

US District Court
Middle District of Florida

PLAINTIFFS' EXHIBIT

Exhibit Number: 9

6:06-md-01769-ACC-DAB

**In Re: Seroquel Products Liability
Litigation**

Date Identified:

Date Admitted:

Exhibit 9

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Docket No.6:06-MD-1769-Orl-22DAB

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IN RE: :
SEROQUEL PRODUCTS LIABILITY :
LITIGATION : Orlando, Florida
MDL DOCKET No. 1769 : May 22, 2007
: 4:00 p.m.
ALL CASES :
:
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TRANSCRIPT OF PRETRIAL CONFERENCE
BEFORE THE HONORABLE DAVID A. BAKER AND ANNE C. CONWAY
UNITED STATES MAGISTRATE JUDGE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Paul Pennock
Larry M. Roth
Scott Allen
Richard Laminack
F. Kenneth Bailey

For the Defendant

AstraZeneca: Fred Magaziner
Stephen J. McConnell
James Freebery

Court Reporter: Sandra K. Tremel

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

1 can proceed without it.

2 THE COURT: Right. Let me tell you, we have
3 only got about an hour for this hearing.

4 MR. PENNOCK: Yes.

5 THE COURT: And it is a status conference
6 hearing, so, go ahead.

7 MR. PENNOCK: I would like to address with the
8 Court, if that's acceptable, the issues regarding the
9 defendant discovery that we have been attempting to take
10 to date. You know, as I'm sure Magistrate Judge Baker --

11 THE COURT: I've read all of the transcripts of
12 all of the status conferences.

13 MR. PENNOCK: Okay. Essentially at this
14 juncture, we have very serious concerns as to whether this
15 discovery can proceed in the manner that --

16 THE COURT: Why don't you tell us what you have
17 to date and what you expected to date and what you need.

18 MR. PENNOCK: We have received to date 32 files
19 for witnesses who were identified by the defendants as
20 being important and relevant witnesses in this case.

21 What we have -- we have also taken a number of
22 30(b)(6) depositions which were permitted by the Court.

23 What we learned last week was that there are a large
24 number of witnesses in two foreign -- at least two foreign
25 entities, AstraZeneca UK and AstraZeneca AB in Sweden, who

1 those entities possess not only personnel but large
2 volumes of documents that bear directly on all the issues
3 in this case. And to our understanding, the defendants
4 have not produced any of this.

5 Moreover, to our understanding, not one of these
6 witnesses that we now identified through the 30(b)(6)'s
7 were on this list of 80 witnesses that they themselves
8 created last fall.

9 And if I may give two examples. One is -- I'm sorry.
10 One example is SET, the senior executive team. We learned
11 from a 30(b)(6) of their senior counsel here in the States
12 that the SET, the senior executive team, as she put it in
13 her words, controls everything. That they can do
14 anything. And they have been running the various drug
15 franchises for this company.

16 And yet these individuals had not previously been
17 identified to us, had not been on this list of 80. And
18 why is that so important? Because these -- this list of
19 80 has already comprised six and a half million
20 documents -- sorry, six and a half million pages, and
21 we're supposed to be plowing through all this discovery on
22 these 80 people, whereas there may be 20 or 30 people who
23 we really want that have been withheld from us.

24 Now, in my presentation, which unfortunately I don't
25 have up, you know, I put the word "deliberately" in there

1 sorry, e-mails with respect to any individuals in those
2 foreign entities, and we need to be able to start taking
3 30(b)(6)'s of individuals from those foreign entities.
4 The witness I took specifically said, you will have to
5 talk to somebody from those companies.

6 So I don't think from the testimony we got last week
7 there is any doubt that these foreign entities are wholly
8 insinuated into this process. In fact, they're
9 controlling it. And we have been unwittingly thwarted in
10 getting this discovery over the last several months.

11 The other category of issues -- we have the foreign
12 discovery issue. The other category that we have been
13 dealing with again and again and again, with some
14 significant measure of frustration, is the nature of the
15 document production that has occurred.

16 And I'm sorry to say there really has not been
17 tremendous improvement. There has been some improvement
18 through the actions of the Court in terms of making and
19 forcing things along. Forcing things along.

20 But the fact of the matter is that the documents we
21 have been getting, for example, include, as I put on the
22 agenda, there are thousands and thousands and thousands of
23 blank pages, and yet there seems to be underlying metadata
24 or files that would suggest there is supposed to be data
25 on those pages, but there's nothing there when we go to

1 look at it. That's number one.

2 Number two, there are instances where for each
3 rolling aspect of this production, they change the way
4 they're identifying documents. So every time we go to
5 upload it and try to match things up, and I do have my
6 director of IT on the phone if you have any questions
7 specifically, or if Magistrate Baker does on these IT
8 issues, but essentially when we try to match this data up,
9 it's not matching up because they change the way they're
10 phrasing the Bates number, literally putting a slash
11 instead of a dash, putting a comma or a semicolon instead
12 of something else.

13 There are different things they're doing with these
14 Bates number, we don't know why they're doing it, but
15 they're being done, and it's creating a lot of difficulty
16 that is completely unnecessary and avoidable in the first
17 instance.

18 MR. ALLEN: Your Honor, could I just --

19 MR. PENNOCK: May I just finish outlining the
20 problem.

21 In addition to that, Your Honor, we have learned that
22 these documents were all TIF'ed since December, so we're
23 kind of at a loss as to why, if they've had these
24 documents in the electronic TIF format since December, why
25 do we not have them all now? As the Court, as

1 Magistrate Baker said at one of the earlier conferences,
2 this stuff, this is not terrible rocket science. If you
3 have it and it's electronic, deliver it.

4 Well, we learned only recently in a communication
5 from them that they have actually had it in TIF since
6 December. So where is it? Why don't we have it?

7 And a fourth category of problem is the continuing
8 problem of page breaks. As Your Honor may have gleaned
9 from an earlier conference, we have this issue where,
10 let's say 500 e-mails for a given individual are produced,
11 but it's essentially one rolling page without a break.

12 And if you had page breaks in that, in that big
13 electronic document, it would be 1,000 pages. In one
14 instance 22,000 pages.

15 So it's this big long rolling document, and when you
16 electronically try to search for terms within that, it's
17 essentially impossible. I mean the smaller it is, the
18 easier it is to sort through it. But the larger it is, it
19 becomes effectively impossible.

20 Now, one other thing we learned that has made this
21 even more of a problem, that we just learned, is that the
22 program that AZ has been using -- and by the way, I say we
23 learned, we have been told, I don't know this for a fact.

24 But we have been told that the program AZ used to
25 maintain these documents is called Intracept, I believe.

1 these are the things that we must take care of. We must
2 get our arms around all this and get this discovery done
3 in order for this MDL to be concluded within the
4 timeframes that we're all trying to get it concluded
5 within.

6 And certainly this discovery needs to be done before
7 we can even think about moving on to the next phase of a
8 litigation like this, which is the discovery that the
9 defendants are insisting upon foisting upon this
10 litigation.

11 As was -- you know, I'll conclude with this, Your
12 Honor, with respect to the defendant's proposals regarding
13 discovery. We would suggest to you that it really is,
14 when you look at it, simply a plan that will result in
15 this Court and all of us being thrown into a quicksand of
16 litigation. It will draw us all into dealing with
17 thousands and thousands of individualized issues to no
18 purpose. Because the defendants have not agreed to try
19 cases in this courtroom.

20 The defendants understand that they're just -- that
21 they're just taking 300 cases that they suggested doing
22 this massive amount of discovery, much of which may have
23 to be redone when we get to trial to the remand court
24 several years from now.

25 So all it is doing is creating this quicksand, this

1 seen or heard about until now.

2 MR. MCCONNELL: I think there are some witnesses
3 that are overseas. I think there are probably some
4 documents. But I think that the vast -- not just the
5 majority, the overwhelming majority of materials is in the
6 United States.

7 And we have said all along, and Your Honor's provided
8 in the order, if they want to add witnesses, they want to
9 ask for more documents, they can do that. And we're ready
10 to respond to that.

11 But right now there's nothing to respond to except a
12 vague complaint. But we have more than met our
13 obligations, Your Honors.

14 And with respect to the technical issue, Mr. Pennock
15 is right. I mean that shouldn't be the case. You
16 shouldn't have blank pages. You shouldn't have pages
17 without page breaks.

18 And what we have said, and Mr. Freebery can address
19 this, time and time again, we have asked to meet and
20 confer, put the lawyers and the techie people together and
21 let's fix these problems. These are susceptible to a
22 technological fix, and it shouldn't have taken this long,
23 but we need to be able to get together and do it.

24 In terms of the TIF'ing, as Mr. Freebery can
25 complain, TIF'ing of documents is the first step, it's not

1 the last step. The fact that documents were TIF'ed in
2 December just is the beginning of the process, and there
3 are a lot of things that have to be done that can be
4 explained by Mr. Freebery in terms of review, privileges,
5 Bates stamping, putting them in the format that the
6 plaintiffs themselves said that they wanted in January.

7 And then finally, I would just say the thing that the
8 plaintiffs talked about in their motion, that they
9 complained about, is that we added extra documents for the
10 first date.

11 Your Honors, as I read Federal Rule of Civil
12 Procedure 26(e), that's what we're supposed to do. You
13 make the best effort you can to find the documents and to
14 produce them. If you find more, you're supposed to
15 supplement. If you need to complete the record, that's
16 what you do. I think that's what we're supposed to be
17 doing.

18 And the last point, and I'll leave this to
19 Mr. Magaziner to address if Your Honors get to it,
20 Mr. Pennock said we need to get all this discovery done,
21 including all the discovery in Sweden and England, before
22 we can even think about plaintiffs' specific discovery.

23 And I'll just remind Your Honor, Judge Baker, you
24 yourself said discovery is supposed to be a two-way
25 street. That's what Rule 26(d) says, too.

1 have here because there's no page breaks. So it would say
2 page 1 -- and I'm not making this up -- through page
3 150,000. And then I have to go to the box to try to find
4 out those documents.

5 So when we say these are technical issues, they're
6 not technical. They're substantive. I can't get to the
7 documents.

8 And then we say we have blank pages. It's not a
9 minor thing. It says, okay, assume we have page breaks,
10 and this is the only word that the computer people told
11 me. It's a hook file. Well, if you had page breaks,
12 which we don't, and we did have Scott Allen's box and we
13 find Scott Allen's box, and you punch on the button, it's
14 blank.

15 And I don't know the technical reasons why. And it's
16 not our responsibility. We did meet and confer on this.
17 Mr. Pyrtle talked to me. He talked to them in
18 Philadelphia.

19 It's their job to give us usable production. I mean
20 what else can I do? Please give me the hook files.
21 Please give me page breaks. Please do it. I could meet
22 and confer on that all day. They know what the problem
23 is. They're supposed to produce it.

24 And so these are substantive issue. They're not
25 technical. They're not imperfections. I can't get to

1 So, you know, there is no doubt that the defendants
2 are producing large volumes of material, much of which, as
3 we have said, is fairly unusable. But the question is, is
4 it what we need and what we think we want to prosecute
5 these claims, because we're not just engaging in a
6 document production and review. We are litigators,
7 lawyers, trial lawyers trying to investigate and discover
8 a case that we could take to trial.

9 MAGISTRATE JUDGE BAKER: Mr. Pennock, what do
10 you want from me?

11 MR. MAGAZINER: Your Honor, I would like the
12 opportunity to serve discovery demands on them.

13 MAGISTRATE JUDGE BAKER: Go ahead.

14 MR. PENNOCK: I'd like the opportunity to serve
15 discovery notices for these foreign witnesses.

16 MAGISTRATE JUDGE BAKER: Go ahead.

17 MR. PENNOCK: And I'd like the opportunity to
18 not be saddled with the 80 witnesses they've picked just
19 yet.

20 MAGISTRATE JUDGE BAKER: Go ahead.

21 MR. ALLEN: By the way -- thank you. And we
22 will do that, and we don't -- we're also prepared, and I
23 think we've got -- I'm prepared to do away with all this
24 custodial production. They can stop it right now.
25 Because I don't need any more blank pages. I don't need

1 any more --

2 MAGISTRATE JUDGE BAKER: Do I need to have an
3 evidentiary hearing with your technical people to find out
4 what the problem is with the slashes and the hyphens and
5 the blank pages and the difficulties which you call
6 technical and what Mr. Allen has called making it
7 impossible to read?

8 MR. FREEBERY: From my perspective, no. I'm
9 willing to sit down tomorrow.

10 MAGISTRATE JUDGE BAKER: Why aren't the problems
11 being solved? I mean I read your papers that you've got
12 the best outfit in the country working on this, and I'm
13 not getting any results, so that says to me, okay, it's
14 impossible. So what's the solution?

15 MR. FREEBERY: What our people are telling us,
16 Your Honor, we're putting this all in this TIF format as
17 laid out in the CMO. We're giving it to them. It's their
18 system that's not reading it right or doing something
19 incorrectly. We need their people there as well because
20 they have a different system than we use.

21 We're all playing on the same level field, or we're
22 playing on the same field, a level field, when it comes to
23 page breaks. Whatever we have is the same thing they
24 have.

25 But the system, when it comes to the way it converts,