

# EXHIBIT

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1 UNITED STATES DISTRICT COURT  
 2 MIDDLE DISTRICT OF FLORIDA  
 3 ORLANDO DIVISION  
 4 Docket No. 6:06-MD-1769-Orl-22DAB  
 5 . . . . .  
 6 IN RE: :  
 7 SEROQUEL PRODUCTS LIABILITY :  
 8 LITIGATION : Orlando, Florida  
 9 MDL DOCKET No. 1769 : December 11, 2006  
 10 : 2:00 p.m.  
 11 ALL CASES :  
 12 :  
 13 . . . . .

9  
 10 TRANSCRIPT OF PRETRIAL CONFERENCE  
 11 BEFORE THE HONORABLE DAVID A. BAKER  
 12 UNITED STATES MAGISTRATE JUDGE

12 APPEARANCES:

13 For the Plaintiffs: Larry M. Roth  
 14 K. Camp Bailey  
 15 Fletch Trammell  
 16 Keith M. Jensen  
 17 Lawrence J. Gornick  
 18 Michael E. Pederson  
 19 Dennis Canty  
 20 E. Ashley Cranford  
 21 Keith Altman  
 22 Karren Schaeffer  
 23 Scott Burdine  
 24 Seth Webb

25 Court Reporter: Sandra K. Tremel, RMR/CRR

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1 APPEARANCES CONTINUED:  
 2 For the Plaintiffs: Ken Smith  
 3 Lizy Santiago  
 4 Angela Nixon

5 Jonathan Jaffe  
6 For the Defendant  
7 AstraZeneca: Michael W. Davis  
8 Fred Magaziner  
9 Tamar B. Kelber  
10 Robert L. Ciotti  
11 Shane Prince  
12 Elizabeth Balakhani  
13 Eben Flaster  
14  
15 Proceedings recorded by mechanical stenography, transcript  
16 produced by computer-aided transcription.  
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1 P R O C E E D I N G S

2 THE DEPUTY CLERK: The case number is  
3 6:06-MD-1769-ORL-22DAB. In re: Seroquel Products  
4 Liability Litigation.

5 Counsel in the courtroom, please state your  
6 appearances for the record.

7 MR. ROTH: May it please the Court, on behalf of  
8 the plaintiffs, Larry Roth. And Your Honor, Mr. Pennock

9 unfortunately could not be here today. He sends his  
10 regrets but we're prepared to proceed without him.

11 MR. CAMP BAILEY: Camp Bailey on behalf  
12 plaintiffs.

13 MR. JENSEN: Keith Jensen for plaintiffs.

14 MR. TRAMMELL: Fletch Trammell for the  
15 plaintiffs.

16 MR. CANTY: Dennis Canty for the plaintiffs.

17 MR. PEDERSON: Michael Pederson for the  
18 plaintiffs.

19 MR. FLASTER: Eben Flaster for the defendants.

20 MS. BALAKHANI: Elizabeth Balakhani for  
21 plaintiffs.

22 MR. PRINCE: Shane Prince for defendants.

23 MR. CIOTTA: Robert Ciotta, Carlton Fields, for  
24 the defendants.

25 MS. KELBER: Tamar Kelber for defendants.

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1 MR. DAVIS: Mike Davis, Sidley Austin,  
2 AstraZeneca.

3 MR. ROTH: Fred Magaziner for defendants.

4 THE DEPUTY CLERK: Now counsel on the phone,  
5 please state your appearances for the record.

6 MR. GORNICK: Larry Gornick for plaintiffs.

7 MS. SANTIAGO: Lizy Santiago with Abraham  
8 Watkins for the plaintiff.

9 MR. WEBB: Seth Webb for plaintiffs.

10 MS. CRANFORD: Ashley Cranford for plaintiffs.

11 MR. BURDINE: Scott Burdine for plaintiffs.

12 MS. SCHAEFFER: Karren Schaeffer for the  
13 plaintiffs.

14 MR. SMITH: Ken Smith for plaintiffs. Angela  
15 Nixon for Robert Schwartz for plaintiffs.

16 MR. ALTMAN: Keith Altman consultant to  
17 plaintiffs.

18 MR. JAFFE: Jonathan Jaffe for the plaintiffs.

19 THE COURT: All right. Let me start out by  
20 saying I am hoping to when we're done prepare an order and  
21 a report and recommendation to Judge Conway. In the order  
22 I'll dispose of as many of the pending motions as I can.  
23 In the report and recommendation, there are some more  
24 motions and issues than what I probably have authority to  
25 rule on them. I think it would because of their

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1 centrality and other issues will make a recommendation to  
2 Judge Conway so that she can make the decision in the  
3 first instance based on my report and recommendation and  
4 any comments that counsel have based on that.

5 And we're going to talk about all of the pending  
6 motions, I hope, and other issues. So regardless of how  
7 we're going to decide it, discussion here will be  
8 available to Judge Conway along with and obviously, too,  
9 any order I enter somebody disagrees with it, subject to  
10 review by the district judge. So...

11 Let me take up some of the -- I'm going to take up my  
12 agenda and other issues that you wanted to present, some  
13 of which are the same. There have been some other motions  
14 pending.

15 Mr. Davis, we're going to not see your smiling face  
16 as often, is that --

17 MR. DAVIS: I think we're probably not, but we

18 will see how things develop, Your Honor.

19 THE COURT: So you want to just change your  
20 role? You're not withdrawing from the case?

21 MR. DAVIS: I'm involved in the Seroquel  
22 matters. Mr. Magaziner, as the motion indicates, will be  
23 taking over as lead counsel. And with the Court's  
24 permission I'm withdrawing as liaison and lead counsel.

25 THE COURT: All right. Any problems from the

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1 plaintiffs on that? I'm not sure it requires Court  
2 approval. We have haven't done a formal designation.  
3 Glad to have you here.

4 MR. ROTH: Pleasure to be here, Your Honor. And  
5 to clarify for Your Honor, both the Sidley firm and my  
6 firm are going to be involved in the litigation going  
7 forward.

8 THE COURT: That's what I assumed. I just  
9 wanted to verify that.

10 MR. MAGAZINER: And if I may, while I have the  
11 floor, in the order that -- in the motion that Mr. Davis  
12 submitted accompanied by a form of order, we did not  
13 ask -- he did not ask that I be appointed liaison counsel,  
14 just lead counsel because I was trying to decide given the  
15 slight restructuring of the defense team what made the  
16 most sense. With Your Honor's permission I'd like to  
17 appoint one of my colleagues to perform the duties of  
18 liaison counsel as specified in the order -- in Your  
19 Honor's order for liaison counsel. That would be Marjorie  
20 Shickman. S-H-I-C-K-M-A-N. We have a form of order  
21 prepared and I could hand that up.

22 THE COURT: Give it to my law clerk. We will

23 take a look at it.

24 MR. MAGAZINER: Thank you, Your Honor.

25 THE COURT: All right. While we're talking

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1 about counsel, we also had a motion to withdraw. I  
2 believe it was opposed. What's the story on that by  
3 Mr. Russell Ryan.

4 MR. SMITH: This is Ken Smith.

5 THE COURT: Go ahead.

6 MR. SMITH: It's a -- the client is somebody  
7 that we have not been able to get in contact with despite  
8 extensive efforts. We tried calling him. He doesn't  
9 return our calls. We tried contacting him through his  
10 doctor. He's not going to return his calls and we tried  
11 to contact him through a different -- an attorney who was  
12 representing him on a worker's compensation matter out in  
13 California. He is in Riverdale, California next to Los  
14 Angeles. We can't get him to communicate with us. So  
15 that there's no way that we can help him.

16 I think that we also indicated in the motion that  
17 there might be some concern about whether he's, you know,  
18 really able to look after his interests. You know, as far  
19 as that part of motion is concerned, I would probably  
20 withdraw that at this point in time. I don't have  
21 evidence of that that that is the case.

22 THE COURT: Well, my inclination would be to  
23 recommend to Judge Conway that the case be dismissed  
24 without prejudice for failure to prosecute. If you're not  
25 able to communicate with the client and respond to the

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1 Court's orders, the solution to that is that those parties

2 in that position drop out of the case. If there's a  
3 statute of limitations problem, that --

4 MR. SMITH: That could be a problem. I don't  
5 know that it is in this particular case without  
6 researching that, but I would prefer -- I don't know.  
7 It's tough for the Court. You don't want the case hanging  
8 around. But I would hate to do anything or have anything  
9 done that would prejudice the client. I think that  
10 probably if the Court is inclined do that, I would suggest  
11 that we give him notice that the Court does intend to do  
12 that by way of a show cause or something like that if he  
13 doesn't contact the Court or other plaintiffs' counsel  
14 within so many days then the Court might take that action.  
15 I wouldn't want you to do that without giving him some  
16 notice.

17 THE COURT: Well, I'm going to do it in a form  
18 of a report and recommendation to the district judge. The  
19 plaintiff personally or you if he contacts you, will have  
20 the opportunity to respond. If there's no response, then  
21 I think it's sort of self-proving. Judge Conway will  
22 dismiss that claim. Anything else with respect to that  
23 claim will be moot subject to if he wants to come back in  
24 and we will deal with any statute problems that arise or  
25 issues that were present at that time.

9

1 All right. Let me move to my agenda then.

2 What's the status of the incoming cases?

3 MR. MAGAZINER: Your Honor, I don't know if you  
4 were expecting me to be at first lawyer to speak on that,  
5 but this might be a convenient time to present a three or



6 four minute Power Point presentation that we prepared  
7 after I got into the case trying to figure out what sort  
8 of cases you had, what the inventory was. And if Your  
9 Honor would permit me, I could present that to the Court  
10 at this time.

11 THE COURT: Any objection?

12 MR. ROTH: We haven't seen it Judge. I'm  
13 looking at it for the first time. So...

14 THE COURT: You have got the floor,  
15 Mr. Magaziner.

16 MR. MAGAZINER: Thank you, sir.

17 Those numbers represent the number of plaintiffs in  
18 the MDL and number of plaintiffs in state court. We have  
19 2,313 plaintiffs presently in the MDL, 4,669 of the number  
20 of cases in the process of being transferred to this MDL  
21 from the federal courts where they were filed. The number  
22 of plaintiffs is different from the number of cases  
23 because the total number of cases in federal and state  
24 court is 577. Many of those cases were filed on behalf of  
25 multiple plaintiffs as is shown by that slide.

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1 The plaintiffs in the federal court, almost 7,000  
2 filed their lawsuits in 23 districts and 17 different  
3 states.

4 This shows where the great majority of those cases  
5 were filed. Ninety-four percent were filed in the Federal  
6 Court in Massachusetts, and the other five percent are  
7 distributed among all the other districts and states in  
8 the country. Importantly for issues we might get to  
9 later, there are three lawsuits filed in Florida.

10 Mr. Bailey's firm has 94 percent of all the cases in

11 this MDL. That includes the cases already here and the  
12 cases being transferred. I said cases. I should have  
13 said plaintiffs. Ninety-four percent of all the  
14 plaintiffs presently in the MDL as shown by that slide.

15       Significantly, all but 24 of their plaintiffs in the  
16 lawsuits were filed in the District of Massachusetts. The  
17 plaintiffs that the Bailey firm represents were filed --  
18 reside in all the states shown in red on that map. We had  
19 noted none of the plaintiffs reside in Massachusetts where  
20 all these lawsuits were filed. One of my colleagues this  
21 morning told me she thinks that maybe there's maybe a  
22 plaintiff in Massachusetts from among these 6500  
23 plaintiffs. But either none of them or only one of them  
24 reside in Massachusetts. The others reside all over the  
25 country.

11

1       Just for informational purposes, and we would like to  
2 talk about a federal/state coordination at some point  
3 today or at a later conference. There are 315 cases in  
4 state court. Seventy-two percent of them are represented  
5 by counsel who are also active in this MDL. Almost all  
6 the state court cases have one plaintiff per case. And at  
7 the bottom you will see where those state court cases have  
8 been filed.

9       Very quickly, Your Honor, we looked at the first  
10 filed complaints from each of the eight firms that have  
11 filed more than 10 complaints in the MDL just to see what  
12 they told us about the nature of this. Among those eight  
13 complaints there are 106 plaintiffs who reside in 17  
14 states. Fifty-three of the plaintiffs filed lawsuits --

15 that's half of them -- in states where they do not reside.  
16 From the complaints themselves, we looked to see why are  
17 the plaintiffs taking Seroquel. One person alleged  
18 depression. And there's no information provided about the  
19 other 105 plaintiffs in this group of 106. These are the  
20 injuries alleged by the 106 plaintiffs in those first  
21 filed complaints.

22 I would note because of the problems that causes for  
23 us is defendants trying to wrap our hands around this  
24 litigation that some of them allege only serious health  
25 problems.

12

1 And the last slide I'd like to show Your Honor at  
2 this time, and this is significant, is several issues that  
3 we will be discussing today is what are the dates of  
4 usage. We have before label change, post label change, et  
5 cetera. Very briefly, Your Honor, the FDA mandated a  
6 label change for Seroquel and two other drugs in this  
7 class that went into effect in January of 2004. A  
8 shorthand way to describe the label changes, that it  
9 warned doctors who prescribed Seroquel of a -- reports of  
10 diabetes in patients using Seroquel and the other two  
11 drugs in the class that was subject to the same mandatory  
12 warning imposed by the FDA in January of 2004. And  
13 because of that label change, there's legal significance  
14 both to the issue of preemption, the issue of failure to  
15 warn, and several other issues depending on whether a  
16 plaintiff used Seroquel before the label change or after  
17 the label change.

18 So we looked at these 106 plaintiffs and the eight  
19 first filed complaints to see what they had said about

20 their use. And you will see what they said about their  
21 use. One alleged that he used it before the label change.  
22 One said after the label change, and one said after the  
23 label change but is continuing to use it even now when the  
24 complaint was filed. And 103 we have no information  
25 provided.

13

1 So that's the very brief overview of the status of  
2 litigation that we were able to put together.

3 Thank you, Your Honor.

4 THE COURT: What is holding up the transfer of  
5 the other cases?

6 MR. MAGAZINER: I don't know that anything is  
7 holding them up other than the process from when they're  
8 tagged and there is a time period during which plaintiffs  
9 whose cases are tagged have the right to object to the  
10 transfer, and then there's -- after that time period  
11 passes, there is some delay between the last date for  
12 objection and the date when the judicial panel actually  
13 issues the transfer orders. I don't know that there is  
14 any other particular reason for the delay.

15 Is that your understanding?

16 MR. ROTH: Well, Judge, I know that, I believe  
17 it was just in the last couple of days we got two  
18 conditional transfer orders from Massachusetts that the  
19 clerk's office was trying to get sorted out. And there  
20 was, I believe, several hundred cases, maybe more  
21 plaintiffs, but several hundred files in there. But I  
22 don't think anybody has a handle on their process up there  
23 as to when they're going to get them all down here.

24 MR. MAGAZINER: I think, as Your Honor knows,  
25 the conditional transfer order does not actually result in  
14

1 a case being transferred. That's the order which then  
2 gives the parties an opportunity to object to the  
3 transfer, and then if there's no objection, which I  
4 anticipate there would not be for 99.9 percent of these  
5 cases, then the transfer order is issued.

6 MR. ROTH: Right. But the point -- the real  
7 question is, is the judicial administration there in  
8 Massachusetts what, you know, what the delay may be or  
9 maybe there's just not getting to them was my point. We  
10 just don't know.

11 THE COURT: There are a lot of ways to speed  
12 this up. One is the parties can stipulate to the transfer  
13 orders. You can waive the time periods. You can -- I can  
14 call judges and clerks up in Massachusetts or Judge Conway  
15 can or I can call the chairman of the multi-district panel  
16 and say, "look, we're trying to administer these. It would  
17 be easier if we get them all here and get them done." So  
18 it's just a judicial interest we have to move these things  
19 along.

20 MR. MAGAZINER: I can state on the record on  
21 behalf of AstraZeneca that we certainly agree to the  
22 transfer of both cases that fall within the scope of  
23 judicial panel's order creating the MDL. So we certainly  
24 are not -- no case need to be delayed to give us an  
25 opportunity to object because we will not object to a  
15  
1 transfer.

2 THE COURT: What I'm thinking is, if it's

3 sitting there just waiting for some period of weeks to go  
4 by, if parties would just file a stipulation up with  
5 the -- whether it's got to go to the MDL panel or the  
6 originating district court, just let them know they can go  
7 ahead and process it.

8 MR. CAMP BAILEY: Speaking on behalf of  
9 apparently 94 percent of the cases, we have not filed an  
10 objection except in one specific case that we have dealt  
11 with.

12 THE COURT: You shouldn't waive an objection  
13 when there's no objection.

14 MR. CAMP BAILEY: There will be cases in the  
15 future there may be some fishing grounds to say perhaps  
16 that if there is no federal jurisdiction or whatever that  
17 we'd still want to preserve. But otherwise, we have no  
18 problem on the existing cases that are somewhere between  
19 apparently Massachusetts and Orlando at this point.

20 THE COURT: Mr. Bailey, let me ask you since  
21 we're sort of on this topic, why do we have this joinder  
22 of plaintiffs in a single action? I don't understand the  
23 rhyme or reason or legal justification for it.

24 MR. CAMP BAILEY: When we looked at where to  
25 file these cases, there were various jurisdictions that

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1 AstraZeneca has principal places of business or major  
2 areas of operation. Those being Delaware --

3 THE COURT: I'm talking about a joinder of  
4 plaintiffs.

5 MR. CAMP BAILEY: Just for economy, judicial  
6 economy and having them filed and put together and if  
7 we're doing it once we may as well do it for as many

8 plaintiffs at a time as possible.

9 THE COURT: I understand you save a filing fee  
10 that way, but these plaintiffs are not identically  
11 situated. You got them coming from all different states  
12 and different law may be applying. They may have  
13 different statute of limitations issues. They may have --  
14 obviously, they have different medical conditions and  
15 different history of taking the drugs. And I mean, this  
16 is not a class action.

17 MR. CAMP BAILEY: It's not a class action but  
18 the core body of factual allegations and legal --

19 THE COURT: That's why we got MDL.

20 MR. CAMP BAILEY: Right.

21 THE COURT: But, you know, particularly we're  
22 talking about pulling out plaintiffs to do Bell Weather  
23 cases. We're talking about winnowing them out because of  
24 statute issues because of, you know, may be a failure to  
25 prosecute by one person. There may be a, you know,

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1 they're taking some other drug that really makes the case  
2 not prosecutable from your point of view. I don't know of  
3 any principal in the federal rules that just allows you to  
4 aggregate plaintiffs because they have got the same kind  
5 of claim.

6 MR. CAMP BAILEY: When we have a group of  
7 plaintiffs come to us and we're going to file essentially  
8 the same complaint on behalf of all 200 plaintiffs or  
9 however many plaintiffs that need to be aggregated or  
10 going to have common issues of fact, I don't know other to  
11 say we save trees, we save the clerk, we save ourselves

12 the hassle of filing 60, 70 page complaints multiple  
13 times. When they get transferred down here to the MDL,  
14 the practical effect is they'll all be, I assume, given  
15 their own case number and given their own treatment  
16 whether they all go back en masse.

17 THE COURT: Each piece gets one of those. If  
18 you have got 600 plaintiffs, it becomes almost impossible  
19 for us to give individual treatment to each of those  
20 plaintiffs. I would think the same thing whether it goes  
21 back to the originating court. They're not going to be  
22 tried together just because they are filed together.

23 MR. CAMP BAILEY: Correct.

24 THE COURT: Let me just alert you that you're  
25 probably going to get an order from Judge Conway directing  
18

1 that you, as to these cases that are here, you know, we've  
2 got any number of them, and I know it creates some  
3 recordkeeping issues, but it seems to me this is better  
4 than the alternative, that each plaintiff is going to have  
5 to have his or her own case.

6 MR. CAMP BAILEY: Well, they do all have their  
7 own case. They're just filed in groups that always  
8 contemplated a motion for trial groupings or some further  
9 way to identify cases to proceed to trial whether here in  
10 the MDL or back when they're transferred back without -- I  
11 mean, it's almost the same concept as an MDL within the  
12 smaller group of cases that you're not repeating --

13 THE COURT: It's evident that you haven't  
14 grouped them. I mean, if you -- you know, if you had been  
15 able to and had done what you got everybody from  
16 California in this case and you got everybody from Arizona



17 in this case and you broke it down and everybody who's  
18 taken it since 1992 in this case, and it's people who  
19 stopped taking it in whenever, and it's -- or it's people  
20 who have had this general group of symptoms, some logic.  
21 But apparently there's no logic to it except, you know,  
22 these are the ones that were in the bag when we filed it.  
23 I don't see that working.

24 MR. MAGAZINER: May I address that point?

25 THE COURT: All right.

19

1 MR. MAGAZINER: On our agenda that we have  
2 not -- on our own private agenda -- on the AstraZeneca  
3 side, let me put it that way, for things we would like to  
4 do down the road, we will be filing a motion for  
5 severance. I believe the case law is overwhelmingly clear  
6 that not even two plaintiffs from the same state who use  
7 the drug at the same time can be joined in one complaint  
8 in federal court. And that has been the consistent ruling  
9 of courts, both MDL and otherwise, for many years.

10 This is a -- these claims are misjoined.

11 THE COURT: My inclination is to agree with you.  
12 This isn't a lot of people got hit by the same train.

13 MR. MAGAZINER: And what we're going to be  
14 asking the Court to do is to sever the existing cases and  
15 make them be refiled. And there may be some streamlined  
16 procedure for refiling, refiling on behalf of individual  
17 plaintiffs. And we're also going to ask the Court to  
18 enter an order that any new cases filed must be filed on  
19 behalf of one plaintiff or plaintiff and spouse per case.  
20 So we can expedite our submission of that motion if

21 Your Honor would like.

22 MR. CAMP BAILEY: I'm not up to speed on whether  
23 the overwhelming majority of courts have that, but we  
24 would like to at least have the opportunity to go review  
25 that and brief that and see if we can work out some kind

20

1 of --

2 THE COURT: My plan is to, on this issue,  
3 prepare a report and recommendation to Judge Conway that  
4 requires that the plaintiffs disaggregate themselves here  
5 with respect to the claims that are pending here. You  
6 will have a chance to -- the way the report and  
7 recommendation works is you will have 10 days to disagree  
8 with it or comment on it, both sides will. And typically  
9 the way it works here is one side disagrees, files an  
10 objection, the other side can file a document either  
11 objecting or in support or seeking some alternative. But  
12 we usually move pretty quickly on this.

13 All right.

14 MR. ROTH: Just a housekeeping thing. Could I  
15 request that we get a copy of hard copy of that because I  
16 know when we did our Power Point we gave them a -- this is  
17 the first time we have seen this.

18 THE COURT: I'm sure Mr. Magaziner will e-mail  
19 it to you.

20 MR. ROTH: That would be great.

21 MR. MAGAZINER: Absolutely, Your Honor. We  
22 might be able to give it to you before we leave the  
23 courtroom today.

24 THE COURT: I mean, I might add with respect to  
25 Power Points, I'm not a juror here. If you want to put