

11 have a single IT person that we could get on the phone  
12 with the plaintiffs to explain the various systems in  
13 place at AstraZeneca, as AstraZeneca has multiple systems.  
14 And we are working to identify the people who are  
15 responsible for each system and to find out information  
16 from them about their back up procedures. AstraZeneca  
17 does have in place disaster recovery back up procedures,  
18 but the back up procedures are directed only to disaster  
19 recovery.

20 What we have advised the plaintiffs is not that we're  
21 refusing to provide information on this, but that we need  
22 to investigate and learn the information ourselves before  
23 we can provide it. And we proposed in our order that we  
24 would continue on that investigation and get that  
25 information as quickly as possible. But it is simply not  
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1 possible to provide information about multiple systems in  
2 the course of a few weeks.

3 So as to the redaction log, the redaction log is  
4 something that was raised in the motion yesterday. The  
5 redaction log was discussed with the plaintiffs in the  
6 context of the proposed protective order. The plaintiffs  
7 originally proposed a redaction log and it was agreed that  
8 redaction log would be unduly burdensome, was taken out of  
9 order.

10 If the Court is inclined to address that proposal,  
11 I'd ask the opportunity to brief it.

12 As for the privilege log, we have said and maintained  
13 that we would agree to produce, of course, a privileged  
14 log that corresponds to the requirements of federal rules.

15           The last topic I have on my list is that of the  
16 plaintiffs' deposition notice. That notice was filed,  
17 sent to us over the weekend last week for a deposition  
18 that was on 28 different topics that was supposed to go  
19 that same Friday. We had a discussion with the plaintiffs  
20 during which I was under the impression that we had  
21 reached an agreement that we would instead of going  
22 forward on a motion to compel that deposition, we would  
23 move forward in an orderly and coordinated fashion whereby  
24 we would provide the plaintiffs with our objections to  
25 their deposition notice by this Wednesday. We will meet

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1 and confer this Friday about the issues in that and work  
2 to negotiate an appropriate solution to the problem.  
3 After which, if they still felt they needed to file a  
4 motion to compel, they would file a motion to compel. But  
5 there is simply no reason to not allow us an opportunity  
6 to respond to their deposition notice and to work together  
7 with the plaintiffs to determine the most appropriate  
8 depositions.

9           We're making every effort to obtain all relevant and  
10 necessary information, but we're not, you know, the  
11 plaintiffs, Mr. Jensen represented they had a call where  
12 they had their IT person on and we didn't have our IT  
13 person on. Well, this is an employee from one of the law  
14 firms that represents plaintiffs on the phone who deals  
15 with IT issues. If there were a counterpart at  
16 AstraZeneca to that person, we could have had them on the  
17 phone with the plaintiffs, but there simply isn't. We  
18 need to investigate every single system separately, and  
19 all we request is the time to do that.

20 MR. TRAMMELL: May plaintiffs respond?

21 THE COURT: I'm going to move forward.

22 I'm disappointed in the progress. I thought we had  
23 discussed these out at the initial conference where Judge  
24 Conway and I were presiding and that there was an  
25 understanding. Everybody here as sophisticated litigators

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1 you know what the core documents are, the core piece of  
2 information that needs to be produced and that was going  
3 to be produced so that the cases would move forward and we  
4 wouldn't have this posturing that we're getting now. I'm  
5 disappointed that when I set a hearing three weeks out  
6 that the serious discussions don't take place until the  
7 Friday or the weekend before the Monday hearing so that  
8 the parties really aren't ready.

9 There's some different ways I can deal with that. I  
10 have given some contemplation to the appointment of a  
11 special master to handle discovery matters. That is both  
12 expensive and tedious. I thought based on our initial  
13 discussions that would not be necessary. I'm now  
14 considering whether that would be necessary. We have got  
15 an exchange of various forms of proposed orders that deal  
16 with some of these issues, some of which you're close to  
17 agreement on, some of which you aren't. Seems to be very  
18 difficult for you to take it to the final step where you  
19 actually have an agreement that you both want to live  
20 with.

21 Then we've got a real problem with the defendant  
22 failing to produce basic information to the plaintiffs.  
23 You have an understanding as to what's going on here. And

24 the defendant -- what has just been said doesn't even know  
25 its own organization. That's relevant to the issues here.

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1 Again, I don't understand why here in the middle of  
2 December that's the case when this issue was recognized  
3 and talked about several months ago. To the extent that  
4 work needed to be done to find those things done, it  
5 should have been done long ago.

6 So asking for time to get something done when it  
7 should have been done long ago is, again, not a very good  
8 response.

9 I'm going to direct that both parties file by  
10 Wednesday, noon, your final version of this proposed order  
11 dealing with this first round of discovery. Apparently it  
12 doesn't matter now whether anything relates to preemption  
13 issues or not. So any issue as to that will fall out.  
14 That should be done then by noon Thursday. If there's a  
15 specific objection that you want to raise as to the other  
16 side's proposed order, you could file that and then I'll  
17 craft together, some sort of order.

18 I want the defendant to be ready to produce witnesses  
19 for deposition. If need be, I'll preside over the  
20 depositions here in this courtroom next Wednesday,  
21 Thursday and Friday. I'll issue the nature of the  
22 defendant's document retention policy, database  
23 organization and organizational chart.

24 If the parties agree to some other method, less  
25 onerous than that, that information will be exchanged

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1 promptly, then we can reconsider that.

2 Now, both sides have raised some issue about my order

3 regarding the plaintiffs' production of fact sheets.

4 What's the plaintiff's problem?

5 MR. CAMP BAILEY: Numerous problems. It's also  
6 going to be very disappointing to the Court to hear that  
7 while we're undertaking and spending every waking hour of  
8 the day of the week working on this thing, I can speak to  
9 specifically to my cases. When we -- to kind of refresh  
10 the history, when we finally got the final order as  
11 proposed by the defendants, we sent that out to our  
12 clients, to my firm every client we represent. In looking  
13 at the revised order from the last hearing when we  
14 contemplated having it due on December 8th, moving it to  
15 December 15, we have now gone back and determined that of  
16 our cases filed before September 11, this year, that  
17 basically we have got 1,234 cases which are technically  
18 due this coming Friday. And when we send out those 600 --  
19 or those 6,000 some odd fact sheets, as of today, we have  
20 gotten 122 of them back from our clients. Of those 122,  
21 they aren't all necessarily even in that first tranche of  
22 1,234.

23 The problems are, one, the U.S. mail service. We  
24 send those out to our clients. And the difficulties in  
25 this whole process is not that we have any motive or

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1 desire to prevent them from getting the information they  
2 need on these cases, but the difficulty all arrives from  
3 the mechanics and mechanism of getting these fact sheets  
4 with these specific questions out to our clients and  
5 having them, in some cases, have to go back 30 or 40 years  
6 for information and try to put this all together and get  
7 it back to us in the mail. In that case it comes back to

8 us, and even then there's usually multiple deficiencies,  
9 holes, that require further follow-up by us before we can  
10 even get them into a form ready to produce to the  
11 defendants.

12 Which is why we ask for it on the 20th. We would ask  
13 for a some kind of relief or some kind of understanding  
14 that we're doing everything in our ability to get these  
15 done. We're doing everything in our ability to get  
16 defendants the information they need. But either we would  
17 request some kind of relief on the deadline as far as the  
18 practicality is concerned on these cases, or, secondly,  
19 some kind of alternative exchange of information that does  
20 not have all of the fluff and extra questions that we  
21 agreed to on behalf of the plaintiffs solely or really  
22 originally to get a rolling production that would allow us  
23 to produce these on a rolling basis.

24 When we originally negotiated with the other side, we  
25 had proposed a one-page fact sheet which gave the Court

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1 information such as name, who's filling this out, social  
2 security number, gender, date of birth, the address, who's  
3 representing you, what case you are captioned in, plus  
4 your Seroquel usage dates, the reasons you're taking the  
5 drug in the first place, the name and address of the  
6 prescribing physician, the name and address of the  
7 pharmacy where the prescriptions were filled, the  
8 principal injury for which the claim is to be asserted,  
9 the dates of that injury, and the name and address of the  
10 physician or facility that diagnosed the principal injury.  
11 And was included with a HIPAA authorization which would

12 allow them to get going on getting those records and that  
13 proof so they could begin their evaluation of our cases.

14 Before we came to that Halloween agreement when we  
15 went up to Chicago and agreed to use their form in  
16 exchange for the rolling production, based on the initial  
17 status conference we had here with you on September 7, we  
18 went ahead and sent that out to at least my clients, the  
19 1800 clients that we had currently in federal court at the  
20 time.

21 Since September that we sent that out, we now have  
22 over 1,000 of those back in our office with all that core  
23 information ready to go with HIPAA authorizations for most  
24 of those. And so another alternative we would propose is  
25 to give that information that we have and have no desire

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1 to hide that or to impede defendants from getting that  
2 information to get them started on all the core  
3 information. All of the motions and all the things they  
4 talk about here are all focused on basically two things.  
5 Did you use the drug and what are the injuries you're  
6 claiming from that drug. Which getting these medical  
7 records, getting them -- the process going off getting them  
8 started, plus this basic information will let them go a  
9 long way in getting the initial case evaluation going.

10 We have no problem with this additional information  
11 as far as employment records and criminal background  
12 history and all the other stuff that's in there that's not  
13 a core to the essential part of the case but is  
14 information that they have sought to ask because it's  
15 their discovery. We have no problem in supplementing that  
16 when those role in. But as far as being able to meet the

17 deadlines, we would propose to start, I guess, with the  
18 core information and supplement that on an ongoing basis  
19 as it comes in.

20 I would point out that the litigation would not be  
21 hampered or slowed down anyway by a longer time period.  
22 We need to get those in. They're still going to be able  
23 to make their motion. Still going to be able to get their  
24 understanding of these cases. And what will result is a  
25 better, more complete fact sheet process as we continue to

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1 supplement what we initially give them.

2 But as we currently stand with the December 15  
3 deadline for our first 1200 plus cases, it does not look  
4 good. Followed shortly thereafter with many other  
5 deadlines because of the mass cases, more than one  
6 plaintiff in it, we're going to have probably the same  
7 problems following shortly thereafter as well.

8 THE COURT: We can dismiss all the cases and  
9 start again. I don't mean to be sarcastic, but we talked  
10 about all these things in September. And now three months  
11 have gone by. And we seem to be back in a worse condition  
12 than we were before then. I just don't understand. I  
13 thought when we filed these actions you were ready to  
14 proceed. You had the time that was built in to the case  
15 with the transfer to the MDL process where I would have  
16 thought you would have been doing all of this just as I  
17 thought defendant would have been doing all these things.  
18 None of this is a surprise to anybody and yet you're  
19 acting like, oh, I never could have thought that I would  
20 need to do all this work. You do need to do all this



21 work. And you knew that. And I am now deeply  
22 disappointed in both sides in terms of their -- I don't  
23 know how Judge Conway and I could have been more clear  
24 about your seriousness in moving these cases and our  
25 expectations with respect to counsel.

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1 Your is a small firm with a lot of cases. I assume  
2 that before you took on all those cases you were ready to  
3 proceed. There's lot of other plaintiffs' lawyers. I  
4 don't know how many lawyers are billing time to the  
5 defendant here. But we have got two of the best firms in  
6 the country representing them -- at least two if not more  
7 than two, with some of best lawyers in the country with  
8 lots and lots and lots of resources.

9 I am flabbergasted at the response I'm getting from  
10 both sides here this afternoon.

11 MR. CAMP BAILEY: We were ready when we filed  
12 the cases. We are ready now to give them the basic  
13 information they need. It was only when they proposed a  
14 new form of a fact sheet and added additional questions --

15 THE COURT: But there's nothing strange in their  
16 proposal.

17 MR. CAMP BAILEY: There's nothing strange. We  
18 agreed to the format of that fact sheet. The mechanism of  
19 that requires us to send that out to our clients. It's  
20 not something that I as a law firm in my database have and  
21 can just plug those into the thing. There is an  
22 authorization requirement on there that the client signs  
23 off under penalty of perjury that he has considered, that  
24 he has gone back and looked for multiple sets of document  
25 requests, for employment information going back

1 potentially 30 or 40 years for health issues, for  
2 basically their entire life that I as an attorney can't  
3 just spit that information out and send it to defendant.  
4 That requires me to send it to these clients, many of whom  
5 have mental health issues and are hard to contact or  
6 communicate with on any regard let alone fill out a  
7 multipage, very serious, very detailed fact sheet, getting  
8 those back to us when they basically went out 30 days ago.  
9 I mean, even the one pagers that we sent out without  
10 waiting because we did view your comments as serious and  
11 needing to get that information going, we sent out 1,800  
12 in September. We were now sending out around the 1,000  
13 mark on that initial production. And so that just kind of  
14 gives you a window of how fast we're able to get these  
15 things back from this particular population or anybody for  
16 that matter, because it's a detailed process, not that  
17 we're not hiding the information.

18 We have also agreed I think or talked about -- we  
19 haven't come to the final agreement or mechanics of it --  
20 defendants and plaintiffs have agreed to do joint ordering  
21 of medical records. And I'll say with the large  
22 percentage of core information which we have as a firm,  
23 which the other firms have that they have told me they  
24 could provide with the HIPAAs that authorize us to order  
25 medical records on their behalf, if we go into on a joint

1 basis, we will be able to get that process rolling and get  
2 those medical records in because ultimately if we were to  
3 answer all these fact sheets, they're not going to really  
4 take our word for it. They're going to want to see --

5 they're going to want to see the pharmacy record that  
6 shows actually that they have been taking Seroquel. And  
7 they are going want to see the medical records that they  
8 are actually suffering from one of these diseases. So  
9 that the key issue is really getting the medical record  
10 production going, in our opinion.

11 THE COURT: I will offer the counsel if you wish  
12 the opportunity to go meet and confer and see if you can't  
13 resolve these issues in a way that addresses the concerns  
14 that I've expressed. That will reflect that you are ready  
15 to -- both sides are ready to proceed with the case to get  
16 each side the information that you need to go forward.  
17 And I'm going to offer you a choice on how to proceed in  
18 that way. We can give you my jury room and you can stay  
19 in there and we can reconvene tonight or tomorrow morning  
20 or if you want to caucus on each side tonight and come  
21 back here and meet in the morning and I'll meet with you  
22 again later tomorrow, we can do that. What is your  
23 preference?

24 MR. MAGAZINER: Your Honor, if we meet in the  
25 jury room and try to accomplish what Your Honor desires us

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1 to accomplish this evening, come back, how late would we  
2 be able to come back without imposing on Your Honor's  
3 schedule?

4 THE COURT: Well, I'm going -- I'll go home and  
5 come back. I live here.

6 MR. MAGAZINER: My own thought would be that it  
7 would useful for us to be in the jury room. It's 5:00  
8 now. It would be a way to communicate with the Court when

9 we're ready to see Your Honor. And I think maybe if we  
10 just keep at it knowing that we're going to have to call  
11 you and Your Honor's willing to come back this evening,  
12 that might be the best way.

13 THE COURT: Well, let me warn you, I have  
14 expressed my disappointment here and I have no level of  
15 confidence that I have gotten through to you yet on these  
16 issues. From my view of the case, I am now prepared to --  
17 I either have or will enter orders that impose significant  
18 burdens on both sides that right now neither side wants to  
19 live with and both sides say they can't live with. Well,  
20 be that as it may. That may present an opportunity for  
21 you to compromise with each other and get down to the  
22 practicalities or it may lead to more posturing. I can  
23 guarantee you that neither side is going to be happy if I  
24 sense that posturing is continuing.

25 There are some logical problems with meeting again

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1 this evening in terms of court security and I can proceed  
2 without staff help. It makes the court security officers  
3 nervous to have people running around the building  
4 unescorted after hours.

5 MR. MAGAZINER: Particularly lawyers, I guess.

6 May I confer with Mr. Bailey for one moment?

7 THE COURT: All right.

8 MR. ROTH: We have made some progress already,  
9 Your Honor, because we agreed on what -- our preference  
10 would be that we go to Carlton Fields, which is our  
11 Florida counsel's office, hash this thing through. If  
12 Your Honor tells us that you would be willing to come to  
13 Carlton Fields so we don't have to deal with the court

14 security at a later time tonight such as, I hate to  
15 suggest this to the Judge, but 8:00 or something like  
16 that, we will know we have a relatively short timeframe by  
17 which we have to reach some fundamental agreements on some  
18 fundamental issues that Your Honor has raised and we think  
19 that would be beneficial to the process knowing that we  
20 have very tight deadline and that the time for posturing  
21 has passed because you're going to show up at 8:00 and  
22 hold us all in contempt if we haven't reached an  
23 agreement. If Your Honor prefers we come back in the  
24 morning, we will do that if that would be your preference,  
25 Your Honor.

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1 THE COURT: Well, meeting outside the courthouse  
2 is -- out of formal session is problematic because it's  
3 difficult to create a proper record. I'm not concerned  
4 about security issues, but the lack of a record is  
5 problematic, particularly since we have got so many people  
6 involved.

7 I will adjourn the hearing, allow you to go meet. If  
8 you want to meet at Carlton Fields that's fine or wherever  
9 else.

10 I've got a detention hearing scheduled tomorrow at  
11 10. So I'm going to set you -- we will reconvene this  
12 hearing tomorrow at 11. See where we are.

13 We're in recess.

14 (Recess at 5:05 p.m.)

15 C E R T I F I C A T E

16

17 I certify that the foregoing is a correct

18 transcript from the record of proceedings in the  
19 above-entitled matter.

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25 Sandra K. Tremel