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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.	:	September 7, 2022
	:	9:03 - 10:03 a.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

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Proceedings recorded by Realtime Stenography.

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1 APPEARANCES:

2

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5 Raymond C. Silverman

6 Christopher C. Oxx

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

(Court called to order.)

JUDGE DALTON: Call the case.

THE DEPUTY CLERK: Calling the case of

In Re: Tassigna Products Liability Litigation versus

Novartis Pharmaceuticals Corporation, Case Number

6:21-md-3006.

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

MR. ELIAS: Richard Elias on behalf of the plaintiffs, Your Honor. Good morning.

JUDGE DALTON: Good morning.

MS. WICHMANN: Good morning, Lawana Wichmann for the plaintiffs.

JUDGE DALTON: Good morning.

MR. SILVERMAN: Good morning, Raymond Silverman on behalf of the plaintiffs.

JUDGE DALTON: Good morning.

MR. OXX: Good morning, Your Honor. Chris Oxx on behalf of the plaintiffs.

JUDGE DALTON: Good morning.

MR. REISSAUS: Good morning. Andrew Reissaus for Novartis.

JUDGE DALTON: Good morning.

1 MR. JOHNSTON: Good morning, Your Honor. Robert
2 Johnston for Novartis.

3 JUDGE DALTON: Good morning.

4 All right. While we're gathering together for our
5 status conference --

6 JUDGE BAKER: Judge Harz.

7 JUDGE DALTON: I'm sorry? Is somebody on the
8 phone?

9 JUDGE BAKER: Judge Harz is.

10 JUDGE DALTON: Oh, I'm sorry. Yes, Judge Harz.
11 Are you with us, Judge Harz?

12 JUDGE HARZ: Oh, I definitely am. Thank you.
13 Good morning, Judge Baker, Judge Dalton. Yes,
14 thank you.

15 JUDGE DALTON: Good morning.

16 So anyway, we've gathered together for our status
17 conference with respect to your progress in the Novartis
18 litigation, the Tasigna litigation.

19 Mr. Elias, let me ask you to come to the podium,
20 if you would, first, and give me your view of how things
21 are progressing with respect to fact discovery.

22 I've had a chance to review your joint submission,
23 which I appreciate. And I'd like to get your take kind of
24 on where things stand.

25 I want you to, I guess, alleviate my concern about

1 some of these depositions that are being taken out of time.
2 That always worries me. I will say that you all entered
3 into those agreements at your own peril, as you know, to
4 take depositions beyond the time that's been established by
5 the Court. So how about seeing if you can assuage my
6 concerns about that.

7 MR. ELIAS: Appreciate that, Your Honor. And I
8 appreciate the Court's concern.

9 Just as a preliminary matter, these are
10 depositions that we had noticed quite a while ago, but
11 because of scheduling issues, we did agree to take these
12 depositions out of time. And so it's not like this is a
13 last minute -- we were noticing depositions last minute.
14 These have been on the schedule for quite some time.

15 And from the perspective of the depositions, the
16 depositions are all going forward at this point in time,
17 and we do not foresee any issues with any delays that are
18 going to be prompted by taking these depositions out of
19 time.

20 We are still on schedule and intend to hold the
21 schedule with respect to expert discovery. And I think
22 that we are going to close fact discovery out, according to
23 the schedule that we put forth in front of the Court. And
24 there are not going to be any issues.

25 JUDGE DALTON: Okay.

1 MR. ELIAS: There's one issue I do want to raise,
2 and this is just an issue that we found out this morning.
3 Frankly, I don't know enough about it.

4 But there is some clinical trial data that is
5 outstanding from Novartis, and they've made reference to
6 that in the joint submission.

7 We were informed this morning -- I wasn't, but my
8 colleagues were informed this morning that there have been
9 some technical issues. We're not casting any blame. We
10 understand that technical issues happen. But that the data
11 is not -- we were expecting it by yesterday, and we didn't
12 receive it. So that data is still outstanding.

13 The concern there -- and my colleagues can maybe
14 discuss this issue a little more detailed than I can, but
15 there is a concern that one expert that we have needs this
16 data in order to complete his report.

17 And so the only concern that we raise for the
18 Court is depending on when we get this data, you know, if
19 we're talking a couple weeks, we don't foresee any problem,
20 but if this is something that is longer than that, then
21 that could pose an issue.

22 But that's the only caveat.

23 JUDGE DALTON: Okay. Well, I don't have a crystal
24 ball, of course. And I'll hear from Novartis with respect
25 to their explanation of the delay that they've encountered.

1 But I guess my advice to you would be to make sure
2 that you get in compliance with Judge Baker's protocols,
3 something in front of him with respect to this issue as
4 soon as you can if it's something that you all are not
5 going to be able to work out and you're concerned about
6 timing, because we've run out of flexibility in terms of
7 the schedule.

8 We're going to talk about some other things this
9 morning to address some of Mr. Johnston's earlier concerns
10 about being able to take some fact-specific discovery. So
11 we're going to have some other irons in the fire, I expect,
12 when we get finished here today. And I don't have any time
13 flexibility.

14 What I'm beginning to do now is I'm beginning to
15 proactively look to a date where we can get some cases set
16 for trial, to the extent that they're Middle District
17 cases, and we can get some remand schedules in order to the
18 extent that it relates to the other cases.

19 And, of course, I've also been in close
20 consultation with Judge Harz about the New Jersey cases in
21 terms of trying to also look at potential trial schedule
22 and some case-specific discovery potentially in those
23 cases.

24 So my point is that we just don't have a lot of
25 flexibility for litigation over discovery matters which is

1 really why I wanted to raise the question about how are we
2 doing, you know, in terms of the deadline.

3 I read your submission, which was essentially all
4 is well, we're in control of this. And, you know, as I
5 said, I'm always unsettled for a couple of reasons when the
6 lawyers agree to set depositions outside the discovery
7 deadline. I often wonder why it is they think they can do
8 that. You didn't ask anybody whether you could do that.
9 You just did it.

10 I'm not going to forbid you from doing it, but I
11 am going to tell you that the deadline is the deadline.
12 And so to the extent if you run into difficulties with
13 respect to your discovery after the close of the deadline,
14 you're not going to have much, if any, recourse because the
15 discovery is over.

16 MR. ELIAS: Understood, Your Honor.

17 JUDGE DALTON: So anyway, as I said, you do that
18 at your own peril.

19 And I was a lawyer for many years myself. I
20 understand the problems of scheduling. So it's not that
21 I'm unsympathetic to your problem. It's just that we have
22 deadlines for a reason.

23 MR. ELIAS: Understood, Your Honor.

24 The only thing I'll say is that we appreciate that
25 and that the Court -- and appreciate the Court's deadlines.

1 I think a lot of the reasons why we scheduled
2 these out of time or to not burden the Court with these
3 issues, and we did so because we didn't expect there to be
4 any surprises. So we do appreciate the Court's admonition.

5 And at this point, other than that data issue
6 that I raised which we just found out about this morning --
7 and Novartis can comment about -- we don't foresee any
8 issues.

9 JUDGE DALTON: Okay.

10 Let me hear from your colleagues from Novartis.

11 MR. REISSAUS: Good morning, Your Honor.

12 To start off with the depositions, the parties
13 have worked cooperatively to get those scheduled. Out of
14 the remaining depositions, five of them are former
15 employees who are not under Novartis' control. And we've
16 worked with plaintiffs to get those depositions taken based
17 on their work schedules.

18 To give you an example, we have a witness whose
19 deposition is coming up and she's been traveling out of the
20 country for a new job on at least two or three occasions.
21 So we've been working across those issues.

22 I'm happy to talk through those individually by
23 witness, but things of that character are what are going on
24 there.

25 We also -- there were two notices that came in for

1 fact depositions that were relatively late in the schedule.
2 Those depositions are on the calendar later, obviously, as
3 a result. But we're proceeding on those. And, you know,
4 everyone has indicated they will appear on the days that we
5 put in the submissions.

6 So with regard to the raw statistical dataset and
7 the IT issue, I spoke with Mr. Oxx this morning about that.
8 We heard from the third-party vendor that's doing the work
9 to anonymize the data and make sure that it protects the
10 individual patients' privacy rights.

11 They have a major IT outage that has set things
12 back at least a week. We do not have an ETA for when that
13 issue will be resolved nor do I have any more detail to
14 share today on what specifically that IT issue is. We will
15 give plaintiffs updates as soon as we have those.

16 And we do recognize that they have an expert that
17 is using that data, and to the extent that requires some
18 adjustment on his piece of work and the discovery related
19 to that expert, you know, we'll work with plaintiffs on
20 that and submit whatever needs to be submitted if we get to
21 that point.

22 JUDGE DALTON: Okay. Well, I think it might be
23 helpful if I gave you some incentive.

24 And so I'm going to direct you to notify the
25 plaintiffs within seven days from today's date what the

1 status is of solving that technology problem, whether it's
2 soluble; and if it is soluble, what the time period will be
3 for solving it and when you expect to be able to deliver
4 the discovery that's due so that they can plan accordingly.
5 Because what I don't want to do is run into a fishhook at
6 the back end of the schedule because we didn't deal with
7 this on the front end.

8 MR. REISSAUS: Yes, Your Honor. Thank you.

9 JUDGE DALTON: Okay.

10 One of the other questions -- I didn't ask
11 Mr. Elias this, but, Mr. Reissaus, we've had some tagalong
12 cases that have come in fairly recently. And I do plan to
13 enter an order in those tagalong cases just simply --
14 basically folding them into the current schedule and the
15 current process.

16 I wanted to find out whether or not there is
17 anything in any of those tagalong cases that either of you
18 see as being unique or out of the ordinary or anything
19 that's going to require any special attention or
20 consideration.

21 No? Mr. Elias is shaking his head.

22 MR. ELIAS: I'm shaking my head no, Your Honor.

23 MR. REISSAUS: Your Honor, based on the
24 information we have right now, they're of the same ilk as
25 the other cases that we have, you know, whether they're --

1 we think some of them are susceptible to defenses like
2 statute of limitations and things of that sort, but that's
3 general case-specific discovery.

4 JUDGE DALTON: Okay.

5 JUDGE BAKER: What about the information sheets
6 for those plaintiffs?

7 MR. REISSAUS: Plaintiffs have been serving
8 plaintiff facts sheets as new cases have been coming in.

9 I am not positive on the status with the most
10 recent tagalongs, but I would assume that if they can meet
11 the deadlines that we have under the current orders to
12 produce those, we'll immediately collect records and catch
13 those cases up.

14 JUDGE DALTON: Okay. I don't think I've entered
15 any orders on those yet, but I will enter just a relatively
16 tombstone order basically adopting the -- folding them into
17 the current schedule and binding them to the disclosure
18 obligations that all the other plaintiffs have and
19 vice versa, you know, in terms of the discovery issues.

20 I guess we're looking at expert and case-specific
21 discovery deadline of January the 17th of 2023, which
22 brings me to a topic I wanted to discuss.

23 As you move along with your expert discovery, I've
24 been giving some thought to the most efficient way to give
25 Novartis the opportunity to develop this defense of failure

1 to warn in terms of case-specific inquiries they want to
2 make of the prescribing physicians as well as the
3 plaintiffs in terms of whether or not even given what I'll
4 characterize -- and again, I don't know anything about,
5 much about the facts, but if I were to characterize it as
6 the most concerning or alarming adverse consequences.

7 That the plaintiff feels that they could
8 demonstrate that if the plaintiff treating physicians were
9 aware of those most concerning or alarming potential
10 contraindications to the use of the medication, whether
11 they would have prescribed it in any event in light of the
12 plaintiff's condition and/or whether the plaintiff would
13 have followed the physician's direction and taken the
14 medication without regard to concern about the adverse
15 consequences.

16 So it seems to me, Mr. Johnston and Mr. Reissaus,
17 that you all would want to, at least, inquire of some of
18 the treating physicians and some of the plaintiffs on those
19 issues.

20 And what I've given some thought to doing is, in
21 light of your indication that you're not interested in
22 waiving your Lexecon rights, to maybe confining you to
23 specific discovery in the cases that are under my direction
24 and control.

25 And that would be cases that are pending in the

1 Middle District of Florida as well as potentially if -- if
2 after I hear from you I'm persuaded that that's not a broad
3 enough -- I hesitate to use the word sample set because I
4 don't know -- I mean, the facts are probably going to be
5 different with respect to each of these treating physicians
6 and plaintiffs. But if I say "sample set," know that I'm
7 not trying to suggest that they're all alike.

8 But I do suspect that at least one of the goals is
9 to try to determine whether or not there's a sense of
10 commonality amongst the prescribing physicians in terms of
11 their view of the potential complications associated with
12 prescribing the drug and the benefit to the plaintiff. I
13 may be wrong about that, but it's my sense -- my common
14 sense tells me that that's probably the case.

15 And so my thought was that in doing that
16 case-specific discovery in a smaller number of cases than
17 whole might be able to give you, both sides, enough
18 information to sort of put that into your case evaluations
19 in terms of how viable that defense might be.

20 And then, of course, it would allow Novartis to
21 make a -- to move for summary judgment on that issue if
22 they felt the facts supported it in the cases where that
23 case-specific discovery had been permitted.

24 So I'm looking at -- I think there are six cases
25 here in Middle Florida. I had my clerk run a list for me,

1 and somewhere I have it.

2 It looks like 8:20-civil-587. Let's see here.

3 Well, let me give you the new numbers. So the new
4 numbers, the Middle District numbers -- I mean, the Orlando
5 Division numbers are:

6 6:21-civil-1287.

7 6:21-civil-1312.

8 6:21-civil-1335.

9 6:21-civil-1408.

10 5:22-civil-283.

11 5:22-civil-303.

12 The "5" cases are just in the Ocala Division as
13 opposed to the Orlando Division. It doesn't make any
14 difference. They're all assigned to me.

15 And then I've talked to Judge Harz, who obviously
16 will make her own decisions about it, but I believe I can
17 represent that Judge Harz is at least open to the
18 possibility of having some case-specific discovery in a
19 finite number of the cases that are before her.

20 And we would have to talk about some method of
21 selecting those cases. Maybe give you all the opportunity,
22 let the plaintiffs pick five cases and the defense pick
23 five cases perhaps. And that would give us a
24 representative sampling of about 16 cases, which we don't
25 have a huge pool of cases anyway.

1 I'm just picking that number sort of out of the
2 air. It may be more than we need. I don't think it's less
3 than we need, but it may be more than we need to do.

4 But I think it's something that you all are
5 capable of doing within the time period that we have
6 remaining, because it seems to me that you're really only
7 looking at about two depositions in each one of those
8 cases, the treating physician and the plaintiff.

9 But I'd be interested in hearing from -- let me
10 hear from Novartis first, their reaction to that.

11 And then I'll come back and hear from your team,
12 Mr. Elias.

13 MR. JOHNSTON: Good morning, Your Honor.

14 I'm going to let Mr. Reissaus give you some
15 details on some of this.

16 But my reaction is, first, we are pleased that the
17 Court is entertaining this idea. We think it's important
18 particularly with a mediation deadline at the end of this
19 year. At this point, I can't mediate because I don't know
20 enough about the cases to mediate. So giving us the
21 opportunity to do that will be useful.

22 I would suggest that -- our view is that there are
23 only 30 cases or something like that in this MDL. If we
24 don't do discovery in all of them, that means we have to do
25 it all when we get remanded, except for the ones that you

1 have before you. And it seems to me that that is not
2 particularly efficient or in the interest of justice.

3 So I would suggest that the Court consider
4 broadening, at least its purview, to the entirety of the
5 MDL, which is not an overwhelming number of cases.

6 There are cases that within four months in MDLs
7 where they have had a hundred or a thousand individual case
8 workups in waves within four months. So we would again
9 urge the Court to go ahead and take up the entirety of the
10 inventory.

11 While we understand that without our waiving
12 Lexecon you can perhaps only focus on those six, it would
13 put us in a position on remand to get moving quicker
14 instead of having to have a four- or six-month period of
15 case-specific discovery on remand.

16 I'd also note that most of this inventory in the
17 Middle District is recently filed. When we started this
18 MDL, there was only one case in the Middle District.

19 And that suggests to us some selection bias by the
20 plaintiffs over the last few months in putting cases that
21 they like in this jurisdiction, and we were concerned that
22 that skews that pool of six cases in the plaintiffs' favor.

23 JUDGE BAKER: Well, do you have some doubt about
24 whether they're properly filed here?

25 MR. JOHNSTON: No, Your Honor. I'm simply saying

1 that we think --

2 JUDGE BAKER: The reason I ask is the last MDL I
3 worked on 20 years ago, we had cases filed in districts
4 that had no relationship to the plaintiffs, and it was
5 temporarily an issue.

6 MR. JOHNSTON: Do we have any reason --

7 MR. REISSAUS: No.

8 MR. JOHNSTON: We don't have any reason to think
9 they're not properly filed here.

10 JUDGE BAKER: Okay.

11 MR. JOHNSTON: My point simply is that, you know,
12 the plaintiffs decide whether to bring a suit, and they
13 clearly decided to bring more suits in this court. And
14 they may have put the thumb on the scale of filing in this
15 court a case that they may not file in another court in
16 order to increase the pool before the Court.

17 So all I'm suggesting is that we think a broader
18 pool -- our view would be all of the MDL cases -- but
19 something between six and all of the MDL cases would be
20 useful too.

21 Our concern is that on remand we now have to start
22 in everything but the six with case-specific discovery and
23 that that's going to be a burden to those courts and delay
24 our ability to have a broader collection of resolutions
25 that allow us -- the issue in this case ultimately is that

1 there was a -- one of the issues.

2 But we think a big issue is that there was a
3 warning and precaution put on the label in 2014. Most of
4 the cases in the inventory in this court involve folks who
5 either have been exclusively treated after 2014 or were
6 treated before and after 2014.

7 If that label were to be found adequate as a
8 matter of law, for example, that would eliminate a huge
9 portion not only of this inventory but of the New Jersey
10 inventory.

11 And what we would -- we're hoping is it would help
12 us move towards a mediation resolution, a settlement. It
13 would help us move towards knowing which cases to try to
14 get some answers to some of those questions. And I'm not
15 sure that the six here provide the opportunity for all of
16 those answers.

17 So we're simply suggesting some broader set, we
18 think, than the six would be appropriate, and up to the
19 entirety of the MDL inventory, so that that discovery is
20 completed before the cases get remanded, Your Honor.

21 JUDGE DALTON: Thank you, Mr. Johnston.

22 Mr. Elias.

23 MR. SILVERMAN: Good morning, Judge Dalton. Good
24 morning, Judge Baker. Nice to see you both again.

25 So a few things, I guess, to raise there in

1 general regarding plaintiffs' position.

2 First, as an initial matter, as we expressed to
3 Novartis last week -- we did meet and confer on this issue
4 after Novartis raised it in their agenda, and we expressed
5 to them that we agree with both Novartis and the Court that
6 we believe that it is time to start working up cases both
7 here and in the MCL. Work them up and get them trial
8 ready.

9 Trials, ultimately, I believe, are what will
10 resolve these cases, or the prospect of trials, as they did
11 in the first two cases that were brought against Novartis.
12 And I don't think that's any different here.

13 Ultimately, how we select those cases,
14 particularly here in the MDL, I think, is a challenge
15 presented.

16 One solution, as Your Honor has mentioned, is
17 selecting the Middle District cases, which contrary to
18 Mr. Johnston's position he just took, I believe there were
19 three Middle District cases. I know my firm had two of
20 them at the time of the formation of this MDL. And there's
21 been no selection bias to properly filed cases.

22 Obviously, the MCL presents a different issue with
23 a much larger group of cases, and we can certainly consult
24 with Judge Harz about that.

25 I would say there are two concerns that plaintiffs

1 have just regarding some of the initial things that have
2 been mentioned this morning.

3 First, if we're going to move to case-specific
4 discovery -- and as I indicated, I think that time is
5 right -- we agree that it should be on a select group of
6 cases both here and in the MCL. Doing so on every case in
7 this litigation in the MDL is certainly not going to bring
8 this efficiently to a resolution.

9 But if we're going to do case-specific discovery,
10 plaintiffs would submit that we do so not just selecting
11 one deposition here or one deposition there. We do so to
12 get cases trial ready, to move them in a position.

13 There are depositions that plaintiffs would desire
14 to take in the context of bellwether or individual cases as
15 well, not just letting Novartis individually select doctor
16 or plaintiff to take. So it would be discovery we would
17 want to take too.

18 And ultimately, if we're selecting just a couple
19 of depositions in each case without the remainder of
20 case-specific discovery, we are only inching a little bit
21 further towards getting cases ready for trial both --

22 JUDGE DALTON: So tell me, Mr. Silverman, what do
23 you contemplate that you would want to do? So your
24 suggestion is that we should just open up specific
25 discovery in some number of cases, however to be selected,

1 without any limitation on, for instance, being issue
2 oriented or otherwise?

3 MR. SILVERMAN: Oh, I would say -- I would say
4 limitations could be discussed in terms of the number of
5 depositions taken by a side. That's a pretty common
6 limitation that's placed in these types of MDLs and MCLs.

7 I wouldn't say it should be issue specific. I
8 think it should be towards getting cases trial ready.

9 Limitations in terms of the number of depositions
10 to take, each side; if there are case-specific depositions
11 that plaintiff wishes to take of Novartis' witnesses.

12 JUDGE DALTON: So help me understand what it is
13 that you're talking about, because you've completed your
14 fact discovery, or should have, with the exception of the
15 depositions that are out there to be done.

16 MR. SILVERMAN: Yes, sir.

17 JUDGE DALTON: Your expert discovery is scheduled
18 to be completed in January.

19 What other case-specific discovery from the
20 plaintiffs' standpoint are you envisioning?

21 MR. SILVERMAN: Well, Your Honor, particularly, I
22 would think with respect to treating physicians, there
23 would be treating physicians who ultimately treated the
24 plaintiff's injuries on the other side of it that we would
25 likely consider taking in cases.

1 Now, one caveat I would say to that is if we are
2 selecting Middle District of Florida cases and those
3 physicians are located within 100 miles, within subpoena
4 power, that would obviously be a discussion about whether
5 or not we needed to depose that expert to preserve their
6 testimony, which would probably also involve a discussion
7 with the doctor, him or herself. Some may be more flexible
8 coming to trial live as opposed to being deposed and having
9 a trial preservation video. So that would be one example.

10 Also, pursuant to the DFS order that was agreed to
11 some time ago for cases that are going to move forward with
12 additional discovery, Novartis has additional disclosures
13 that they're required to make in connection with that.

14 That could -- although I will confess that I'm not
15 particularly a huge proponent of deposing sales reps in
16 cases, but depending upon the specific facts of the case,
17 depending upon what was being discussed between one of
18 Novartis' sales reps and my client's prescribing physician,
19 I may want to depose that witness as well.

20 That said, Your Honor, the other issue I'd like to
21 raise is just a general scheduling issue.

22 Depending upon the breadth of what we would be
23 undertaking here, obviously we still have, I believe, nine
24 depositions scheduled in fact discovery which will be
25 taken. Plaintiffs then have to serve their expert reports.

1 Novartis serves their expert reports. Mixed in with that
2 will be some amount of expert depositions as well.

3 I don't know how many experts Novartis is going to
4 disclose. My experience in MDL practice working with
5 pharmaceutical and medical device companies is they do have
6 a tendency to disclose a number of experts. But I'm sure
7 they'll remember your admonition from the beginning of the
8 case that you didn't want experts overlapping expertise.

9 That said, just because of the breadth of issues
10 here, I'm sure you're talking about a decent size number of
11 expert depositions that will need to be undertaken as well.

12 So I would also like to put out there the issue
13 that plaintiffs would like to also discuss what a
14 reasonable schedule would look like to get a number of
15 case-specific depositions done as well. And done so
16 expeditiously. We do want to move this case forward
17 towards trial.

18 JUDGE DALTON: Okay. Go ahead.

19 JUDGE BAKER: Have you talked with the defense
20 about scheduling doctors?

21 I mean, they're notorious for not liking to
22 cooperate with lawyers that interfere with their schedules.
23 And that particularly if you have a lot of doctors being
24 taken, it becomes a real issue, even apart from the issue
25 of trial depositions and subpoena powers and so on.

1 And, I mean, I have appointed a special master to
2 help counsel -- I won't say coerce, but certainly get the
3 doctors' attentions and enter orders that you can use to
4 get their attention.

5 So I wondered if you had talked about that.

6 MR. SILVERMAN: Thank you, Judge.

7 We did not. On our call last Thursday, we didn't
8 get to that granular level. I do think there was an open
9 dialogue.

10 I mean, plaintiffs essentially had four questions
11 for Novartis in conjunction with this:

12 Do you have a specific proposal to make with
13 respect to discovery here?

14 Secondly, when do you propose having, conducting
15 this discovery based upon the current schedule and the
16 discovery that needs to be done?

17 Third, are you -- have you changed your position
18 on waiving Lexecon for the remainder of the MDL cases?

19 And four, what do you propose about the MCL which
20 obviously has vastly different issues in terms of both
21 jurisdiction and the number of cases?

22 Novartis had expressed at the time, I think,
23 mostly, other than their original position of wanting to
24 take two doctors depositions in every MDL case, which we
25 said we didn't think was particularly efficient, amongst

1 other issues, that they mostly wanted to see where the MDL
2 incorporating Your Honors were in terms of your thoughts
3 about things at the time. So we didn't have any real
4 granular discussions about that.

5 I too, Judge Baker, share your concerns about the
6 difficulty in scheduling doctors. We are talking about
7 potentially hematologist/oncologist here who are obviously
8 treating some very important patients.

9 On the other side, we're talking about potentially
10 vascular surgeons or cardiologists who are similarly in
11 active practice.

12 But I think the assistance of certain orders and
13 the like and I think with a good amount of diligence we get
14 it done, but it is a challenge. We are talking about
15 people who have busy schedules and often try to hope to
16 avoid putting their head in the sand and not have to go to
17 depositions.

18 But I think we can work together cooperatively in
19 that regard.

20 JUDGE DALTON: All of those are problems that are
21 not unique to this case. It's just the magnitude of it, of
22 course, makes it more difficult.

23 And, you know, there are going to be some
24 physicians who are cooperative or are going to be willing
25 to meet with you all and discuss their upcoming deposition

1 testimony. There are going to be others that say, you
2 know, I'm not coming unless you subpoena me. Don't call
3 me, don't come see me, don't talk to me. You know, so they
4 run the gamut.

5 I've had lots of experience with that myself. I
6 know you all have as well. And it's one of the reasons,
7 Mr. Silverman, that I, frankly, am reluctant to -- I'm
8 unpersuaded, I guess, by your plea that we ought to open up
9 the gates to case-specific discovery across the board to
10 get the cases trial ready, because I don't think it's
11 manageable within the schedule that we have.

12 And I think that what is manageable is to allow a
13 limited amount of case-specific discovery to go forward to
14 make sure that the cases that proceed are cases that are
15 viable. I'm not suggesting that they're not viable.

16 Mr. Johnston, of course, on behalf of his client
17 says that they have significant defenses related to the
18 failure-to-warn case. And I think they have a right to, at
19 least, have a limited amount of discovery to determine
20 whether or not that defense is viable.

21 It seems to me that until that dragon either
22 prevails or is slain that you all are not going to have
23 much success in getting these cases resolved. Just my
24 partially informed -- I started to say uninformed --
25 partially informed opinion about it.

1 I think the best way to get there is to allow you
2 all, allow Novartis to do some limited case-specific
3 discovery.

4 Since they've not waived their Lexecon rights, I'm
5 going to restrict it to the cases that are in front of me
6 that I can control so that that is useful information and
7 so that I'm not treading on the toes or turf of my
8 colleagues with respect to how they, he or she might
9 fashion their discovery plan going forward.

10 I've had -- I have a great relationship with
11 Judge Harz. And I think that we can probably put enough
12 cases in there with the six from the Middle District as
13 well as a few -- I don't know what a few will be -- from
14 New Jersey that will, at least, let all of you know whether
15 or not this failure-to-warn defense that from day one
16 Novartis has said is going to be the game over for these
17 cases, let's find out whether there's viability to that or
18 not.

19 Again, Mr. Johnston is correct that it's not going
20 to completely take the burden off the shoulders of my
21 colleagues. But if at the end of this period, Novartis
22 files, as I suspect they will, a dispositive motion on that
23 issue as well as perhaps an omnibus motion for summary
24 judgment, I'll have an opportunity to rule on that.

25 Obviously, the ruling with respect to the record

1 that is developed in the case-specific cases will not be
2 the same as the record that might be developed in another
3 case, but I suspect that there will be many similarities in
4 that that work that I do may be useful, not dispositive but
5 useful, when my colleagues come to look at that question in
6 their cases later on.

7 So I appreciate that the plaintiffs want to get
8 this case to the finish line and they want to get the cases
9 teed up and ready for trial. So I'm not unsympathetic to
10 that.

11 I just am reluctant to do it at this stage because
12 I think it's going to defeat the purpose of what I was
13 asked to do as a multidistrict litigation manager judge,
14 and that is to get the cases to a point where they can be
15 sent back, remanded as close to trial ready as possible
16 recognizing that there are going to be outstanding issues
17 because there always are.

18 So I'm also not persuaded by Mr. Johnston's plea
19 that I should just, you know, let him take discovery in
20 every one of the MDL cases because, frankly, that argument
21 falls a little bit flat when you look at the fact that
22 there are 200-plus cases in front of Judge Harz in
23 New Jersey.

24 So we're not going to take -- I don't think that
25 Judge Harz -- I shouldn't speak for her. She's on the

1 phone. She can speak for herself.

2 But I'd be surprised if she were inclined to open
3 up case-specific discovery in 250 cases and turn that into
4 a discovery free for all.

5 You know, because I don't think either of you,
6 frankly, want that. Mr. Johnston might act like he wants
7 it. I don't suspect he really does, because it would be
8 frightful to try to manage that.

9 So I'm going to exercise the influence I have to
10 try to put together something I think is fair to both
11 sides. It's manageable.

12 If during the course of what I'm going to propose,
13 Mr. Silverman, Mr. Elias, you come upon situations where
14 you think case-specific discovery needs to be taken
15 offensively by the plaintiff in order to combat some of
16 this defense of failure to warn, I'm not saying that that's
17 going to be foreclosed, but you're going to need to come
18 ask us about it. All right?

19 So what I'm inclined to do is allow Novartis to
20 take two depositions in each one of these cases, which I
21 envision would be the prescribing physician and the
22 plaintiff.

23 Now, if they need more than that, they can come
24 and ask for more than that, but that's what I'm going to
25 permit right now. I'm going to permit between now and the

1 close of the expert discovery period in January, I'm going
2 to permit the defendant to take the prescribing physician,
3 not treating physicians, with respect to whatever the
4 various injuries may be or consequences of the -- the
5 doctor who made the decision to prescribe the medication
6 and the plaintiff who took the medication.

7 Those two depositions, it seems to me, are going
8 to give them all, or at least substantially all, of the
9 information they need in order to ask the Court to consider
10 whether or not this failure-to-warn issue is a case ender
11 for them as a matter of law.

12 And if during the course of that, as I've
13 mentioned already, not to repeat myself, you become aware
14 in one of these cases that you need to take a deposition of
15 somebody else, you can come ask me or you can ask
16 Judge Baker, and we'll consider whether or not we think
17 it's necessary.

18 But to go beyond that and to open the door for
19 case-specific discovery across the board is going to derail
20 us, and I'm not prepared to do that.

21 MR. SILVERMAN: I appreciate that, Your Honor.
22 Thank you.

23 And I will -- I'll confer with my colleagues and
24 take a look at these issues from the perspective that you
25 just raised it to see even if initially there are certain

1 aspects of discovery -- as I mentioned, for example,
2 certain aspects of the DFS that would defer to later on --
3 that we think are essential.

4 We will obviously take that, Judge, in conjunction
5 with your desires on how to manage these cases. So you can
6 rest assured that we will not be coming to you with what we
7 consider to be marginal requests. It would only be things
8 we think are ultimately, like a deposition, are essential
9 to defend it.

10 One thing I would ask, Your Honor, is just based
11 upon the number of depositions to be taken, both fact
12 discovery, expert reports, and expert discovery, to
13 potentially consider giving the parties a little bit of
14 additional time on the back end to complete that just
15 because of scheduling and the like.

16 We will have -- as I mentioned, you know, expert
17 depositions are going to take a lot of preparation for as
18 well, both to both defend and take. So I would ask
19 Your Honor to consider a slightly longer bit of time on the
20 back end to do those depositions so that we're not running
21 from deposition to deposition and don't have adequate time
22 to prepare.

23 JUDGE DALTON: It's not an unreasonable request
24 except that, as I said before, you know, the time
25 flexibility is getting away from us.

1 And I appreciate the fact that these cases are
2 labor intensive, but, you know, that comes with the
3 territory.

4 And how much time do you think -- how much extra
5 time do you think you would need, Mr. Silverman?

6 MR. SILVERMAN: Your Honor, I would -- I would
7 defer to my colleagues as well on this.

8 But I would even say, even to push that out an
9 additional 30 days just to complete the extra depositions,
10 I think, would be invaluable to give us a little bit of
11 additional breathing time to get these done properly. That
12 would be my sense, Your Honor.

13 JUDGE DALTON: Okay.

14 MR. SILVERMAN: Thank you.

15 JUDGE DALTON: Thank you.

16 JUDGE HARZ: In terms of what was discussed from
17 the selection of cases for the depositions from the MCL
18 docket, selecting five picks from the defense, five picks
19 from the plaintiff, I think we should put a time frame in
20 terms of when you'll advise each other -- excuse me -- when
21 you'll advise each other as to the five selected.

22 What would you suggest, Counsel? Two weeks?

23 MR. SILVERMAN: Go ahead, Mr. Johnston.

24 MR. JOHNSTON: Yeah, Your Honor.

25 I'm wondering if perhaps we would have a separate

1 hearing because we would oppose that selection process in
2 the New Jersey cases.

3 JUDGE HARZ: What are you suggesting, a random
4 selection?

5 MR. JOHNSTON: Well, I believe you have some cases
6 where we select -- so first of all, I believe that because
7 you are going to have to address all these cases in the
8 MCL, that some of the concerns that govern why Judge Dalton
9 has limited the pool don't apply and that we could do waves
10 of like 30 cases in the MCL, which is not unheard of in the
11 MCL. And that's --

12 JUDGE HARZ: We can't do that simultaneously while
13 all this is going on. It's not humanly possible to do
14 waves of 30. It's not humanly possible.

15 I have a schedule in front of me. I'm trying to
16 give you more than seven cases because we've had the
17 Lexecon waiver. You're limited to seven in federal court.

18 I believe, Judge Dalton and Judge Baker, more than
19 seven is appropriate. I'm thinking another ten so that you
20 have a body of information in front of you.

21 So I'm suggesting ten more cases. I'm not doing
22 200 cases or 250.

23 MR. JOHNSTON: Well, I wasn't suggesting that we
24 do 200. I was suggesting, though, that we do -- and this
25 perhaps should happen in a hearing before Your Honor. But

1 that we do --

2 JUDGE HARZ: No, I don't need a separate hearing
3 for this. No. We're going to do ten. Okay?

4 And is it the methodology that you're objecting
5 to, that each side picking? Do you want me to pick them,
6 or is it just the number?

7 MR. JOHNSTON: Well, it's the number, but also we
8 would prefer random selection.

9 JUDGE HARZ: Plaintiffs' counsel, do you want
10 random selection? I can do it through Google computer
11 application.

12 MR. ELIAS: Your Honor, this is Rich Elias for the
13 plaintiffs.

14 No, we do not think that for this particular
15 purpose and given what we are doing here that random
16 selection is appropriate, and we agree with the Court's
17 recommended procedure of each side selects five.

18 JUDGE HARZ: Yeah, I'm going to do a selection of
19 five.

20 And why don't you let each other know within
21 two weeks from today. So today is the 7th. So by the
22 21st, the list of the cases that you're choosing.

23 And let me ask you a question. On some cases,
24 there may be more than one prescribing physician. Is that
25 a fair statement?

1 MR. JOHNSTON: Well, I have some issues that I
2 need to address about that.

3 But, Your Honor, we'd like a process where -- we
4 need to understand when the plaintiffs dismiss our five
5 because they don't want to litigate them, how do we replace
6 our five and not just end up with the plaintiffs' five?

7 MR. ELIAS: We're not going to do that.

8 MR. JOHNSTON: I understand that you say that now,
9 but I've had it happen over and over again.

10 So we need -- Your Honor, I'd ask that we have a
11 replacement.

12 JUDGE HARZ: Well, then, you would be able to pick
13 another five.

14 MR. JOHNSTON: Okay. Thank you.

15 JUDGE HARZ: Okay. You'd be able to pick another
16 five. I understand what you're saying. I didn't miss
17 that. I get it.

18 You'll be able to pick another five.

19 MR. JOHNSTON: Your Honor, with respect to -- and
20 I'm addressing Judge Dalton now.

21 With respect to the limited number, I'm okay with
22 that. But I want to just make the point that, you know,
23 the Seroquel cases went away on specific causation. We
24 actually think we have very valid, specific causation
25 defenses here.

1 And what I don't want to be is in a situation
2 where we choose doctors based on only warnings causation
3 issues and then have a summary judgment motion early next
4 year and then somebody -- then me not have an opportunity
5 on a case-specific basis to make specific causation summary
6 judgment motions as well.

7 And so I just -- I think we need to make it clear
8 that if we're going to take this limited approach focused
9 on warnings issues, that that does not deprive us of the
10 opportunity to take their cardiologists, their diabetes
11 doctors, et cetera, in an effort to build out a more broad
12 specific causation case at some point.

13 If that specific causation motion is going to be
14 due at the time that the warnings causation motion is due,
15 then I need to get that discovery in this or we need to
16 make sure that that's carved out somehow, if that makes
17 sense.

18 JUDGE DALTON: It makes some sense, yes.

19 MR. SILVERMAN: Your Honor, may I address that
20 very briefly?

21 JUDGE DALTON: Yes.

22 MR. SILVERMAN: Thank you, Your Honor.

23 And my colleague, Mr. Oxx, raised this issue a
24 moment ago, so I'm glad Mr. Johnston brought that up.

25 One of the concerns, an example of a concern we

1 have about doing this well cabined discovery is, for
2 example, our client's cardiologist.

3 So one of the issues we have here -- which we see
4 a lot with cardiologists, vascular surgeons, the treating
5 end of this -- is that because there was at no point in
6 time a warning on the label and many of our clients here
7 did receive this before the warning and precaution -- and
8 we can debate aspects of it, whether it's an adverse event,
9 sections and the like.

10 Certainly if a cardiologist was aware of the
11 connection and would have taken our client off or would
12 have recommended our client come off of the drug as well if
13 they had known what they knew now or knew what they knew
14 today, that also presents a potential issue that relates to
15 issues on summary judgment, not merely just a prescribing
16 physician.

17 One of the issues here as well is the disconnect
18 that exists between the vascular surgeons, cardiologists
19 and the like and hematologists, oncologists on the other
20 end. Vascular surgeons, cardiologists don't have any
21 personal prescribing experience with Tassigna based upon the
22 nature of it.

23 So that is one example of an issue in certain
24 cases that presents where beyond just taking the
25 prescribing physician what a cardiologist or vascular

1 surgeon says may bear on that issue.

2 Thank you.

3 JUDGE DALTON: So what I'm going to do, part of
4 the reason that I'm cabining the discovery is because of
5 this very problem, you know, Mr. Johnston, in terms of, you
6 know, once you start pulling on the sweater yarn, you know,
7 the whole sweater unravels. And I'm not going to let this
8 case get unraveled. So I'm going to stick to my guns in
9 terms of what I said.

10 I'm going to let you take the prescribing doctor
11 and if there's more than one prescribing doctor, then
12 you'll have to bring that back to us and point out to me
13 why you need or point out to Judge Baker why you need
14 another one.

15 Mr. Silverman, Mr. Elias, if there's some wrinkle
16 in one of these cases that arises where you think you need
17 to take some discovery because maybe there's somebody else
18 in the treatment chain that would have intervened and said,
19 you know, I didn't prescribe this drug but I'm treating her
20 now and she needs to come off of it, I can see and I can
21 envision that facts scenario developing.

22 Again, that's the reason that, in my mind,
23 something like -- and I think we only have six, Judge Harz,
24 here, six that are my cases.

25 But something like 16 cases in terms of order of

1 magnitude is a manageable number of cases for us to be able
2 to get these issues developed. It also gives me the
3 ability to control the six cases that are in front of me
4 without a Lexecon waiver.

5 And, you know, Mr. Johnston, I guess the most I
6 can tell you is that to the extent that these cases are in
7 front of me and you've not been permitted to have fulsome
8 individual discovery, obviously you've got due process
9 rights. Your client has due process rights. And so we'll
10 take that up.

11 But I want to get these cases managed to the point
12 where we've got as much done as we can get done in the
13 context of multidistrict litigation and where Judge Harz
14 can get as much done as she can get done in the context of
15 the MCL proceedings there in New Jersey.

16 And what I know we cannot do -- which she said
17 better than I can say it, is it's not manageable. We can't
18 open up case-specific discovery in 300 cases and let you
19 all just start noticing them.

20 First of all, you can't do it. We can't do it.
21 And it can't be done. So we might as well talk about what
22 can happen.

23 MR. JOHNSTON: Okay. I just wanted to let -- I
24 think you have seven cases, Your Honor.

25 JUDGE DALTON: Well, I may have miscounted.

1 Okay. Thank you.

2 MR. JOHNSTON: We can send something to let you
3 know.

4 JUDGE DALTON: That's fine. I mean, I can find
5 them. My clerk will find them.

6 MR. JOHNSTON: So my only point was that I just
7 wanted to make sure the record was clear that we will have
8 an opportunity to address those other issues if we approach
9 this narrow issue, which I think is -- you're right that
10 that is an issue that's going to be very important in
11 figuring out these cases.

12 I just -- my only point was to put on the record
13 that we likely still will have specific risk factor
14 alternative cause specific causation issues that won't get
15 addressed. And that's fine.

16 I just wanted to make sure the record was clear on
17 that.

18 JUDGE DALTON: Well, you know, when you say they
19 "won't get addressed," I'm not sure they won't get
20 addressed.

21 MR. JOHNSTON: They may not get addressed.

22 JUDGE DALTON: They may not get addressed.

23 What you're going to need to do is you're going to
24 need -- because I'm going to give you some deadlines for
25 not only filing -- for, first of all, closing this

1 discovery, you know, writ large; and for dispositive
2 motions, both on these specific issues of failure to warn
3 as well as omnibus dispositive motions across the board
4 once you finish your expert discovery.

5 And then we're going to talk about a date, at
6 least a target date, for me to be able to remand these
7 cases back from whence they came so they can be made ready
8 for trial.

9 And in the course of doing that, I'm going to do
10 the very best I can to try to get the seven cases that are
11 in front of me, if in fact it is seven, as case ready as
12 possible as quickly as possible so that we can start trying
13 to get some adjudication of these claims and find out, you
14 know, where do we go from here.

15 So I guess we're fortunate that we have -- I'm
16 fortunate that I have 40 of them, or whatever it is,
17 30-some odd of them, and I don't have 250 like Judge Harz
18 has. But, you know, that's good news for me.

19 MR. JOHNSTON: Thank you, Your Honor.

20 Right.

21 MR. ELIAS: Your Honor, can I be heard?

22 JUDGE DALTON: Yes.

23 MR. ELIAS: Just one clarification.

24 These treating physician depositions for --

25 JUDGE DALTON: Prescribing.

1 MR. ELIAS: I'm sorry, prescribing.

2 Try as we might, they don't always talk to us. So
3 these depositions in many cases will be the first time that
4 we have an opportunity to talk to them.

5 And so if there's any time limitations that the
6 Court is putting on the depositions, we just request that
7 the Court keep in mind that the plaintiffs will have
8 probably substantial questions to be asking in these
9 depositions too. It's not just Novartis asking questions.
10 I just wanted to make that clear for the record.

11 And we will attempt to meet and confer with
12 Novartis on these depositions about priority of
13 questioning, but I just wanted to raise that issue.

14 JUDGE DALTON: Well, I have a time limitation, I
15 think, now built into my preliminary order of no more than
16 seven hours per deposition. I can't imagine that you're
17 going to get a prescribing physician who's willing to sit
18 there for seven hours whether I order them to or you
19 require them to. I mean, I say that somewhat tongue in
20 cheek. Obviously, they'll do what they're ordered to do.

21 But you all are certainly going to need to work
22 together to try to streamline what you need to get
23 accomplished and do it in a way that's respectful of the
24 witnesses and respectful of the witnesses' time.

25 And I'm no stranger to, you know, the occasional

1 -- and I say occasional, because most of these physicians
2 are committed, dedicated, professional men and women who
3 are principally devoted to the care and treatment of their
4 patients who recognize, albeit somewhat grudgingly, that
5 they have also a concomitant responsibility to testify when
6 they're asked to do that. But it's not something that they
7 like to do, and it's not something that they build into
8 their schedule.

9 And I also recognize that occasionally you run
10 into the prima donna who thinks that he or she is not
11 subject to process and is not required to attend and is not
12 required to respond to a court order. And, you know, when
13 those unfortunate situations happen, we'll deal with them.

14 And hopefully it won't be a problem. But if it
15 is, it's not something that's new to the Court.

16 MR. ELIAS: Thank you, Your Honor.

17 JUDGE DALTON: You're welcome.

18 What do you think, Mr. Johnston or Mr. Reissaus,
19 about some additional time on the back end? Currently,
20 we're looking at mid-January. And recognizing that it's
21 hard to get much done between December 15th and
22 January 15th, what do you think about an additional
23 30 days or so?

24 MR. JOHNSTON: We don't have any objection to an
25 additional 30 days. We would not like to see it much

1 further than that, but certainly that makes sense given the
2 holidays and everything, in our view.

3 JUDGE DALTON: Here is what I have tentatively
4 sketched out for the schedule.

5 And so I'm going to give you these dates with the
6 understanding I'm going to -- I think you're right,
7 Mr. Silverman, that we're going to need some additional
8 time in light of this. So these dates, I'm going to adjust
9 these dates by 30 days.

10 But what I had sketched out was based on the
11 January 17th expiration date for expert in
12 case-specific discovery, that dispositive motions would be
13 due a month thereafter. That would be mid-February. It
14 would now be mid-March.

15 The responses to dispositive motions would be due
16 mid-March. That would now be mid-April.

17 Replies, so I had late March. And that will now
18 be late April.

19 And then -- so if I get the motions briefed by the
20 end of April, my hope would be that I would be able to take
21 the time necessary to resolve those and at least have the
22 cases in a position for remand by the end of the summer.

23 Obviously, I've got a lot of other things on my
24 plate. And I don't know the level of complexity of the
25 summary judgment motions or anything of that sort.

1 But assuming that if I build myself in about three
2 to four months to be able to get to those and dispose of
3 them in a responsible way, that will put me at about early
4 summer in a position to be able to start remanding the
5 cases back from whence they came, which I think is -- I
6 think it's a reasonable schedule. I think it's doable.
7 But it's not going to allow you all to have any -- a lot of
8 flexibility in terms of moving forward.

9 You have a lot to do. You have the expert
10 discovery. You have all of the issues that are associated
11 with that.

12 Even if it's just two depositions in each one of
13 these cases -- Judge Harz, I think, if I understood her
14 order, has required you to let her know within seven days
15 of your selections, five from the plaintiff and five from
16 the defense.

17 My seven cases are going to be included in my
18 order. So I'll have my clerk identify all the cases that
19 are Middle Florida cases, and I will very quickly turn
20 around an order that identifies those cases.

21 In each one of those cases, at least as a starting
22 point, I'm going to allow Novartis to take the prescribing
23 physician and the plaintiff.

24 And then as I said, I'm open to entertaining,
25 Judge Baker is open to entertaining requests for expanding

1 that, recognizing that it needs to be a -- you need to have
2 a very good reason to expand the request.

3 And I'm certainly not foreclosing you from taking
4 an offensive deposition on behalf of the plaintiff if the
5 circumstances suggest that it is necessary in order to meet
6 the challenge of the warning issues or things of that sort.

7 So what I'm trying to do is to get the case to the
8 point where we can get, to the extent possible, recognizing
9 Mr. Johnston's concerns that there may be some loose ends
10 out there that might benefit them from the standpoint of
11 the specific causation defense that may not be encompassed
12 in what's to be done between now and February. I'm a
13 little skeptical that there's something that's not going to
14 be done, but I recognize it's possible. So we'll see.

15 But that's what I intend to do when you all leave
16 here today is give you an order that sets forth that
17 schedule and encourage you to, again, continue to do what I
18 think you have been doing, and I congratulate you for,
19 which is to work cooperatively together on what I know is a
20 complex case with a lot of -- dealing with all of these
21 professional people who have busy schedules and busy lives
22 and don't want to be bothered with litigation is a -- it's
23 the trial lawyer's burden and nightmare, you know, that all
24 of you have to suffer under.

25 And as I said, I'm not unsympathetic to it, but

1 it's not unique to this case. You all are used to doing
2 it. So give it your best effort and continue to work
3 cooperatively, because this work is hard enough to do and
4 it's a tough enough job when you do it getting along. So I
5 encourage you to keep getting along the best you can.

6 Anything else that we can take up while I have you
7 here?

8 Judge Baker has something.

9 JUDGE BAKER: Yes.

10 It occurs to me, part of what Mr. Johnston said,
11 something for you to have in the back of your minds is, for
12 now, starting to look at a rise for remanding the cases,
13 that you all should be thinking about what you'd like
14 Judge Dalton to include in his order of remand for things
15 that aren't done and will need to be addressed by the
16 originating court.

17 Nothing that you need to do now, but keep that in
18 mind. Because there are things we're not letting the
19 plaintiff do. There are things we're not letting the
20 defendant do now.

21 And Judge Dalton has his mandate from the panel
22 and he's going to do that, but part of that will be
23 alerting the judges who receive this what they're going to
24 have left on their plates.

25 JUDGE DALTON: And part of it -- you know, part of

1 the reason, again, Mr. Johnston, to your concern, one of
2 the -- one of the thoughts I had in terms of limiting the
3 case-specific discovery as I have to the cases that are in
4 front of me that I have the ability to control is that I'm
5 going to know with respect to those cases if you -- if
6 during the course of that, if you come back and say, you
7 know, we have some specific causation defenses in your
8 cases and this is who we need to talk to, these are the
9 people that we need to depose, I could at least potentially
10 resolve those issues, which may not be dispositive if the
11 same issues arise in front of my colleagues, but it might
12 help them.

13 I mean, I know that any time I get a case back
14 from the MDL, from the managing judge, there's many things
15 that -- when he or she has resolved something, even if it's
16 not binding on me, it's very helpful for me to have the
17 benefit of his or her thinking in terms of -- I don't
18 always agree, you know, but it's very helpful for me to
19 have that work already done by at least one other judicial
20 officer before I see it. And I don't think that's
21 particularly unique to me.

22 So to the extent that I can do that and tee some
23 of those things up and get some of that work done for my
24 colleagues down the road, that's my mission. That's my
25 goal.

1 All right. Judge Harz, anything else from
2 New Jersey?

3 JUDGE HARZ: No further comment.

4 Thank you very much. Thank you.

5 JUDGE DALTON: Okay. Judge Harz, would you like
6 for me to include in my order your seven-day remit?

7 JUDGE HARZ: Sure, I would. But I think I did say
8 14 days. I think I said the 21st.

9 JUDGE DALTON: Oh, I'm sorry. I misheard you.
10 I'm sorry. 14. So absolutely. Your word is the end of
11 the day as far as those are concerned.

12 So if you'd like for me to include 14 days for the
13 parties, do you want them to give you a joint submission of
14 their list, the five selected by the plaintiff and the five
15 by the defense?

16 JUDGE HARZ: Sure. That would be appreciated.
17 Thank you.

18 JUDGE DALTON: Okay. You're welcome.

19 So, Counsel, I'll include that in my order at
20 Judge Harz's direction, 14 days for you all to meet and
21 confer and submit a combined list of ten cases, five
22 selected by the plaintiff and five selected by the
23 defendant.

24 And I don't have anything else for you, I don't
25 think. I appreciate it.

1 Mr. Reissaus, you have something else you wanted
2 to raise?

3 MR. REISSAUS: Yes, Your Honor.

4 JUDGE DALTON: Yes.

5 MR. REISSAUS: I just wanted to share the case
6 number for the seventh case.

7 JUDGE BAKER: Come to the podium. Our sound
8 system picks up a lot better from the podium.

9 MR. REISSAUS: I'm sorry.

10 The seventh case, it hasn't made it into the MDL
11 yet, but it was filed in this district.

12 JUDGE DALTON: Okay.

13 MR. REISSAUS: It's Menear, M-E-N-E-A-R, is the
14 plaintiff's name. The case number is 8:22-cv-01644.

15 JUDGE DALTON: Okay. Great. Thank you very much.

16 All right. You all have a good afternoon. Thank
17 you for coming together. And we'll be in touch.

18 MR. ELIAS: Thank you.

19 MR. JOHNSTON: Thank you.

20 JUDGE DALTON: Thank you, Judge Harz.

21 JUDGE HARZ: Thank you. Off the record.

22 (Proceedings adjourned at 10:03 a.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.

September 9, 2022

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