
14 supposed to include the clinical study report, the  
15 statistical analysis plan, study protocols for each of the  
16 clinical trials.

17 When we received that production, we reviewed it  
18 and identified a number of clinical trials that were  
19 missing one or multiple of those documents. We reported it  
20 to Novartis. They went back and checked and found out that  
21 they had, in fact, not produced some of those.

22 We do have them now. So that issue has been  
23 resolved. But it was just, you know, another thing that  
24 was supposed to have been produced earlier and wasn't  
25 ultimately produced until a couple weeks ago.

1 THE COURT: Do you know -- and maybe Mr. Johnston  
2 is the better person to ask, but do you know why it is that  
3 those documents were not produced, how they got missed?

4 I presume -- well, maybe I shouldn't presume. Do  
5 you suspect that there was any nefarious reason why those  
6 portions of the production were not forthcoming, or was it  
7 an oversight, or what was the explanation that you  
8 received?

9 MR. OXX: I can't say. Mr. Johnston would be the  
10 one to ask. I can't say why they weren't produced. I  
11 don't have any reason to suspect any nefarious activity.

12 THE COURT: Well, I'm a big believer in the old  
13 adage of never conjure up a conspiracy when a simple error  
14 will do. So I'm not suggesting that there was any reason.

15 I guess I'm just trying to figure out whether or  
16 not as you guys have gone along in terms of the document  
17 production, are you reasonably satisfied that the things  
18 that have been ordered pursuant -- that the progress from  
19 your production requests to the meet and confer narrowing  
20 to the Court's assistance in terms of giving you direction  
21 and specificity, are you reasonably comfortable that what's  
22 being received -- I understand you'd like to get it more  
23 quickly, but what you're getting is a fulsome and robust  
24 response to the discovery orders of the Court and to your  
25 request?

1 MR. OXX: Yes, I think so.

2 There's been times we've gone to them and said,  
3 Hey, this document looks like it's missing. This document  
4 looks like it's missing. They've been responsive to  
5 getting those materials to us.

6 So at this point the answer is yes. There's just,  
7 you know, multiple things that are still outstanding.

8 THE COURT: Good. I'm happy to hear that.

9 Let me turn back to Mr. Elias unless, Mr. Oxx, you  
10 want to take it from this point on.

11 But, Mr. Elias, I don't mind telling you that  
12 90 days seems to me like an awfully long time to be asking  
13 for. I don't mind telling you I'm not really inclined to  
14 extend it to 90 days. Maybe your strategy was to ask for  
15 90 and hope for 30. I don't know what you hoped for.

16 MR. ELIAS: Well, I can tell you what the strategy  
17 is. I think the strategy is, if we get 90 days, I know  
18 with great confidence that we wouldn't be coming back to  
19 the Court. I think that that gives us some cushion.

20 And the big thing guiding that is the fact that  
21 there's a significant production that we -- that we need,  
22 especially our biostatistician. And those documents aren't  
23 even going to come to us until --

24 THE COURT: Hang on a second.

25 Let's figure out what's happening with Judge Harz.

1 (Pause in proceedings.)

2 JUDGE HARZ: I'm right here.

3 THE COURT: Judge Harz, how are you this  
4 afternoon -- yeah, it is afternoon. How are you this  
5 afternoon?

6 JUDGE HARZ: Oh, that recording was coming from my  
7 line because I had it on mute?

8 THE COURT: I don't know.

9 JUDGE HARZ: I'm sorry.

10 THE COURT: I don't know for sure, but it did  
11 remind me that I had forgotten to welcome you to the  
12 hearing, and that's rude on my part. I apologize for that,  
13 and I just wanted to remedy that before we got too much  
14 further. So welcome.

15 JUDGE HARZ: Oh, thank you.

16 I'm keeping my line unmuted because I think I was  
17 the culprit for some reason.

18 THE COURT: All right.

19 MR. ELIAS: Your Honor, the only thing I was  
20 saying on the 90 days, we're still awaiting a significant  
21 production that we're not going to get until the last day  
22 of August or first day of September, 45 days after the  
23 current close of fact discovery. Those are those  
24 documents, the clinical trial documents, that we discussed  
25 earlier.

1           So we really do need those documents. And we need  
2 the opportunity, once our statistician takes a very quick  
3 look at them, to have the ability to take a deposition of a  
4 fact witness on some issues there that our statistician  
5 would have questions about.

6           So that's what is driving the 90 days. If you're  
7 not inclined to give us 90 days, we understand. We'll take  
8 what we can get, but that's the thought process behind it.

9           THE COURT: All right. Thank you.

10           Let me hear from your friend on the other side,  
11 Mr. Johnston.

12           MR. JOHNSTON: Your Honor, if it's all right with  
13 you, Mr. Reissaus is much closer to the details of all of  
14 this than I am so I asked him to present to you today.

15           THE COURT: Yes. Thank you.

16           Good afternoon, Mr. Reissaus.

17           MR. REISSAUS: Good afternoon, Your Honor.

18           Just to start with the questions you had about the  
19 noncustodial documents --

20           THE COURT: Yes.

21           MR. REISSAUS: -- these were clinical trial  
22 documents which Novartis has produced out of the database  
23 for clinical study data called CREDI. And that's been in  
24 plaintiffs' hands.

25           And in their review of that data, they came back

1 with a request for 26 additional documents that they could  
2 not locate, and we responded to that and said here are 10  
3 that you have had that you just didn't see when you  
4 searched. And we went back and looked for the rest to see  
5 why those would not have been produced and whether they  
6 existed.

7 And the production from CREDI was made under a --  
8 we told plaintiffs how we were pulling the data from it and  
9 there were a few categories of data that were not included,  
10 including with foreign studies. There were certain aspects  
11 of those studies that were not produced out of concern of  
12 foreign data privacy issues or foreign regulations and also  
13 just foreign language issues.

14 So with a specific list of 16 documents that  
15 plaintiffs did not already have, we went back and we got  
16 them 14 of them in a pretty timely way. That request could  
17 have been made a while ago. In fact, it could have been  
18 made at the time we were briefing the motion on the raw --  
19 on the raw data from the statistical studies. And that is  
20 a separate topic entirely.

21 And this CREDI production has not been the subject  
22 of a court order. This has been part of the parties  
23 working back and forth and producing from that source.

24 There's the separate topic of the raw statistical  
25 data from 26 clinical studies, and that is the area where

1 there's additional work to be done.

2 We have now produced a batch for this month from  
3 the vendor that's been working on anonymizing the data,  
4 five additional studies which takes us to eleven. And  
5 there will be, each month, a rolling production from that  
6 vendor.

7 Now, plaintiffs stated basis for having that data  
8 was for their experts when they brief this motion, and now  
9 we hear that this is for fact discovery. We have not seen  
10 data used that way in the past. And I don't see -- we have  
11 not seen it to date in the depositions taken today.

12 They've deposed clinical study folks from the  
13 company that worked on clinical studies and they haven't  
14 shown them clinical study reports. They haven't shown them  
15 protocols. They haven't asked them about their analyses of  
16 the data. They don't need the raw statistical data to do  
17 that. There's study reports, and they've had those  
18 for months, if not many years, for some of these studies.

19 THE COURT: So let me interrupt you for a second  
20 and get you to educate me on the need for the additional  
21 time in terms of what's been represented to be 45 days  
22 after July 15 of your production time line.

23 How did you develop that time line? Why do you  
24 need that additional time? What is it that either you or  
25 your vendor are needing to undertake that you couldn't have

1 done long before now?

2 MR. REISSAUS: Yes, Your Honor.

3 So we had Judge Baker's order on the raw data  
4 production and ordering us to produce that, and we worked  
5 with the company to develop a -- to figure out how to  
6 implement and follow the order.

7 And we realized that there's this data  
8 privatization, anonymization that's required. And we  
9 worked with a vendor that Novartis works with to make sure  
10 that we could do that. Producing this data for litigation  
11 is not the norm and not what Novartis does.

12 And so it requires working with the vendor to  
13 expand on their normal workload and what they were doing.  
14 They developed a time frame, and it requires expediting,  
15 actually, at additional cost. And they are able to do  
16 X many studies each month.

17 And Judge Baker's order acknowledges that this  
18 anonymization process is something that we have to  
19 undertake. And so that's going on.

20 And as we get each rolling production, which  
21 they're doing as fast as they can -- they gave us an  
22 estimate of how many studies they could do each month. I  
23 think they had four as their estimate for what we would be  
24 able to produce at the beginning of June. We had  
25 five done.



1           And so our calculation of 45 days past  
2 July 15th was to get us to the production -- what we  
3 anticipate to be the final production from the vendor at  
4 the beginning -- or at the end of July or the very  
5 beginning of August and with the hope it might be a little  
6 faster, but I think realistically --

7           THE COURT: You just anticipated my question.

8           Is this 45 days aspirational, or is this 45 days  
9 we know we can do it within 45 days? Perhaps we can get it  
10 done more rapidly.

11           That's what I hope it is.

12           MR. REISSAUS: So I would say it is more than  
13 aspirational. They have experienced doing this work in the  
14 time frame they have estimated. So far they've been  
15 meeting that. You know, unforeseen things can come up, but  
16 we think we're on track with that.

17           THE COURT: Do you anticipate that the document  
18 production as the 45 days is consumed will be rolling, or  
19 are you going to -- are you going to wait and release it  
20 all at one time?

21           MR. REISSAUS: No, Your Honor, we'll do a rolling  
22 production.

23           So we made the June production. So if we get the  
24 data from the vendor, we double check to make sure the  
25 vendor didn't do something to mess up the data and then we

1 release it to plaintiffs in the software environment.

2 THE COURT: Okay.

3 MR. REISSAUS: I will say this is a very discrete  
4 set of data compared to the millions of documents that have  
5 been produced. So now this is entirely separate from the  
6 email productions and the noncustodial productions that  
7 have been made from more than a dozen sources.

8 THE COURT: I appreciate the fact that you don't  
9 think they need this information in order to move forward  
10 with their fact discovery and they've not demonstrated a  
11 need for it based on what has happened to this point, but  
12 what prejudice would Novartis suffer if I were to grant  
13 some additional time for fact discovery to be completed?

14 MR. REISSAUS: Your Honor, our concern is that an  
15 open-ended fact discovery extension will allow brand new  
16 discovery to be undertaken.

17 We're at the end of a period that we've had a  
18 deadline for more than six months that we've been working  
19 towards. And if it's extended for all purposes, we're  
20 concerned that we're going to be in the same boat at the  
21 end of that extension because plaintiffs are going to come  
22 up with new discovery that imposes additional burden on  
23 Novartis.

24 THE COURT: Why do you think it's in their  
25 interest to do that? I mean, why --

1 MR. REISSAUS: Your Honor, we have seen, from our  
2 perspective, requests that are always in excess of what we  
3 believe is necessary to work up these cases.

4 We've now produced from -- where are we at? --  
5 48 custodians that we've produced data from at great, great  
6 cost. And we're concerned that if plaintiffs are allowed  
7 to take depositions of additional folks beyond what have  
8 been noticed and indicated so far -- plaintiffs have  
9 represented there's four more depositions that haven't been  
10 noticed yet -- if there's a 90-day extension, we don't know  
11 how many more. And that's a one-sided discovery burden on  
12 us.

13 THE COURT: Well, I mean, I appreciate your  
14 concern in that, but I guess it's tempered by the fact that  
15 unless these plaintiffs are markedly different from the  
16 other plaintiffs that I've come to know over my years here  
17 is that they're generally interested in an early trial  
18 date, not a late trial date.

19 So they're generally interested in getting these  
20 matters wrapped up and getting the case at issue not only  
21 technically but also, you know, as far as the development  
22 of fact and there are fact questions and resolving of  
23 motion practice.

24 So maybe there's some -- maybe there is some merit  
25 to your concern. I'm not dismissing them out of hand. I

1 appreciate what you're telling me.

2 But I'm just trying to imagine why it would be  
3 advantageous to the plaintiffs to come up with more people  
4 to depose, more questions to ask, you know, unless there's  
5 information that's in these documents which has not been  
6 received to this point which is -- I don't want to use a  
7 pejorative term -- which is truly revelatory, you know, in  
8 terms of things that they didn't know or didn't have the  
9 ability to know before the case was brought or during the  
10 course of discovery up to this point in time. So I'm not  
11 overly concerned about that.

12 Of course, you have remedies, of course, available  
13 to you as well if you feel like the process is being  
14 abused. And both Judge Baker and myself, as well as  
15 Judge Harz in the state court litigation, are available to  
16 cabin the requests if they do get out of hand.

17 I'm not interested in adding any more time to it  
18 either, but I also want to make sure that everybody has all  
19 the process that they're due in terms of the development of  
20 the case.

21 I'm not persuaded that 90 days is necessary, but I  
22 think some additional time might be warranted.

23 I don't know, Judge Baker, do you have some  
24 thoughts on the subject over here? Anything you want to  
25 add?

1 JUDGE BAKER: Nothing to add.

2 THE COURT: How about you, Judge Harz, any  
3 questions in your mind, things that you want to raise?

4 JUDGE HARZ: Not at this time.

5 Thank you.

6 THE COURT: Okay.

7 MR. REISSAUS: Judge Dalton?

8 THE COURT: Yes.

9 MR. REISSAUS: With respect to approaching the  
10 Court if there is an issue that we do need to raise, I  
11 would like to preview that we've had some issues from our  
12 perspective with how the depositions have been conducted to  
13 date with, in particular, folks who were deposed previously  
14 in the prior litigation and also with a former employee who  
15 retired about five years ago and last worked on Tassigna a  
16 decade ago which occurred last week. And that deposition  
17 went over seven hours. And my understanding is plaintiffs  
18 had additional documents that they wanted to ask that  
19 witness about.

20 We believe that plaintiffs have been retreading  
21 ground that they have testimony on and do not require  
22 additional time with folks on and have been abusing or  
23 taking advantage of the schedules of folks who no longer  
24 work for Novartis.

25 Just to be specific, Ms. Letvak is an example.

1 She spent significant time with counsel reading into the  
2 record a report written by another witness who was deposed  
3 for more than seven hours, or, excuse me, for seven hours  
4 in the prior litigation and who is being deposed again on  
5 June 30th.

6 I don't have an ask for you at this moment, but  
7 I'm afraid come June 30th we may be in a position where  
8 we might need to reach out to the Court if what we've seen  
9 continues there.

10 THE COURT: Well, I know we took this subject on  
11 at least weekly at the outset when I heard from you with  
12 respect to your concern about whether or not witnesses have  
13 been deposed in prior litigation would be allowed to be  
14 redeposed over the same ground.

15 My recollection is that my inclination at the time  
16 was -- and I think my orders were -- that I'm going to give  
17 you all your allotment of time and trust the lawyers to use  
18 it in a professional and a judicious way. I'll be  
19 disappointed if that's not been what's occurring.

20 What I would suggest, again, not to tell you how  
21 to craft your motions, but if you feel like that you've  
22 got -- if you feel like that that's happened and that  
23 there's a track record for it, probably the most efficient  
24 way to do it would be to point out the parallel -- the  
25 areas where the inquiries have been parallel, repetitive,

1 or duplicative of what is already in the record and give  
2 Judge Baker an opportunity to make that, you know,  
3 apples-to-apples comparison and figure out whether or not  
4 my confidence that the lawyers would use their time in a  
5 professional, efficient way was unwarranted.

6 So I don't want to make a judgment about it now  
7 because you're not asking me to and I haven't seen the  
8 record. And I can tell from looking at Mr. Elias that he  
9 doesn't agree.

10 So I'll just take that as a given for the record,  
11 Mr. Elias. You don't need to necessarily make it known.

12 MR. ELIAS: Okay.

13 THE COURT: But we'll see.

14 And as I said before -- well, I'm not soliciting  
15 court intervention. I always count on the lawyers. The  
16 lawyers generally do a better job of it, but if you can't  
17 sort it out, that's why we're here. We'll sort it for you  
18 if it becomes necessary.

19 MR. REISSAUS: Thank you.

20 THE COURT: I think my inclination, Mr. Elias, is  
21 to give you some additional time. I'm going to give you  
22 actually more time than I thought I was going to because I  
23 don't want to hear from you again, frankly, on a request  
24 for time. I'm going to give you 60 days from  
25 July 15th. I'll move all of the deadlines back

1 commensurately.

2           And my charge from the panel on multidistrict  
3 litigation was to manage these claims in an efficient way  
4 to move them forward.

5           We've got -- of course, Novartis is concerned  
6 about taking case-specific discovery. That remains  
7 unresolved. And they have a right to have an answer to  
8 that question in terms of who are they going to get to talk  
9 to, if anybody; are they going to get to raise these  
10 questions with the treating physicians in terms of the  
11 warnings, the adequacy of the warnings, whether the  
12 warnings would have been any different had any of this  
13 information been available.

14           I gave you the confidence, I guess, of my judgment  
15 that you needed this information in order to make sure that  
16 the doctors, when they were deposed, knew everything that  
17 they could have known or everything that was knowable was  
18 available so that they could be apprised of it before they  
19 reached their conclusion about whether their instructions  
20 to their respective patients would have been any different.  
21 So I don't want that -- I don't want to find out that  
22 confidence was misplaced.

23           But I don't want Mr. Johnston to leave here or  
24 Mr. Reissaus to leave here with the impression that I have  
25 forgotten about their interest in pursuing these questions,



1 which they contend -- and I have no reason to have a  
2 judgment about it one way or the other -- that they contend  
3 are case dispositive on many of the cases that are now  
4 pending in the MDL. And they have a right, their client  
5 has a right, if that's the case, to turn off the tap, you  
6 know, and to have those claims adjudicated if, in fact,  
7 they're correct.

8           So I don't know whether or not you all intended to  
9 press me on that or not, but I just wanted you to know that  
10 I haven't forgotten it.

11           So I don't have anything else on my agenda unless  
12 Judge Baker has something or unless you all have something  
13 else that we can help you with or Judge Harz has something.

14           But I do want to commend you all in working  
15 together in terms of, you know, this is a fairly extensive  
16 document-intensive case.

17           And I appreciate the efforts of Novartis in terms  
18 of -- Mr. Johnston and Mr. Reissaus, I appreciate your  
19 efforts of responding to some of the early prods from the  
20 Court and taking those seriously.

21           And I want to congratulate you all to the extent  
22 that you've worked together. I hope that will continue to  
23 be the case.

24           And, Mr. Reissaus, I also want you to know I hear  
25 you loud and clear on your concerns about whether or not

1 these witnesses are being abused.

2 I don't -- again, it's just my two cents' worth.

3 I mean, seven hours' worth of deposition testimony from any  
4 one individual witness is an awfully long day. And I did a  
5 lot of this work myself when I was sitting in your chairs  
6 and I know it can be done in an efficient way.

7 And there's nothing more painful, frankly, for a  
8 practicing lawyer, trial lawyer, than to have to sit in a  
9 deposition for hour upon hour upon hour upon hour with  
10 questions being asked that could be asked more efficiently,  
11 that could be asked more directly, or that have already  
12 been asked before and are already in the record and you  
13 don't need to do it again.

14 You know, again, I don't know who is taking these  
15 depositions so I make no judgment about that. So my hope  
16 is that the depositions are all being taken by counsel who  
17 are, first of all, possessed with enough authority on  
18 behalf of your respective interrogators not to feel like  
19 that they must ask these questions out of concern that  
20 someone looking over their shoulder is going to be  
21 concerned that they didn't do an adequate job. I see that  
22 all the time.

23 You know, I see a deposition that could be taken  
24 in 30 minutes but it takes four hours because, you know --  
25 I'll say the poor associate. I don't mean -- but because

1 the associate lacks either the confidence or has not been  
2 vested with the authority to do the job as it ought to be  
3 done and they spend four hours doing things that could be  
4 done in 30 minutes because they are worried somebody is  
5 going to second-guess their work.

6 I don't have any reason to suspect that's going on  
7 here, and so I don't suggest that it is. I just mention it  
8 in the unlikely event that that's happening, make sure the  
9 lawyers that are taking it understand the case and have  
10 enough vested responsibility to exercise, you know,  
11 game-time decisions about questions that need to be asked.

12 So you don't need any more of a sermon from me on  
13 that point other than to say it's a real thing. I see it  
14 happening all the time. And I encourage you all to avoid  
15 it.

16 MR. ELIAS: Your Honor, the only thing I would say  
17 is you're looking at the deposition team. I was not at a  
18 deposition, the one that was seven hours. That is -- if we  
19 had one that went seven hours, that's the only one.

20 I think for the seven depositions that we've had,  
21 the average is about five hours or so or less. I don't  
22 have any specific numbers. But we certainly aren't taking  
23 seven hours with every witness.

24 THE COURT: Okay. Well, I understand.

25 You know, there's a reason that seven hours is the

1 limit in the federal rules. I think if you imagine that  
2 that's the collective wisdom of the committee, that's the  
3 endurance capacity of any human being to put up with. And,  
4 frankly, it's beyond the capacity of any lawyer who's doing  
5 this day in and day out. I mean, to sit in a seven-hour  
6 deposition is, frankly, cruel and unusual punishment.

7 I don't have anything else.

8 Judge Baker, Judge Harz, thank you for joining us  
9 this afternoon.

10 JUDGE HARZ: Thank you.

11 THE COURT: I look forward to getting a good  
12 progress report when I see you next.

13 Have a pleasant trip home.

14 MR. ELIAS: Thank you Your Honor.

15 MR. JOHNSTON: Thank you, Your Honor.

16 (Proceedings adjourned at 1:35 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

June 17, 2022

s\ Amie R. First  
Amie R. First, RDR, CRR, CRC, CPE  
Federal Official Court Reporter  
United States District Court  
Middle District of Florida