

EXHIBIT 11

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF FLORIDA
3 ORLANDO DIVISION

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5
6 In Re: Seroquel Products
7 Liability Litigation
8 MDL Docket No. 1769

9 Case No. 6:06-md-01769-ACC-DAB

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13 TELEPHONE CONFERENCE BEFORE SPECIAL MASTER BROWN
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18 Taken before EARLY K. LANGLEY, RMR

19 CSR No. 3537

20 October 15, 2007
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1 RUSSELL STEWART (by telephone), Faegre & Benson
2 LLP, 3200 Wells Fargo Center, 1700 Lincoln Street,
3 Denver, Colorado 80203-4532, appeared on behalf of the
4 Defendants.
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1 TELEPHONE CONFERENCE BEFORE SPECIAL MASTER BROWN
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3 BE IT REMEMBERED, that pursuant to Notice, and on
4 the 15th day of October 2007, commencing at the hour of
5 10:06 a.m., in the offices of Aiken & Welch Court
6 Reporters, One Kaiser Plaza, Oakland, California,
7 before me, EARLY K. LANGLEY, a Certified Shorthand
8 Reporter, the following proceedings were held
9 telephonically in said cause.
10

11 ---oOo---

12
13 ORRAN BROWN (by telephone), Brown Greer PLC,
14 115 S. 15th Street, Suite 400, Richmond, Virginia
15 23219-4209, appeared as Special Master.
16

17 DENNIS CANTY (by telephone), Levin Simes Kaiser
18 & Gornick, LLP, 44 Montgomery, 36th Floor, San
19 Francisco, CA 94104, appeared on behalf of the
20 Plaintiffs.
21

22 BUFFY MARTINES (by telephone), Laminack, Pirtle
23 & Martines, 440 Louisiana Suite 1250, Houston, Texas
24 77002, appeared on behalf of the Plaintiffs.
25

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1 --oOo--

2 PROCEEDINGS.

3 --oOo--

4 MR. CANTY: This is Dennis Canty. And I guess
5 we should go on record.

10:06:15

6 SPECIAL MASTER BROWN: Yes. Let's go ahead and
7 go on the record and we'll take up this issue.

8 MR. CANTY: At this point I have made a
9 submission that there have been, I guess, several items
10 of correspondence that have been gone back and forth

10:06:26

11 between myself and Mr. Stewart to which I imagine
12 you're privy. And then on Thursday, when it was
13 decided that we would be on this call and be on the
14 agenda, I sent kind of a position statement. And,

10:06:42

15 Special Master Brown, have you had an opportunity to
16 look at that?

17 SPECIAL MASTER BROWN: Yes. And this is Orran
18 Brown, and I do have a submission from Mr. Canty dated
19 October 11 that I have reviewed, and this issue about
20 the timeliness of some designations of sales

10:06:56

21 representatives for depositions relative to when
22 disclosures were made. We have discussed it at times
23 with the parties, with Ms. Martines and Mr. Stewart,
24 and I'm happy to take up this issue now, and see if we

10:07:15

25 can get as far as we can with it to resolve it if we

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1 can.

2 I have your submission, Dennis, and have been

3 through it. I have other things from, papers from the

4 time this has come up before and why don't we do this.

10:07:31 5 I would like to have everybody say their peace

6 on this. It does not have to be in a very formal

7 manner and I have a few questions of my own and why

8 don't we just sort of have a discussion about it.

9 How many cases right now, and how many sales

10:07:48 10 representatives present this issue total?

11 MR. CANTY: From our perspective, at this

12 point, the reason this issue has come to light is

13 because of AstraZeneca's refusal to produce sales reps

14 in the Frederick, Glover, Coppola and Thomas cases,

10:08:12 15 four cases.

16 I don't know to what extent AstraZeneca's

17 disclosures have been deficient in cases that are under

18 Buffy's purview but those are the four clients at this

19 point where AstraZeneca is refusing to produce sales

10:08:32 20 reps.

21 SPECIAL MASTER BROWN: All right. So there are

22 four cases that you have, and then since we observe

23 very few formalities in these calls, we can still

24 continue to call each other by first names, even though

10:08:44 25 we have a court reporter, as far as I'm concerned.

1 But Russell, how many others other than those

2 four? I think at one time we had maybe a total of

3 seven cases that were at issue.

4 MR. STEWART: That's correct. This is Russell

10:08:56 5 Stewart. There are the Olive case, which is the

6 Mathews's firm, the Sonier case of which Ken Smith is

7 the plaintiff's attorney and then the Hodge case which

8 we have discussed previously on this call. Seven

9 total.

10:09:11 10 SPECIAL MASTER BROWN: Seven total. Four with

11 Dennis and then three others. And the Haas case we

12 discussed in our last call is actually Cranford's case.

13 MR. STEWART: Correct.

14 SPECIAL MASTER BROWN: And then when we talked

10:09:26 15 about the Haas case in that call without you present,

16 Dennis, we had been through the particular facts of

17 this one, and I had indicated that in that

18 circumstance, I felt that the entire series of things

19 could sort of be chalked up to sort of a transition

10:09:43 20 period from no PMO to a PMO and then working out how

21 the CMO 4 was going to work.

22 So on the one, we reached a -- I reached a

23 feeling that that one would be allowed. This

24 deposition would be taken. But then we tabled that

10:10:00 25 issue and I haven't issued any report and

1 recommendation on it to try to deal with all seven

2 cases at once.

3 And, and this brings us to today.

4 So that on the -- do you have anything, Dennis,

10:10:15 5 that you would wish to say or add to your written

6 submission dated the 11th of October?

7 MR. CANTY: Again, this was put, you know, put

8 together kind of quickly, obviously, you know. The

9 entire discovery, date-specific discovery has caused

10:10:34 10 everybody to be a little bit compressed.

11 I would say that probably the easiest way to

12 get to a determination on this issue is to ask

13 AstraZeneca point blank when, if at any time, it

14 produced all available documentation of contact with

10:10:56 15 the physician witness. That may include the -- the

16 sale -- the call notes. It may include the IMS data

17 which, to my knowledge, has never been produced in the

18 format ordered by the court, nor has it ever been

19 produced completely, and I guess finally perhaps ask

10:11:19 20 you that and whether they have ever produced any

21 accounts payable record in any of these cases.

22 And, when you -- when you reach the

23 determination that they have not done that, then by the

24 plain language of CMO 4, plaintiff's time to designate

10:11:40 25 a sales rep can begin to run. So maybe I think that

1 the best way to go about it is to ask AstraZeneca when

2 did you produce it.

3 SPECIAL MASTER BROWN: Okay. Thanks, Dennis.

4 Buffy, do you have anything to add to that, or is that

10:11:57 5 going to cover at least at this stage until Russell has

6 a chance to respond to everything you think that's an

7 issue?

8 MS. MARTINES: I'm sorry, Orran, are talking to

9 me?

10:12:08 10 SPECIAL MASTER BROWN: Yes.

11 MS. MARTINES: This is to the court reporter.

12 This is Buffy Martines as liaison counsel for the

13 plaintiffs.

14 With regard to all seven cases we've obviously

10:12:21 15 had -- had a preliminary ruling in the Cranford case,

16 we have the case from Ken Smith and Dave Mathews

17 outstanding and Dennis is on the line because of his

18 involvement with AZ from the start on this issue for

19 the Gornick firm. I'm going to let him take the lead

10:12:41 20 on these four and make his arguments, et cetera.

21 I don't have anything to add to that, but

22 obviously, I would withhold any arguments on the

23 Mathews and Smith cases until we get to those.

24 In other words, I think this discussion should

10:12:54 25 just be with regard to the four Gornick cases.

1 SPECIAL MASTER BROWN: Okay. Thank you, and
2 Russell, you've heard all of this, we've talked about
3 it some before.

4 Do you have Dennis's October 11 package?

10:13:10 5 MR. STEWART: I do. And this is Russell
6 Stewart.

7 Orran, do you have my October 10th letter
8 which was attached to my agenda items?

10:13:29 9 SPECIAL MASTER BROWN: Yes. I had that and I
10 have been through it and I'm going to pull it back out.
11 Just give me a moment.

12 Yes, I have it in front of me now.

13 MR. STEWART: That states our position, but let
14 me respond directly to Dennis's questions here.

10:13:50 15 The AP records have been produced, that is, the
16 payable records, that's payables to physicians in all
17 cases. And we have, in addition, supplemented those at
18 times, as you know, as Buffy knows.

10:14:12 19 But right now, the Gornick's firm, I believe,
20 has AP in all of their cases, and we are producing
21 payment information for all the cases now in November.

22 And we have for all the cases in November and
23 we are going forward.

10:14:31 24 IMS same thing. We produced IMS information
25 back to March 1999 for all cases.

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1 Except there is a lacking here. You know, it's
2 really, you know, Dennis should call me and talk about
3 any problems on these issues but we haven't really
4 discussed the problems he's mentioned here.

10:14:45 5 But I think the focus, or the important thing
6 is the call notes, and Dennis asked me when we produced
7 the call notes and in my letter we produced them on
8 August 3rd, 2007.

10:15:01 9 And for each of the four cases that Dennis has
10 those call notes contain the names of the sales
11 representatives through detailed product to the
12 prescribing physician that was identified in those
13 cases.

10:15:14 14 And all of them contain notes from several
15 years, and you can determine from those call notes at
16 what time the PSSs were detailing the product and what
17 time the plaintiff was being treated so that the
18 plaintiffs can determine which sales reps were relevant
19 to their case.

10:15:34 20 So that's the answer. It was done on August
21 3rd. And they had that information necessary, and it's
22 our position that the information necessary to
23 designate the sales representatives is the call notes
24 with the names of the sales representatives included.

10:15:49 25 And these were all September. Plaintiff's, as

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1 I recall, they were chosen in the end of August by us,
2 or the 1st of September by the court or the plaintiffs.
3 So the designation of time for designating their sales
4 representatives was -- they were due August 7, 2007.

10:16:15 5 And I did ask in my letter, you know, the
6 question is, I take it the position of the plaintiff's
7 is that the electronic format -- these weren't provided
8 immediately in the electronic format. And as you can
9 tell from our letter, that is precisely the same the
10:16:44 10 changeover happened from paper to electronic and we
11 subsequently did provide electronic.

12 But I think that's not the issue because the
13 electronic form has the same information as the paper
14 form about the sales reps, so the determination of
10:16:58 15 which is the proper sales rep wouldn't have changed, it
16 wouldn't have affected that. It's the same information
17 that was in paper that later was provided in electronic
18 form.

10:17:11 19 SPECIAL MASTER BROWN: And we -- this is Orran
20 Brown again.

21 When you say in electronic format?

22 MR. STEWART: I mean a version of Excel as
23 opposed to PDF. Actually all of our services are by
24 e-mail, so as opposed to an e-mail containing a PDF,
10:17:26 25 you know, I'm talking about in addition to that we also

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1 now provide Excel in a native format so that you can
2 have the call notes on your computer and search through
3 them and do searches and things.

4 SPECIAL MASTER BROWN: Okay.

10:17:43 5 MR. STEWART: That's what happened. The
6 changeover was about that time.

7 SPECIAL MASTER BROWN: Before going back to
8 Dennis Russell, do you have anything else to add at
9 this juncture?

10:17:51 10 MR. CANTY: There are some other issues.

11 MR. STEWART: Just generally about some of
12 these issues relating to the PSS designations, and
13 we've discussed some of this with Ashley in the context
14 of Ashley Cranford and the Haas deposition but, you
10:18:16 15 know, I think the court entered this order in the MDL,
16 and the case management orders are entered for the
17 case-specific discovery for the purpose of making sure
18 this can work, and it is a tight time frame.

10:18:32 19 And I think that the court adopted this two-day
20 designation to get things moving and make sure that
21 this happened and we could all complete things in a
22 timely way, and our interest and our concern is that
23 looking -- looking back on these cases two months from
24 now, start reopening and designating additional people
10:18:47 25 to depose. It's just not going to work with our

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1 schedule.
2 We're having -- as you know, it's all we can do
3 now to do the 30 depositions a month, that we're doing
4 and it's taxing us all.

10:19:02 5 So that's our main concern is that we have a
6 byline so we know when this is done and we can look
7 back and say that there are no other PSSs that can be
8 pulled from earlier months.

10:19:16 9 SPECIAL MASTER BROWN: All right. This is
10 Orran Brown.

11 Russell, are the depositions, the other
12 depositions for these four cases that Dennis has, have
13 they all been completed except for the PSS for each
14 case?

10:19:27 15 MR. STEWART: I believe all the plaintiffs
16 have. All the plaintiffs' depositions. Now I'm not
17 sure -- and most of the physician depositions. But I
18 don't have that in front of me.

10:19:42 19 These are all September cases. So if they're
20 not completed they're certainly in the process of being
21 completed.

22 We would -- and another issue that's related to
23 this, too, is the timely -- the other plaintiffs in
24 these cases have been able to designate sales
10:19:58 25 representatives in a timely fashion, and there have

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1 been a lot that have gone through, as you know. You
2 get those in -- you have seen those and those have
3 happened in August and September and throughout.

10:20:13 4 The other issue that this raises is the October
5 4th letter from Mr. Canty designating these, also
6 contained -- it also offered up the plaintiffs for
7 depositions.

8 But this was 40 days nearly after these
9 plaintiffs were selected for participation. And that
10:20:30 10 causes a problem, because, in our -- the fast pace that
11 we have to complete these depositions when it takes 40
12 days to designate these plaintiffs that puts us all
13 into a bind as far as scheduling coverage for those
14 issues.

10:20:43 15 So, that's an issue for us as well. And I also
16 take it that there's an issue -- and Mr. Canty can
17 address this -- of, I sense that Mr. Canty wants to
18 take all of these depositions at the same time to save
19 costs which is understandable.

10:21:01 20 But I think as we've concluded through this,
21 and our experience with this program so far is that we
22 can't have that luxury, that we have to take the
23 plaintiffs first and then we should take the sales
24 representatives and then we should, if we can, try to
10:21:16 25 schedule the physicians together. That's what makes

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1 the most sense.

2 And the reason we take the plaintiffs first --
3 there are a lot of reasons. But particularly because
4 in this -- in this plaintiff population, there are a
5 lot that just don't up show up for their depositions.

10:21:30 6 So unless we can be sure that they're coming,
7 it causes a great deal of expense for us to take
8 depositions of physicians and sales representatives
9 where the plaintiffs in the case don't participate and
10:21:45 10 don't intend to proceed with their cases.

11 So those are generally our concerns about this,
12 Orran, and I think I've expressed our position before,
13 but it's stated in our October 10th letter.

14 SPECIAL MASTER BROWN: Appreciate it.

10:22:01 15 Dennis, let's go back to you for a moment. And
16 let me say this first. It is apparent that you had
17 some disclosures on August 3, for the four cases, and
18 that those disclosures did not contain everything at
19 that time that you eventually got or were supposed to
10:22:23 20 get, and they were not in a live Excel format which is
21 the way it's being done now. I understand why they
22 weren't.

23 But it is a given, I think, that the initial
24 disclosures that you got were not everything and they
10:22:38 25 were not in a live Excel format.

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1 So, let's talk about your feelings about how
2 those two deficiencies, if you call them that, for lack
3 of a better word now, impaired your ability to select a
4 PSS for deposition, if they did, because I'm trying to
10:23:00 5 relate the nondisclosures to the ability to pick
6 someone.

7 So, talk to me about how things that you point
8 out quite well in your October 11 summary that were
9 missing or not done by the book at that stage, let's
10:23:19 10 say, how did that interfere with your picking the PSS
11 for each of the four cases?

12 MR. CANTY: Sure, Orran.

13 There's two real components to that. One is
14 it's not just the failure to disclose and not have the
10:23:37 15 material that I should have. But also let's consider
16 for a moment the fact that I communicated with Russell
17 on that, and Russell said, "Fine, we'll get you what
18 you need and we'll discuss it later."

19 But there's two components to that and we'll
10:23:49 20 take them one at a time.

21 Number one, the Excel sheets, the formatting
22 issue. With the data produced in native Excel format,
23 I can sort, I can search and I can filter the data so
24 that I can analyze, okay, well -- oh, and let's throw
10:24:07 25 in there the new columns that they added.

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1 I can -- with the new data produced in the
 2 proper format, I can make a list as you will see in the
 3 exhibit that I attached Frederick, I believe it is. I
 4 can sort by the message. I can sort by the date. I
 10:24:29 5 can sort by the rep's sales name. I can do dates. I
 6 can say all right, I want to know all -- I'm going to
 7 look at the sales rep that called on the doctors
 8 between X date and Y date and deliver the doctor a
 9 minimum weight gain sales message.
 10:24:45 10 I can do that with the Excel files. And by
 11 court order I have the right to do that before I take
 12 the sales rep's deposition.
 13 What else do I have a right to do before I make
 14 a sales rep designation? I also have the right to IMS
 10:24:58 15 data in electronic format that tells me when, if at
 16 all, there was a spike in Seroquel prescription, or a
 17 falloff in Seroquel prescription.
 18 What else do I have a right to? I have a right
 19 to accounts payable records that tell me, okay, was the
 10:25:17 20 doctor paid, was the doctor paid by AstraZeneca to
 21 speak, was the doctor paid by AstraZeneca to speak
 22 about Seroquel and deliver a minimal weight gain
 23 message, in what time frame, and, therefore, what sales
 24 rep was visiting the doctor at -- at that time. Was
 10:25:38 25 that arrangement made.

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1 I get to pick a sales rep that talked to the
 2 doctor about weight gain, and assisted him, or had
 3 communications with him about messages he was
 4 delivering to other doctors.
 10:25:56 5 All of that information came after August 3,
 6 2007. And one thing that I will say is at this point,
 7 complete IMS data has not been produced and a complete
 8 accounts payable records, records, not interrogatory
 9 response, records, have not been produced in any of
 10:26:15 10 these cases.
 11 So, at this point, you know, we asked, my
 12 initial question was let's ask AstraZeneca when this
 13 stuff was produced. We didn't get an answer to that.
 14 What we got was, okay, we produced the initial call
 10:26:32 15 notes on August 3, 2007, and then we got a statement
 16 about how plaintiffs had everything right now. It was
 17 a nice way to kind of jog a little bit off topic.
 18 So, what we don't have is we don't have an
 19 answer to when these complete records were produced.
 10:26:55 20 At this point, the assertion that, you know,
 21 producing the call notes is all the info, all the
 22 information that we need to choose sales reps, that
 23 position. It's not borne out in COM 4. COM 4 doesn't
 24 say that. COM 4 doesn't say produce call notes in
 10:27:26 25 unsearchable PDF format and from that plaintiffs will

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1 choose a sales rep. That's not what a COM 4 says. COM
 2 4 says produce all available documentation about
 3 contacts with the physician witness.
 4 There's some comment about how, you know, other
 10:27:40 5 plaintiffs have been, you know, able to designate sales
 6 representatives. I guess just because they've been
 7 able to buffalo other people into -- into designating
 8 sales reps, they assume that, you know, they can do
 9 that in every case. And plaintiffs in this case, when
 10:27:59 10 it finally got down to it, in September, when they
 11 still didn't have any response to request for
 12 electronic format, made the designations anyway.
 13 That's what we did to move it along.
 14 At this point, you can't forget the initial
 10:28:21 15 correspondence on the issue. The initial
 16 correspondence on the issue, wrote a letter three days
 17 after receiving the disclosures, wrote a letter to, I
 18 guess it was an e-mail to Mr. Stewart saying these
 19 disclosures are deficient, we can't choose a sales rep
 10:28:38 20 from them. We are entitled to more information. We
 21 won't choose a sales rep until you give it to us.
 22 Mr. Russell -- Mr. Stewart wrote back, he said,
 23 okay, we'll give it do you and we'll discuss it later.
 24 Mr. Stewart didn't get back to me.
 10:28:56 25 He led me to believe that he was going to give

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1 me the information and then didn't produce it. And
 2 now, two months later, makes an argument that I have
 3 somehow waived the right to designate a sales
 4 representative.
 10:29:10 5 Those are the facts.
 6 SPECIAL MASTER BROWN: Okay. And this is Orran
 7 Brown again.
 8 As we stand here today going forward in other
 9 cases, is AstraZeneca applying this type of information
 10:29:29 10 in Excel format, and is it complying, you think, in
 11 other cases, with the CMO 4 duty to provide all the
 12 information including the IMS information?
 13 MR. CANTY: I'm aware of no case in which
 14 AstraZeneca has provided the information ordered by CMO
 10:29:50 15 4.
 16 IMS data is entirely incomplete. IMS data,
 17 it's clear from deposition testimony, and, I guess, the
 18 comment at the July 27 hearing, that available IMS data
 19 includes new prescriptions, total prescriptions for
 10:30:18 20 Seroquel and for its competitors.
 21 At this point AstraZeneca has not provided that
 22 information in any case to my knowledge, nor has
 23 AstraZeneca in any case provided that information in
 24 electronic format as ordered on August 3.
 10:30:33 25 I am aware of no case, mine or others, in which

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1 AstraZeneca has produced an accounts payable record.
 2 SPECIAL MASTER BROWN: Okay. And I understand
 3 that, Dennis. Again, this is Orran Brown.
 4 Let me ask you, for the IMS data which deals
 10:30:55 5 with prescribing behavior, right?
 6 MR. CANTY: Correct.
 7 SPECIAL MASTER BROWN: And the accounts payable
 8 show payments by the company to physicians for speakers
 9 bureau or engagements or other things, and I'm not
 10:31:12 10 saying that it's not important, but, without giving
 11 away any of your strategic secrets, how do you use the
 12 IMS data or the accounts payable data, assuming you
 13 have it, to help you select which sales representative
 14 you think would be the one you need the most,
 10:31:32 15 recognizing you can only do one and you need to pick
 16 one.
 17 MR. CANTY: Again, if IMS data indicates that
 18 there was a spike in Seroquel prescriptions at a
 19 particular time, obviously, I'm going to want to know
 10:31:45 20 when that was and I'm going to want to know who was
 21 seeing that doctor at the time that spike occurred.
 22 If accounts payable data indicate that the
 23 doctor began speaking about Seroquel, I would want to
 24 know that. I would want to know who was seeing that
 10:32:00 25 doctor during that time frame and what messages were
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1 and I frankly didn't hear back from him, so I don't
 2 know that that's an issue.
 3 We have provided all IMS information, all AP
 4 information that is available to the company and we're
 10:33:31 5 doing that now.
 6 So I think that is the point.
 7 My concern is that under Mr. Canty's view here,
 8 is that these are never complete and there's never any
 9 limit on when we can -- when sales reps can be
 10:33:44 10 designated because under his view, none of the
 11 disclosures are complete. They'll never be complete
 12 and so he has no obligation to disclose them within the
 13 two days.
 14 That harkens back to one of my concerns and my
 10:33:58 15 interests here is that we have a rule and we kind of
 16 understand how this works so that we can complete what
 17 the court has ordered us to do in cases of specific
 18 discovery under the time lines and schedule the court
 19 expects us to complete this.
 10:34:14 20 MS. MARTINES: This is Buffy Martines.
 21 May I say a couple of words on behalf all of
 22 plaintiffs?
 23 First of all, with regard to what the CMS says
 24 regarding the production of electronic discovery, I
 10:34:26 25 have it right here in front of me, and it states, and
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1 being delivered.
 2 Now all of that would aid me in deciding who
 3 was the best sales rep -- I only get one at this
 4 point -- who the best sales rep is to take.
 10:32:15 5 And whether or not that's going to help me
 6 decide to pick a sales rep, that's getting far afield
 7 at this point. CMO 4 ordered it. There's no question
 8 as to whether that information helps me select a sales
 9 rep; it's been ordered.
 10:32:33 10 SPECIAL MASTER BROWN: I understand. All
 11 right.
 12 So, back to you, Russell, for maybe the last
 13 comment before we move on.
 14 MR. STEWART: We have provided AP information
 10:32:46 15 for all of the physicians and we provided IMS data back
 16 in March 1999 that we have, that AZ has in its
 17 possession.
 18 You know, Mr. Canty says that IMS is required
 19 to be produced in Excel form. I am trying to find the
 10:33:03 20 order here. I believe it just says that call notes
 21 electronic form. We would be happy to provide --
 22 actually my letter to him said the IMS information is
 23 really only on two pages or so. It doesn't do you much
 24 good to put it on Excel format or something like that.
 10:33:19 25 But if you really want it that way, we'd do it for him,
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1 I'm just going to read it, "As to case-specific
 2 discovery from defendant set forth in CMO 4, defendant
 3 shall provide the call notes for the prescribing
 4 physicians associated with that plaintiff in readily
 10:34:42 5 accessible electronic form. To the extent account
 6 payable records, IMS, prescribing habits and the PIR
 7 information for prescribing physician associated with
 8 that plaintiff are available in electronic form,
 9 defendant shall provide those in readily accessible
 10:35:00 10 electronic form."
 11 I just want to make a couple of comments on
 12 behalf of all plaintiffs, because I'm a little
 13 concerned about a few statements that have been made,
 14 and I'm very concerned with the situation described in
 10:35:11 15 Russell's letter last week.
 16 We have, in fact, discovered that all accounts
 17 payable information was not provided at first, that
 18 there is a problem with the searches in the databases
 19 and that's going to have to be taken up on a different
 10:35:27 20 level.
 21 But I believe Dennis is correct that the court
 22 ordered this information and we've been through this
 23 on -- in different issues, and the special master has
 24 taken a look at this.
 10:35:39 25 The court said this is the information that the
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1 plaintiffs are entitled to in order to make this
 2 selection and it specifically said that in a
 3 transcript.
 4 So I think that I understand AZ's position that
 10:35:53 5 call notes really should be enough, but I don't think
 6 AZ gets to make that decision. I think the court made
 7 the decision and, to be honest, it's a little like the
 8 chicken guarding the henhouse when the wolf -- whatever
 9 the heck that saying is -- when the person that's
 10:36:10 10 required to produce the information gets to say what
 11 information is enough for plaintiffs to make a
 12 decision.
 13 I think the order is clear, and on the whole we
 14 have a lot of -- plaintiffs in general have a lot of
 10:36:25 15 problems with this disclosure, not the least of which
 16 we've discovered that the accounts payable information
 17 that's produced is not correct, and at this point I
 18 don't have any way of knowing other than Russell's good
 19 word which I have no reason to disagree with that it's
 10:36:41 20 corrected now.
 21 So, I just wanted to make sure that that was
 22 clear and that plaintiffs had not waived, because we do
 23 have a lot of concerns with the disclosures that are
 24 being made at this point and that's going to come up at
 10:36:52 25 a later time.

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1 But I wanted everyone to be clear on what this
 2 order did say, and my thoughts on what the Court's
 3 order means.
 4 Thank you.
 10:37:02 5 SPECIAL MASTER BROWN: Thank you both. You're
 6 reading from a July 12, 2007 order?
 7 MS. MARTINES: That is correct -- no, no, I'm
 8 sorry, Russell -- I'm sorry, Orran this is the August
 9 3, 2007 order.
 10:37:18 10 SPECIAL MASTER BROWN: Yes, I have it. It's
 11 document 348.
 12 MS. MARTINES: I was reading from Section 3 on
 13 page 2.
 14 SPECIAL MASTER BROWN: I have it.
 10:37:25 15 Let's do this. Let me say this first, Russell,
 16 and then I have one last question for you and then
 17 we'll move on.
 18 We obviously have today's problem which are
 19 these four cases and there may be two others that we
 10:37:40 20 haven't addressed that have this question of late or
 21 potentially late PSS designations.
 22 Then we have tomorrow's problem which is going
 23 forward and making sure that we're all doing what we're
 24 supposed to do to tender plaintiffs for depositions and
 10:37:57 25 schedule them and these CMO 4 contact information

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1 disclosures, that they're done in a way that everybody
 2 agrees they're supposed to be done, and that they're
 3 done timely and then we don't have continuing questions
 4 about timeliness of PSS designations relative to when
 10:38:13 5 there were supplemental disclosures.
 6 So that's a large problem for today and going
 7 forward for these four cases that Dennis has, and I
 8 understand fully, Russell, your point about how we're
 9 on a schedule, we're trying to meet the court's
 10:38:33 10 schedule, a lot of people all around the table working
 11 very hard to keep it on schedule and that anything that
 12 goes off schedule is a disruption that has potential
 13 ripple effects, and it causes hardship or
 14 readjustments, and on and on for schedules of all the
 10:38:53 15 lawyers and other depositions that are scheduled.
 16 So, if we add four to the plate that we have to
 17 deal with, that is always a problem.
 18 But is there any particular prejudice to
 19 AstraZeneca for having these four beyond this -- the
 10:39:13 20 need obviously to do them and the rearranging and
 21 having people cover them?
 22 Is there anything unique about these four that
 23 causes any particular heartburn?
 24 MR. STEWART: No. These are not unique.
 10:39:26 25 They're similar to all the rest. Although I will say

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1 given the timing on this, we would need some additional
 2 time obviously to contact these and get them scheduled.
 3 We would need some leeway in doing that, and I
 4 think also we'd need some kind of resolution or leeway
 10:39:45 5 on getting timely plaintiffs designation from the
 6 plaintiffs. That would help us as well so that we can
 7 in the future move on with this and so we can have
 8 discussion about having the plaintiffs taken before the
 9 sales reps for the purposes we've discussed.
 10:40:02 10 SPECIAL MASTER BROWN: All right. Because what
 11 I would like to do is solve this problem once and for
 12 all for all time to the best of our abilities and that
 13 means that we have to deal with the four cases, or the
 14 seven cases, and as I said, the last time, very
 10:40:16 15 tentative at this stage myself, while we're
 16 transitioning to the PMO, while we're all trying to
 17 figure out what CMO 4 does and make sure it's complied
 18 with and get our feet under us for making that work
 19 like clockwork like it's supposed to, that prejudice to
 10:40:34 20 the plaintiffs of not being able to depose a particular
 21 PSS for a particular case probably outweighs the
 22 prejudice to the system and to AstraZeneca from having
 23 to go for these four depositions.
 24 That's where I come out on the four or even the
 10:40:50 25 seven. Because there is plenty to debate about what

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1 was going on and who was doing it and the timeliness of
2 it and the format.

3 It got us to this point, and I'm tempted to say
4 let's take care of what got us to this point by doing
10:41:06 5 these and getting them out of the way on an orderly
6 schedule rather than ruling at this stage that the
7 timeliness was such that they cannot be deposed at all.

8 But that only solves part of the problem. We
9 have to get to the point where we all know what's
10:41:28 10 happening on these disclosures and when they're
11 happening, and in what format they're supposed to
12 happen, so that we remove any debate about when the PSS
13 designations are due, and we have to make sure that the

14 order of discovery that we are trying to follow, which
10:41:50 15 does have the plaintiffs deposed in the earlier part of
16 the month, and in general, in front of the physicians
17 and sales representatives, that those plaintiff
18 depositions are arranged from month to month so that
19 they happen in that due order. Sometimes it's

10:42:07 20 impossible for various reasons, but that ought to be
21 the goal every month.

22 And so we do want to have going forward the
23 commitment and understanding that the plaintiffs'
24 depositions will be tendered up in the early parts of
10:42:18 25 each month for that particular month, and that

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1 everybody will work hard to get them scheduled. I'm
2 not saying that anybody hasn't. I'm just saying that's
3 the way it needs to be from here out to take care of
4 that issue.

10:42:30 5 On the other issue about CMO 4 contact
6 disclosures and whether they're complete and whether
7 the two business days have started to run, we've got to
8 do one of two things.

9 We've either got to make sure that we
10:42:45 10 understand what is being disclosed all at one time and
11 in a format that everybody finds acceptable and that
12 Russell and his folks have done everything that they
13 need to do to get that stuff out there in -- within the
14 five business days, so that the two days are running,

10:43:02 15 or we have to say that there's still some holes in that
16 that we're trying to fix, and we cannot fix today,
17 because the accounts payable information is still --
18 you're still trying to work through all that, Russell,
19 or whatever.

10:43:18 20 And we have to say the plaintiffs have to
21 designate their sales representative within two
22 business days, even if they still feel like there's
23 something missing, unless what's missing is really
24 substantial and material to making that choice.

10:43:35 25 And I understand that's difficult, would be

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1 difficult to apply.

2 So what we really need to do is get on the
3 playing field where these disclosures are made, they're
4 made once, unless something completely out of your
10:43:50 5 control happens, and the two days is running and we can
6 all tell when they start to run. Because if we don't
7 solve that problem we're just going to have this over
8 and over and over.

9 And, unless, Russell, you're in a position to
10:44:07 10 discuss some agreements that these four will go forward
11 or these seven will go forward and we'll get these
12 under our belt and behind us, then that would be my
13 ruling on it and another report and recommendation that
14 these four that we're talking about today will be

10:44:24 15 treated like the Haas case, that they will be
16 considered to be in this transition period, and there
17 are arguments on both sides of the table that are very
18 legitimate about how things happen and when they
19 happen, but that the prejudice of not doing them is
10:44:40 20 going to outweigh the prejudice of doing them at this
21 stage, provided we can fix the problem going forward.

22 And that's a problem that we can talk more
23 about today. And I guess the issue then for you,
24 Russell, is whether you're in a position to be able to
10:44:58 25 say that the main three components of these disclosures

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1 that you have to provide being the call notes, this
2 prescribing behavior information, the IMS -- IMS data
3 that people call it, and the accounts payable records,
4 are you all -- you and all of us then in a position

10:45:19 5 where you can get your hands on that information
6 generally, in time to produce it within the five
7 business days, all three of those pieces, and, once we
8 get past that point, is it -- what form is it in? Is

9 it in live Excel, and it does seem like the court wants
10:45:42 10 the call notes to be in accessible electronic form, and
11 the other information to be in electronic form to the
12 extent it's already in electronic form is the way the
13 order reads.

14 MR. STEWART: Would you like me to respond,
10:46:05 15 Orran?

16 SPECIAL MASTER BROWN: Yes.
17 Can you tell me where you are on that and how
18 comfortable you are with being be able to say we can
19 get our hands on all of it and it's all going to be
10:46:15 20 within the five business days?

21 MR. STEWART: This is Russell Stewart again.

22 Right now our disclosures, the ones we just
23 finished for November are complete. They have the
24 complete accounts payable records information that we
10:46:25 25 have, and for these doctors.

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1 It has the complete IMS and it has the complete
 2 PIRs which are the physician information requests to
 3 the extent we have them in the company. And the call
 4 notes are being produced in Excel form as we've talked
 10:46:39 5 and also in paper form.
 6 Frankly, a little bit of this is surprising me
 7 because I haven't heard this, some of these issues that
 8 are talking about with the AP records and IMS.
 9 If there are problems with that, I do want to
 10:46:52 10 know what those are so we can sit down and we can bring
 11 that up probably on another call to see exactly what it
 12 is the plaintiffs are unhappy with or want us to look
 13 at because I haven't heard that.
 14 I haven't heard complaints from any of the
 10:47:05 15 plaintiffs about, recently, about the disclosures we're
 16 making.
 17 MS. MARTINES: Well, now, Russell that's not
 18 true.
 19 MR. STEWART: Once you brought to us an issue
 10:47:29 20 of this is a problem, we've tried our best to remedy
 21 it, you know, to get on it and fix it as fast as we
 22 can.
 23 So, we, you know, in our view, we pride
 24 ourselves in being responsive to issues of plaintiffs.
 10:47:43 25 There was another issue, for example, Orran, of
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1 some of the call notes not containing the entire
 2 verbiage, were being truncated. And as soon as we
 3 learned that, we fixed it and filed supplemental call
 4 notes.
 10:47:58 5 Early on in this case, the call notes were
 6 produced in a way that was very difficult to read, and
 7 we corrected that. But it has to be a give and take
 8 between plaintiffs and defendants in talking about it
 9 and meeting and conferring about what it is that's
 10:48:13 10 going on.
 11 But right now, in our view, the record
 12 disclosures we are doing are complete. So but if
 13 there's a view that's not true, I suppose it's
 14 something we should take up and plaintiffs should state
 10:48:25 15 their position and we should talk about it at the next
 16 call.
 17 Is that -- is that responsive to your question,
 18 Orran?
 19 SPECIAL MASTER BROWN: Yes, it is. And this is
 10:48:33 20 Orran Brown again.
 21 This is what I would like to do, and unless,
 22 Russell, you can say we agree to take these four and be
 23 done with it, then I will issue a report and
 24 recommendation that says these four depositions of
 10:48:47 25 these PSSs will be scheduled and you said you needed
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1 time to find them and all that. We will -- certainly,
 2 obviously, you have to do that.
 3 MR. STEWART: Actually, Orran, I may be able to
 4 relieve you of that obligation to do a report. I mean
 10:49:02 5 we can do it either way.
 6 I think given your sense of how you like us to
 7 do this, as long as we can have some issue of timing
 8 with these plaintiffs and also some resolution of the,
 9 you know, the timing to do these PSSs and get them
 10:49:18 10 scheduled and also some discussion of what you
 11 mentioned, which is getting the plaintiffs first and
 12 getting the schedule so that the plaintiffs happen
 13 first and we know whether the plaintiffs are proceeding
 14 before the PSSs are deposed.
 10:49:31 15 That would be, you know, very helpful. And,
 16 I'm not sure that you actually need a report and
 17 recommendation unless you want to because we're
 18 prepared to proceed on that.
 19 SPECIAL MASTER BROWN: All right. Then how
 10:49:43 20 long do you think, Russell, to set up these four?
 21 MR. STEWART: We haven't talked to them so we'd
 22 need --
 23 MS. MARTINES: Can I ask a question.
 24 Are we going to go ahead and include the --
 25 (inaudible).
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1 Buffy Martines. My question to Orran and
 2 Russell is are we going to go ahead and include the
 3 Haas, H-a-a-s, case from Ashley Cranford's office with
 4 this four, or is the Special Master's office going to
 10:50:15 5 issue a report on that case?
 6 SPECIAL MASTER BROWN: Russell, that's really
 7 up to you because now it comes down to whether you can
 8 agree that these five will be done and go ahead and
 9 schedule because if I do issue a report, which is fine
 10:50:32 10 if I do, then I would have the same -- it will have the
 11 same content that we're going to go ahead and do the
 12 deposition of the PSS and Ashley Cranford's case as
 13 well.
 14 MS. MARTINES: I just wanted to make sure that
 10:50:46 15 one didn't get lost in the shuffle.
 16 MR. STEWART: Would your report and
 17 recommendation also address the other issues, Orran,
 18 about the timing and deadlines?
 19 SPECIAL MASTER BROWN: If need be.
 10:51:00 20 But let me tell everybody what it would say,
 21 and that is, we are -- unless there's some
 22 extraordinary circumstances, we are following the order
 23 of discovery that has the plaintiffs in a given month
 24 that are designated for a month made available and
 10:51:18 25 tendered for deposition in the first half of the month,
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1 and, as a general rule, before we schedule the PSS and
2 physician depositions.

10:51:33 3 It's not 100 percent the rule because
4 circumstances make one or the other impossible to
5 schedule on that schedule. But that is the general
6 rule and what everybody should be working towards on
7 both sides of the table.

8 The second piece is is that going forward with
9 AZ making disclosures under CMO 4, contact information,
10:51:53 10 and making the call notes available in live Excel
11 format, and making the other information available in
12 electronic format if it exists that way, as the order
13 requires, then the PSS designations are due within two
14 business days of those disclosures, the initial

10:52:17 15 disclosures, unless Dennis, you, or Buffy, or any of
16 your colleagues, see a problem that you point out to
17 Russell and to me within that two business days, that
18 is somehow keeping you from making your designation,
19 because going forward, they either have to be made

10:52:37 20 within two business days, or you have to raise it as an
21 issue that you feel that those particular disclosures
22 are incomplete and we deal with it on the ground within
23 that two-day period, assuming that -- I think in most
24 instances we'll be able to do that so that we don't
10:52:57 25 have it lingering or festering or growing as we get

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1 further and further away from the time that the cases
2 were supposed to be discovered.

3 So that's what -- if I issue anything on this
4 issue, it's going to try to be global in the sense that
10:53:15 5 we will take these five depositions, and we haven't
6 addressed the specifics of the other two, but, unless
7 there's something really different about them, that's
8 where I come out on that, too, as transition issues,
9 get them done, they should be done because the

10:53:31 10 prejudice of not doing them to the plaintiffs outweighs
11 the schedule and inconvenience and cost to the system
12 and to the defendants from having to do them, but going
13 forward it's not going to happen again, and we're going
14 to deal with plaintiffs being scheduled first unless

10:53:57 15 we all figure out that we can't, and PSS designations
16 being made within two business days of whatever initial
17 disclosures you get unless you -- whoever gets them
18 feels that they're inadequate and then it raises a
19 question within those two business days to the
10:54:13 20 defendants, to Buffy and to me, that we take up
21 contemporaneously so that we don't have this issue
22 coming up every month.

23 MR. STEWART: This is Russell Stewart.
24 I think you probably just made your -- all we
10:54:33 25 need as the parties here. In addition to the proviso

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1 that we will have some extra time, probably 60 days to
2 schedule these particular four, or --

3 SPECIAL MASTER BROWN: Let's say the particular
4 five.

10:54:47 5 MS. MARTINES: And if we're trying to settle all
6 of this now, I will concede and Russell may note some
7 facts on Olive and Sonier. I mean if we're going to
8 try to clean all this up now, I mean I'm sure Russell
9 is going to disagree with me but why don't we clean up
10:55:06 10 these last two as well.

11 MR. STEWART: I'm tempted to, Buffy, but I
12 haven't heard whether they really want to take them
13 now. Literally I've heard nothing.

10:55:18 14 MS. MARTINES: Can we assume they do and if they
15 don't, that's just two less to schedule.

16 I can confirm that they want to do them.

17 But can we have an agreement right now that if
18 the plaintiffs want to move forward on those two it can
19 be done?

10:55:28 20 MR. STEWART: I assume Orran has indicated his
21 ruling would be the same on the others as well.

22 MS. MARTINES: Right. I just wanted to make
23 sure. We're sure on 4 and 5. If we can finish this
24 today and get to all seven and call it a day, that
10:55:41 25 would be, I think that would get us down the road.

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1 SPECIAL MASTER BROWN: That's what we should
2 do.

3 Russell, are you okay with that?

10:55:53 4 MR. STEWART: Sure. As long as we get our
5 extra time, one, as long as we talked about the issue
6 you mentioned of the scheduling order, that's fine.

7 SPECIAL MASTER BROWN: All right. Now, 60 days
8 to set these seven PSS depositions. Is that what you
9 feel like you need?

10:56:07 10 MR. STEWART: I think given that they're on top
11 of the rest of our depositions that would be helpful to
12 us for our scheduling purposes.

13 SPECIAL MASTER BROWN: Does anybody object to
14 that?

10:56:15 15 MS. MARTINES: I don't.

16 Dennis, are you okay with that?

17 MR. CANTY: At this point, it seems that
18 AstraZeneca has not yet contacted the four sales
19 representatives designated in September, and I don't
10:56:29 20 think that at this point -- I think the sales

21 representatives' depositions were late when they were
22 noticed in October, but if we really are going to take
23 another 60 days, there's nothing they can do about it.

10:56:45 24 SPECIAL MASTER BROWN: All right. Then let's
25 do this.

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1 Russell, I know you'll do this anyway. But
2 let's get them done. As soon as we can, if you can
3 contact them and try to arrange them and get them fit
4 in as soon as your best efforts will allow.

10:56:58 5 MR. STEWART: We will.
6 SPECIAL MASTER BROWN: But no later than 60
7 days from today. Okay? And try to beat that if you
8 can, but, no later than 60 days from today.

9 MR. STEWART: Okay.
10:57:10 10 SPECIAL MASTER BROWN: All right. On the
11 second two pieces of this puzzle, and that is,
12 plaintiffs being set first part of the month, the two
13 days for disclosures, unless somebody raises a flag and
14 says there's a problem that's keeping me from

10:57:26 15 designating the PSS, those two pieces of trying to
16 solve the problem going forward, does anyone have any
17 questions or comments about that?

18 MR. CANTY: This is Dennis Canty.
19 I'm not sure I quite understand the
10:57:45 20 plaintiffs-in-the-first-part-of-the-month theory.

21 Can someone just make sure they explain that to
22 me again so I can follow it?

23 SPECIAL MASTER BROWN: This is Orran Brown.
24 Let me, Dennis, tell you why that seems to be
10:57:57 25 appropriate to me.

1 One is just from a logistical issue. We have
2 often found it very difficult to get the doctors in the
3 first part of the month by when we're calling them so
4 they kind of fall in later parts of the month anyway.

10:58:14 5 That should become less and less of an issue as
6 we move towards designating 60 days in advance and
7 we're talking to doctors sooner.

8 So there's one logistical issue that the PMO
9 has seen at least in when we set the physicians. And
10:58:27 10 the plaintiffs are people that you have control over
11 and you can generally make them or have them appear
12 whenever, the doctors are third parties and we can't do
13 anything about it, so we've been working deeper into
14 the month because it's further away.

10:58:39 15 Second issue is is that from a sort of process
16 standpoint, it to me generally is more efficient if the
17 plaintiffs are done in advance of the physicians,
18 because it seems that you often learn things at a
19 physician deposition that can -- that may make a

10:59:03 20 difference as to who the real treater is you want, or
21 who, sometimes the prescriber is who you want, and it
22 can alter the physician who's eventually deposed for
23 that case.

10:59:18 24 Plus there have been for lots of reasons, some
25 of them very good ones, instances where the plaintiffs

1 fail to appear for their depositions. And in some
2 cases those cases go away, and that eliminates the need
3 to spend the time and money to depose any physicians or
4 PSS at all.

10:59:32 5 So, trying to meet the goal of having
6 plaintiffs first is really trying to serve those
7 procedural, sort of efficiency concerns.

8 MR. CANTY: Can I address that?
9 SPECIAL MASTER BROWN: Sure.

10:59:51 10 MR. CANTY: No. 1, no matter what anybody said
11 about plaintiffs not showing up for depositions, at
12 this -- no one has ever shown up for a plaintiff
13 deposition for this firm where that's happened. So
14 that's -- I don't know what's going on with anybody
11:00:03 15 else. If there's a scheduling problem we let you know
16 about it ahead of time.

17 With respect to plaintiffs being taken first.
18 At this point, and again, the procedure with my firm
19 may differ because I don't know what's going on if --
11:00:18 20 if the Bailey firm is producing their plaintiffs in
21 Texas, that's what's going on, but we don't do that.
22 We fly out.

23 So at this point, you know, from a -- from a
24 travel, attorney travel and attorney time perspective,
11:00:35 25 probably on both sides, it doesn't make any sense to

1 have plaintiffs in the first half of the month and then
2 make another trip out for doctors in the second half.

3 From the process standpoint, taking the
4 plaintiffs in advance, whether -- no matter what you
11:00:49 5 learn at a plaintiff's deposition, it can't possibly
6 alter your choice for prescriber because he designated
7 a prescriber at the beginning five days from the
8 designation of the plaintiff when you produce the call
9 notes.

11:01:02 10 Now, with respect to the, whether it alters the
11 choice of treater, why should -- why shouldn't we be
12 designating treaters at the same time.

13 At this point, we have -- I guess AstraZeneca
14 gets it for 30 or 60 days depending on this new
11:01:24 15 schedule he develops, gets to review records of the
16 treater, prepare for the treater's deposition, and then
17 give us, what, ten, 15 days notice of a treater
18 deposition when they've had all this other time to
19 prepare?

11:01:39 20 Why are we not designating treaters at the same
21 time we're designating prescribers?

22 Why should a plaintiff's deposition going
23 forward and testimony learned at a plaintiff deposition
24 thereby affect AstraZeneca's choice of treater?

11:01:55 25 SPECIAL MASTER BROWN: Dennis, I understand all

1 those points. They're all very good questions and very
 2 good points, and if there are instances to achieve
 3 consolidation of travel, then, yes, the parties should
 4 be trying to do that, and, yes, we try to do that if
 11:02:11 5 plaintiff is going to be deposed and you're flying out
 6 to that particular location and the physician is there.
 7 We all should make an effort to try to coordinate those
 8 so that they're done together.

9 And I hope the parties are doing that. So far
 11:02:27 10 it's been difficult to make that happen because we've
 11 been operating on a compressed schedule and trying to
 12 get them done in a month regardless of whether we are
 13 achieving sort of travel efficiencies or not.

14 So far, the designation of treaters has lagged
 11:02:41 15 some behind prescribers because it requires the
 16 defendants to go through more documents to try to pick
 17 which one of the treaters is the best one to depose.
 18 And so far we're working within that. It does happen
 19 fairly quickly but it's not done the same time as a
 11:02:59 20 prescriber which is a more obvious choice.

21 But I understand all your points and what we
 22 can do is just try to monitor it as we go forward, try
 23 to hit this question about doing them in that sequence,
 24 because that's what I think is the most efficient way
 11:03:17 25 to do it so far.

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1 But do try to work together to set dates if you
 2 can so that if you're flying out, you can do it in one
 3 trip. That's always a good thing to do.

4 I don't think we have to make any more precise
 11:03:32 5 arguments or ruling on that beyond today except to say
 6 that for now, that is what we are trying to do, is do
 7 plaintiffs and then do physicians and sales reps. And
 8 for the most part, that seems to be working, and we're
 9 going to keep trying to do that unless circumstances
 11:03:54 10 that you see, or somebody sees, change or tell us from
 11 experience that that's not working and we need to alter
 12 it.

13 MS. MARTINES: Orran, this is Buffy Martines.

14 Orran, I think I was just glancing at the
 11:04:13 15 November plaintiffs to see if I'm right. The majority
 16 of the plaintiffs in the month of November is a good
 17 example. There are only two plaintiffs that don't
 18 belong to the Bailey firm for the month of November. I
 19 guess that's just our good fortune.

11:04:27 20 But Dennis is correct. We have chosen to do
 21 this method of bringing the plaintiffs to Houston
 22 because it is based on the volume that we do it, just
 23 works better for everyone.

11:04:43 24 And we have been consistently front-loading the
 25 plaintiffs at the beginning of the month, and I

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1 believe, and Russell and Dennis may correct me if I'm
 2 wrong, that they have been kind of going along on an ad
 3 hoc basis, and as these doctors get scheduled, trying
 4 to front-load the plaintiffs on the beginning of that
 11:05:00 5 trip.

6 For example, if you've got the doctor on a
 7 Thursday, even a Friday, then try to put the plaintiff
 8 on the Wednesday and achieve Russell's goal of putting
 9 the plaintiffs first and Dennis's goal of compressing
 11:05:14 10 down the travel to be more cost-effective.

11 And given the fact that Dennis's firm and some
 12 of these others who -- and I don't think that any of
 13 the other plaintiffs' firms have raised this issue,
 14 it's generally one or two plaintiffs a month at best,
 11:05:30 15 maybe we can just kind of continue on and say as a
 16 general rule, as you suggested, that we're going to
 17 front-load the plaintiffs at the beginning of the
 18 month, and then the folks that have one or two
 19 plaintiffs, such as the Gornick firm, can continue to
 11:05:44 20 work with Russell and see if they can't work out
 21 something that meets everyone's needs.

22 SPECIAL MASTER BROWN: All right. Thank you,
 23 Buffy.

24 That's what I would like to do, and Dennis,
 11:05:54 25 would like for you to try to make that happen, and if

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1 at any time you feel that there's a problem or you're
 2 not getting cooperation, or you'd like to combine
 3 people on the trip and you're not getting that done,
 4 and you want to raise it, then all you have to do is
 11:06:14 5 let me know and we'll get together again and we'll deal
 6 with it and I think resolve it. Just send me an e-mail
 7 or a letter or fax.

8 MR. CANTY: I certainly hope that won't be
 9 necessary.

11:06:28 10 So far, you know, we've been able to -- we've
 11 been able to coordinate trips where necessary, and be
 12 respectful of each other and each other's time so it's
 13 been good with respect to scheduling.

14 Do we have a dispute as to Naramore, Russell?
 11:06:45 15 Do we need to take this up next? This is probably a
 16 good segue way.

17 MR. STEWART: Yes. Naramore is the issue.
 18 This case is one that we have -- this is one on the
 19 list of Dennis's October 4th letter.

11:07:00 20 Allison Henderson is a PSS, and this came up
 21 because we offered a date for Allison Henderson and we
 22 had scheduled the plaintiff before that, but then
 23 Mr. Canty then changed his schedule for the plaintiffs
 24 until after the PSS deposition. So.

11:07:21 25 MR. CANTY: That's incorrect.

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1 MR. STEWART: No? Okay.
 2 MR. CANTY: At this point, you chose a date for
 3 the sales representative. Then you later fail to make
 4 her available on that date and, as a result, the
 5 deposition of the sales rep was moved to the week
 6 following the Thanksgiving holiday.
 7 As a result, the plaintiff's deposition for
 8 convenience of the parties, also needed to be moved,
 9 and I would recommend that since we have the time that
 10 we try and move the physician as well.
 11 That issue aside, at this point, you have the
 12 sales rep schedule for mid-week. I have -- I'm able to
 13 produce the plaintiff on the 30th, which is the Friday,
 14 and for some reason, you need to make sure that the
 15 plaintiff goes first.
 16 And I would like you to explain to us why that
 17 has to be, and why we can't just schedule the
 18 depositions conveniently for all.
 19 MR. STEWART: This is Russell Stewart again.
 20 Let me address something that Mr. Canty said.
 21 One example of a case in which, one of his cases that
 22 is not going forward is the Tracy Flye case in Indiana.
 23 And that was one where a PSS schedule but
 24 luckily after the plaintiff and that case didn't go
 25 forward. And when Tracy Flye was cancelled and that

1 case was not to proceed, then the PSS didn't proceed.
 2 So that -- and it has happened in one of the Gornick
 3 cases.
 4 But that's our concern because it's not only
 5 just the time of deposing this PSS, but also preparing
 6 and meeting with this PSS and taking them out of their
 7 work schedule in order to talk to them, and then also
 8 the day of the deposition is time they're away from
 9 their work and they have limited -- limiting schedules.
 10 MR. CANTY: I'm sorry, Russell, before we go
 11 any farther with that, I just would like to remind the
 12 court that, you know, you should take a look at my
 13 initial letter to Russell in August.
 14 The disclosures for Tracy Flye did not even
 15 identify a sales rep. It is impossible that a sales
 16 rep was designated and set for deposition. Absolutely
 17 impossible.
 18 MR. STEWART: I would agree with you on that
 19 one. But Tracy Flye is one of your cases that didn't
 20 proceed, right?
 21 MR. CANTY: And I informed you of that, so
 22 there was absolutely -- before you provided them
 23 adequate disclosure.
 24 SPECIAL MASTER BROWN: Let's do this. Which
 25 case is currently presenting the problem? You called

1 it Naramore?
 2 MR. CANTY: Correct.
 3 SPECIAL MASTER BROWN: Is that plaintiff's
 4 schedule?
 5 MR. CANTY: I can make the plaintiff available
 6 on November 30. He can make the sales representative
 7 available on Wednesday the 28th? Correct?
 8 MR. STEWART: We've offered the 28th and
 9 they've offered the plaintiff for two days after.
 10 SPECIAL MASTER BROWN: And are the physicians
 11 in that case scheduled, Russell?
 12 MR. STEWART: No. I think it's one of the
 13 cases they were, but I think we've agreed if we're
 14 going to move these back, we didn't have some of the
 15 records and so we also agreed to move both of these and
 16 see if we couldn't schedule them together to make one
 17 trip.
 18 SPECIAL MASTER BROWN: All right. Is the PSS
 19 and the plaintiff, are they located in the same city?
 20 MR. CANTY: Correct. Same geographic area.
 21 SPECIAL MASTER BROWN: And so, you're trying to
 22 do them in one trip, and where is it?
 23 MR. CANTY: Somewhere in the vicinity of
 24 Atlanta.
 25 SPECIAL MASTER BROWN: All right. And PSS on

1 the 28th, plaintiff on the 30th.
 2 And Dennis, is there a way that the plaintiff
 3 could be done before the 28th?
 4 MR. CANTY: Before the 28th? It isn't
 5 possible. With her travel schedule and ours it is not
 6 possible.
 7 Basically what -- we were pushing against the
 8 holiday weekend, right there is the idea.
 9 SPECIAL MASTER BROWN: If the plaintiff is not
 10 done until the 30th, that's a Friday.
 11 MR. STEWART: This is Russell Stewart again.
 12 We're willing to take the plaintiff any time in
 13 October. And that's certainly our preference and
 14 consistent with what makes most logistic sense in these
 15 cases.
 16 SPECIAL MASTER BROWN: Dennis, are you sending
 17 or are you coming from -- are you sending someone from
 18 San Francisco to the Atlanta area for this deposition?
 19 MR. CANTY: That is correct.
 20 SPECIAL MASTER BROWN: And, are we, Dennis, are
 21 you certain that this case is going forward, and the
 22 plaintiff will appear and will be deposed on the 30th?
 23 MR. CANTY: We wouldn't be here discussing it
 24 if the plaintiff wasn't going to appear.
 25 SPECIAL MASTER BROWN: All right. Then we are

1 down to whether we have one trip or two. And generally
 2 one trip is better than two. If this --
 3 MR. CANTY: Mr. Brown, I'm sorry, at this
 4 point, we don't have treaters and prescriber scheduled,
 11:13:12 5 I don't think, in that case. So, there are more trips
 6 that are going to need to be made in that case.
 7 MR. STEWART: I think the idea is that we're
 8 trying -- the prescriber is Mathews, the treaters is
 9 Blomert?
 11:13:28 10 MR. CANTY: I wouldn't know. You guys haven't
 11 told me that you're taking the treaters. For some
 12 reason you're not obligated to do that.
 13 MR. STEWART: This is Russell Stewart.
 14 May I address that, too, because, in fact, we
 11:13:39 15 are providing the names of treaters we're deposing to
 16 the PMO, Mr. Canty, when we do that.
 17 To the extent they're listed on the plaintiff's
 18 facts statement we are providing treaters information
 19 and prescriber information.
 11:13:51 20 And it's also true that it does -- our
 21 experience has been that those names do change as we
 22 learn more about the case, particularly deposing the
 23 plaintiff, that we do change prescribers. And when we
 24 do that, we also do change treaters. It just happens.
 11:14:05 25 It's the nature of the process.

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1 There are sometimes that the plaintiffs' facts
 2 statements don't contain the names of treaters and then
 3 we go to the plaintiffs to ask them to designate or to
 4 help us with that and find one.
 11:14:21 5 SPECIAL MASTER BROWN: And what's the
 6 prescribers last name in that one?
 7 MR. STEWART: I have it down as Matthews.
 8 SPECIAL MASTER BROWN: And the treaters is.
 9 MR. STEWART: B-I-O-M-E-R-T.
 11:14:38 10 SPECIAL MASTER BROWN: The most we can do on
 11 this today is this. Let's say that the plaintiff is
 12 tentatively scheduled for November 30 and the PSS is
 13 tentatively scheduled for November 28, and we are going
 14 to see if we can schedule the doctors for the same
 11:14:53 15 week, to have all this done in one trip.
 16 If the plaintiff does not appear at her
 17 deposition on the 30th, I'm not saying she's not, if
 18 she doesn't appear on the 30th, or if she, in that
 19 testimony, reveals other physician names that would
 11:15:10 20 have been better, deponents will take up at that time
 21 whether there should be any remedy for that because
 22 that's what we're concerned about.
 23 I would like to do them all in one trip as I'm
 24 sure you would. If that's possible, that's what we'll
 11:15:22 25 do. But if it falls apart on the 30th because the

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1 plaintiff doesn't show or identifies other physicians
 2 that really need to be deposed, we'll take up then what
 3 the consequences of that are.
 4 We're going to try here to schedule Mathews and
 11:15:41 5 Blomert for that week. I assume they're both in the
 6 Atlanta area, too.
 7 Okay?
 8 MR. CANTY: Thank you very much, Mr. Brown.
 9 SPECIAL MASTER BROWN: Thank you for your time
 11:15:52 10 today, Dennis, and glad to have you and please join us
 11 any time.
 12 MR. STEWART: Before Dennis leaves, I do think,
 13 I guess given the discussions here, I'm just -- as
 14 we've been talking, I've been thinking about the pros
 11:16:04 15 and cons about a report and recommendation.
 16 Maybe it would be appropriate for you to issue
 17 one, knowing that we are going to produce these, but
 18 just to say what the ruling is and what the dispute is.
 19 Would there be an objection to that?
 11:16:18 20 MS. MARTINES: I don't have a problem with that.
 21 MR. STEWART: I just think we've been talking
 22 about a lot of issues. It would be nice to have them
 23 in a written form.
 24 SPECIAL MASTER BROWN: I would be happy to lay
 11:16:27 25 that out and maybe it will be helpful to all of us

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1 going forward.
 2 MR. STEWART: I think so.
 3 SPECIAL MASTER BROWN: So that takes care of, I
 4 think, all of your issues today Dennis, you think?
 11:16:36 5 MR. CANTY: Yeah. I think you guys can be rid
 6 of me, what do you think, Buffy?
 7 MS. MARTINES: That will be fine. Thank you
 8 for helping out on your stuff. I appreciate it.
 9 MR. CANTY: Thank you for putting me up with
 11:16:48 10 me, Buffy.
 11 So, Ms. Langley.
 12 SPECIAL MASTER BROWN: Off the record.
 13
 14 (Whereupon, the proceedings
 15 were concluded at 11:16 a.m.)
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1 STATE OF CALIFORNIA)
2)
3 COUNTY OF ALAMEDA)

4

5 I, EARLY K. LANGLEY, do hereby certify:

6 That foregoing proceedings were held in the
7 above-entitled action at the time and place therein
8 specified;

9 That said proceedings were taken before me at said
10 time and place, and was taken down in shorthand by me,
11 a Certified Shorthand Reporter of the State of
12 California, and was thereafter transcribed into
13 typewriting, and that the foregoing transcript
14 constitutes a full, true and correct report of said
15 proceedings that took place;

16 IN WITNESS WHEREOF, I have hereunder subscribed my
17 hand this 15th day of October 2007.

18

19

20

21

22

23 EARLY K. LANGLEY, CSR No. 3537
24 State of California

25