

1

1 UNITED STATES DISTRICT COURT  
 2 MIDDLE DISTRICT OF FLORIDA  
 3 ORLANDO DIVISION  
 4 Docket No. 6:06-md-1769-Orl-22DAB  
 5 IN RE: :  
 6 SEROQUEL PRODUCTS LIABILITY :  
 7 LITIGATION : Orlando, Florida  
 8 MIL DOCKET No. 1769 : October 2, 2007  
 9 : 10:00 a.m.  
 10 ALL CASES :  
 11 :  
 12 :  
 13 :  
 14 :  
 15 :  
 16 :  
 17 :  
 18 :  
 19 :  
 20 :  
 21 :  
 22 :  
 23 :  
 24 :  
 25 :

TRANSCRIPT OF PRETRIAL CONFERENCE  
 BEFORE THE HONORABLE DAVID A. BAKER  
 UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiffs: Paul Penneck  
 Richard Laminack  
 F. Kenneth Bailey  
 K. Camp Bailey  
 D. Renee Baggett  
 Craig Ball  
 Buffy Martines  
 Holly Wheeler  
 Angela Nixon

Court Reporter: Sandra K. Trepel

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

2

1 For the Defendant  
 2 AstraZeneca: Fred Magaziner  
 3 Stephen J. McDonnell  
 4 James Freebery  
 5 Robert Pass  
 6 Robert Ciotti  
 7 Liz Balakhani  
 8  
 9 Special Master: Orran Brown  
 10  
 11  
 12  
 13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

3

1 P R O C E E D I N G S  
 2 THE DEPUTY CLERK: The case number is  
 3 6:06-md-1769-Orl-22DAB, In Re: Seroquel Products Liability  
 4 Litigation.  
 5 Counsel in the courtroom, please state your  
 6 appearances for the record.  
 7 MR. PENNECK: Paul Penneck for plaintiffs.  
 8 MR. CAMP BAILEY: Camp Bailey for plaintiffs.  
 9 MR. LAMINACK: Rick Laminack for plaintiffs.  
 10 MS. WHEELER: Holly Wheeler for plaintiffs.  
 11 MP. KEN BAILEY: Ken Bailey for plaintiffs.  
 12 MS. MARTINES: Buffy Martines for plaintiffs.  
 13 MS. BAGGETT: Renee Baggett for plaintiffs.  
 14 MR. MAGAZINER: Fred Magaziner for AstraZeneca.  
 15 MR. MCCONNELL: Steve McDonnell for  
 16 AstraZeneca.  
 17 MR. PASS: Robert Pass for AstraZeneca.  
 18 MR. FREEBERY: Jim Freebery for AstraZeneca.  
 19 MR. CIOTTI: Robert Ciotti for AstraZeneca.  
 20 MS. BALAKHANI: Liz Balakhani for AstraZeneca.  
 21 THE DEPUTY CLERK: Counsel on the phone, please  
 22 state your appearances.  
 23 MR. BROWN: This is Orran Brown the special  
 24 master and PMO.  
 25 MR. BALL: This is Craig Ball. I believe I have

4

1 been appointed special master for IT matters.  
 2 MS. CRANFORD: Ashley Cranford for the  
 3 plaintiffs.  
 4 MS. NIXON: Angela Nixon, noncounsel for  
 5 plaintiffs.  
 6 THE COURT: Anybody else on the phone?  
 7 All right. Let me start first, see if Mr. Brown, PMO  
 8 has any comments. I know your formal report is not due  
 9 for a couple weeks. So any quick thoughts?  
 10 MR. BROWN: Yes, Your Honor.  
 11 If I heard you correctly, quick thoughts on where we  
 12 stand and we did want to discuss with the Court a plan we  
 13 have been working for transitioning to designation of  
 14 cases for case-specific discovery 60 days in advance  
 15 rather than the 30 days in advance that CM04 has  
 16 implemented thus far. It's an issue that came up in our  
 17 last status conference, and I have been working with the  
 18 parties' representatives since then to come up with a  
 19 program that we wanted to review with you.  
 20 As a highlight of a report on how it's going, we have  
 21 been working with the representatives of the plaintiffs  
 22 and defendant to schedule physicians depositions, and  
 23 parties are still scheduling the plaintiff and the sales  
 24 representatives' deposition witnesses for depositions each  
 25 month with 30 cases a month. And as I reported last time,

1 and as reported in our first written report, we are making  
 2 a lot of headway in getting these schedules and trying to  
 3 reach solutions to any of the logistical impediments that  
 4 we're having primarily with the physicians about their --  
 5 some of -- they range, as you can imagine, from witnesses  
 6 who are fully cooperative in providing the records to  
 7 witnesses who do not do depositions if they can avoid it.  
 8 And we're generally able to work through those problems.

9 And as I reported last time, continue to encounter  
 10 outdated contact information from physicians that we have  
 11 to update with the parties' assistance. We have some  
 12 physicians who are deceased and we have to usually find  
 13 replacement physician to serve as a witness. We have some  
 14 physicians that we are really unable to locate, and  
 15 generally that means that the parties need to select  
 16 another potential physician from the fact sheets to  
 17 designate as a witness. And we have the processes in  
 18 place working with the parties to make that happen as  
 19 fluidly as possible.

20 We have not yet been successful in scheduling every  
 21 physician deposition for the month in which the case has  
 22 been designated partly because for the September cases, we  
 23 came onboard right as that was on the cusp of being  
 24 scheduled. So we were calling people in September for  
 25 September depositions which made that a little difficult,

1 but we were successful in scheduling a lot of them in  
 2 September and ultimately most of the rest of them in  
 3 October or thereabouts. We still have some cases from  
 4 September that we're trying to schedule. For example,  
 5 about eight of them where we're unable to locate the  
 6 doctor or there's some issue that, logistical issue that  
 7 is holding us up. But we have a full court press on with  
 8 the parties, and the parties do -- to make those  
 9 scheduling -- solve those scheduling problems and to work  
 10 through them.

11 For October we have gotten designations for a total  
 12 of 48 physician witnesses. We have successfully scheduled  
 13 17 of them thus far. We have 10 of them that have  
 14 problems with a deceased physician or contact information  
 15 bad that we're working through. We have the other 21  
 16 we're in the processes of talking to the doctors, getting  
 17 a date, waiting for return calls.

18 And we have developed internally here with the  
 19 parties' approval steps to keep the pressure on in a  
 20 relentless way to make that scheduling happen. And what  
 21 we're seeing many times is that the physicians do not  
 22 respond to phone calls, do not return them. And so if  
 23 we -- we have a schedule where we call them. If we don't  
 24 hear back in 24 hours, we call them again. If we don't  
 25 hear back in 48 hours from them, we send them, because we

1 usually have fax numbers, we send them the Court's order  
 2 that the Court recently entered at our request which  
 3 impresses upon them the importance of returning a call and  
 4 their duty to cooperate with us. And that is more than  
 5 half of the time finally getting a reaction from the  
 6 physicians, and we're getting calls back. There are still  
 7 some witnesses even after that that we do not hear back  
 8 from. And we have a rule thus far that if we have not  
 9 gotten a call back from a physician's office within 10  
 10 days of the first calls, 24 hours, 48 hours send a  
 11 package, we go out to 10 days. We send them a deposition  
 12 notice and a subpoena that we have completed and we pick a  
 13 date. And thus far that is generally getting a call back  
 14 finally from a physician or a physician's lawyer.

15 As we work through the initial set of cases for  
 16 September and in October, we think we will hit the point  
 17 where we are successfully scheduling cases in the month in  
 18 which they are intended to be scheduled. That is  
 19 definitely the goal. And we think that one of the things  
 20 we're going to discuss about today in terms of designating  
 21 cases 60 days in advance will help us achieve that goal.

22 We have done -- we have modified some of our  
 23 processes and talking about further modifications about  
 24 obtaining medical records, because in each instance, thus  
 25 far, we are asking the plaintiffs -- the physician's

1 office to provide us medical records for either the  
 2 prescribing physician during the time that the product was  
 3 prescribed or a treating physician who's currently  
 4 treating the patient, the plaintiff, to provide those  
 5 medical records. That process is working fairly well,  
 6 although we're discussing with the parties whether in some  
 7 instances it is somewhat redundant because the parties  
 8 collectively using a national collection service record  
 9 track have already canvassed most of these physicians and  
 10 have gotten medical records at some point before now.

11 And so we're studying the issue about whether we can  
 12 identify the instances where it may be redundant where we  
 13 cannot go through the step of asking for the records  
 14 again. Maybe in some instances asking only for an update  
 15 or maybe not asking for them at all if parties recently  
 16 have obtained them through their other collection service.  
 17 We're trying to avoid duplication of any redundant effort  
 18 or any unnecessary costs.

19 The other issue that we wanted to make sure we  
 20 previewed with the Court today was the transition from  
 21 designating cases 30 days in advance, as CMO4 requires, to  
 22 designating cases 60 days in advance. The 60 days in  
 23 advance we think will help us a lot getting the doctor's  
 24 attention first of all and then getting all their  
 25 calendars in the month in which they're supposed to be

1 deposed. That requires a transition period moving from 30  
2 days out to the 60 days out because we have phase-in  
3 double tracking designations to get us to the point where  
4 we can designate 60 days -- the parties and the Court can  
5 designate cases 60 days out.

6 The parties and the Court are right now making their  
7 designations on September and the early part of October  
8 for the November cases which is the 30-day-out model.  
9 We're working on making additional designations in October  
10 for December cases and then shortly thereafter making  
11 designations for the January cases which will then get us  
12 60 days out. And then starting the designations that are  
13 being made in late November, they will be making  
14 designations for February which will then put us on  
15 60-day-out schedule.

16 That requires working with the parties to make sure  
17 that we phase in the designations in a manner that they  
18 can handle because parties have to designate their 10  
19 cases and then their -- the other 10 cases from the  
20 plaintiffs, and then the Court designates 10, and then  
21 those designations trigger dates for defendants to  
22 disclose documents relating to contact by the prescriber  
23 with a sales representative which requires that the  
24 defendants to dig through records and identify and round  
25 those up and disclose those documents. Case Management

1 Order 4 requires those disclosures within five business  
2 days after the cases are designated.

3 And then the plaintiffs have to designate a sales  
4 representative as a deponent they want to depose based  
5 upon those document disclosures. And Case Management  
6 Order 4 says that occurs within two business days after  
7 disclosure of the records.

8 So those dates have to be phased in along with the  
9 designations to get us to the point of doing a 60 days  
10 out. And if we're double tracking designations starting  
11 in October to catch, to phase in the cases for December  
12 and January, those dates are also going to be doubled up.  
13 So there's a lot of work the parties have to do to make  
14 this happen, to phase it in the 60 days out.

15 We have been working with the plaintiffs' designated  
16 representatives and defendant's counsel to make that  
17 happen. And we think that during the transition phase  
18 while they're double tracking this, the five business days  
19 for the defendants to disclose the sales representative  
20 contact records should be extended to seven, and that the  
21 plaintiffs should have four business days rather than two  
22 to pick a deponent witness because they're going to be  
23 doing so much of this at the same time.

24 We have been considering a transition phase that will  
25 allow that to happen, changing the five to seven and two

1 to four.

2 We wanted to preview that with the Court and get the  
3 Court's reaction to it. And then we also have been  
4 considering when to kick this off because we have been  
5 working on a couple of models that would require, one of  
6 which would require designations and the end of October as  
7 normal for the December cases, and then about a week later  
8 in November, early November, designating for the January  
9 cases. And we had talked about starting that with the  
10 normal designations on the 26th of October. We have also  
11 talked about trying to accelerate that and do it a little  
12 earlier if the parties can and if the Court has the  
13 opportunity to consider this between now and then, to  
14 start doing it on the middle of the month, on the 15th of  
15 October, which would start getting us designations a  
16 couple weeks sooner for the November -- the December and  
17 January cases.

18 We have -- we will come up with a proposed order that  
19 we can send the Court by the end of this week that would  
20 express within that order the modifications that would be  
21 required to Case Management Order 4 to make this happen  
22 for the double tracking designations to get us to the  
23 point of 60 days out, so that by the designations in late  
24 November, it will be occurring for February cases. That  
25 will give us the cases sooner. We will start on the

1 physicians sooner. We think that will help. And the  
2 order that the Court will see this week, and we'll  
3 contemplate phasing in the double designations in a  
4 somewhat staggered manner so that it can be achieved. And  
5 then for the transition period, allowing the defendant's  
6 disclosure of sales rep documents, seven business days  
7 instead of five, plaintiff designating the sales rep  
8 witnesses four business days after that instead of two  
9 during the transition period.

10 We are also constantly working with parties to come  
11 up with any other steps that we can to enhance the  
12 efficiency of this process to make it work smoothly and  
13 cleaner or faster, more with less cost. And we don't yet  
14 have a whole lot of experience to be able to identify any  
15 other areas that we would change. We think that right now  
16 we should accomplish this transition 60 days out, and then  
17 continually evaluate what else we can do, like the change,  
18 perhaps, in the document collection that we're studying.  
19 The parties now see if the documents that we're receiving  
20 are redundant or they're helpful. But it's a constant  
21 process of reevaluating to see if there is a better way to  
22 do this. And if we come up with things, then we will  
23 present those ideas to the Court as well.

24 The last thing worth mentioning, I think, Your Honor,  
25 is that we do have a master calendar up in place. We set

1 that up two week ago. We forwarded to the Court a manual  
 2 to explain how to use it and assigned you a user name and  
 3 password should you choose to view it. That is up and  
 4 running. We're listing all the depositions and keeping  
 5 the master calendar. We're also refining and improving  
 6 that as we go along. Now working on the option to make it  
 7 searchable by case name, plaintiff name, and doctor names  
 8 so that if you're looking for a particular case in all the  
 9 depositions that have ever been done or assigned to in the  
 10 future, you can research it and it will show you each one.  
 11 And also if you're looking for a particular doctor's name  
 12 or witness's name you can search it and it will take you  
 13 to each one. That's a feature that we're adding this  
 14 week.

15 So that's a quick report, Your Honor. Maybe not as  
 16 quick as Court intended. But we are going to present to  
 17 the Court an order to effect this transition to the  
 18 60-day-out change. If that meets with the Court  
 19 expectations, we can present that this week.

20 THE COURT: Do you anticipate that that order  
 21 will be agreed in all respects?

22 MR. BROWN: Yes, Your Honor, I do.

23 THE COURT: All right. Then I don't have a  
 24 problem.

25 MR. BROWN: Like we did before, it will be a

1 joint unopposed motion for an order to change that  
 2 schedule to make that happen.

3 THE COURT: All right. I'll look forward to  
 4 seeing that when it arrives.

5 I'd like you to stay on the phone. I'm going back to  
 6 an issue that may affect your role here later on --

7 MR. BROWN: Yes, Your Honor.

8 THE COURT: -- on the agenda.

9 Mr. Ball, let me welcome you to the courtroom here,  
 10 and ask whether since I talked to you last week, have you  
 11 had any further contact with the parties or were you just  
 12 waiting for today's hearing?

13 MR. BALL: Waiting for today's hearing, Your  
 14 Honor.

15 THE COURT: All right. Parties have each  
 16 submitted at the Court's direction proposals with respect  
 17 to the scope of your duties. I'm going to sift through  
 18 those disparate proposals and come up with an order and  
 19 turn the nuts and bolts of the ESI over to you, and,  
 20 hopefully, you will be able to solve some problems the  
 21 parties have been unable to solve. And I'll -- we will  
 22 have you participate again in the next status conference.

23 I may require that you submit some sort of a report  
 24 as to the status of things. And then I expect I'll be  
 25 hearing from either or both sides about -- as we move

1 through that, whether issues about your role ought to  
 2 change.

3 I'm going to ask parties very briefly to comment on  
 4 anything beyond what's in your written submissions that I  
 5 really don't want to argue at this point, but just  
 6 anything else that you want to comment on. I'll get that  
 7 order out in the next day or two.

8 MR. PENNOCK: Paul Pennock for the plaintiffs.  
 9 The only comment is timing. In the next -- by  
 10 December 31, three months, we have third party discovery,  
 11 corporate witness discovery, database discovery. We, of  
 12 course, have to review all those documents and get our  
 13 initial round of expert reports in. And at this juncture,  
 14 we feel that we still, as the Court knows, don't really  
 15 have much to begin with. And we're -- we feel very  
 16 handcuffed. We feel that we have been prejudiced. We're  
 17 continuing to be prejudiced. And the only thing that  
 18 really disturbs me about the defendant's proposal, and I  
 19 agree with you, they're very disparate, and you can  
 20 probably combine the two and come up with what would be  
 21 the appropriate order. But the thing that bothered me the  
 22 most, Judge, was the statement regarding monthly reports.  
 23 I kind of wanted to ask what planet have they been living  
 24 on for the last few months. This is a monthly report. We  
 25 have to have this stuff done this month and certainly by

1 next month. And even next month is too far out. And that  
 2 is the thing that concerned us the most is their kind of  
 3 just failure to recognize the very difficult timing  
 4 situation we're in. But other than that, I think -- our  
 5 proposals, we discussed them at length and the problems,  
 6 and the proposals are before the Court.

7 THE COURT: Anything from the defendants?

8 MR. PASS: Your Honor, Robert Pass. It's only  
 9 my second time here, I don't know if you remember who I  
 10 was.

11 Let me just address very quickly Mr. Pennock's  
 12 observations. The inclusion of a reference to monthly  
 13 reports in our proposed job description is not intended in  
 14 the least to suggest or betray any desire to drag this out  
 15 at all. We're ready to start meeting with Mr. Ball as  
 16 promptly as possible. We want to move this forward. This  
 17 was our idea in the first place to try to get things fully  
 18 on track and resolved. So there simply needed to be some  
 19 sort of procedure by which there will be periodic reports  
 20 and we simply chose monthly.

21 Mr. Ball can report as frequently as the  
 22 circumstances allow. So there's nothing suggested by that  
 23 in terms of delay.

24 The only other thing I would remark about is I'd like  
 25 to comply with the Court's order which directed that we

1 identify a lead attorney contact and a lead technical  
 2 representative. I'll be the lead attorney contact, and  
 3 here in the courtroom today is the lead technical contact  
 4 which will be Carmen Field. And I'd ask her just -- so  
 5 you know who she is. Ms. Field is the person I referred  
 6 to when we were here last who is part of AstraZeneca's  
 7 response to the Court's order which included the formation  
 8 of special technical committee that I chair, the bringing  
 9 onboard of the new electronic discovery, additional new  
 10 electronic discovery vendor FTI Consultants and Ms. Field  
 11 who is with Daylock (phonetic) Forensic and Advisory in  
 12 New York City, is the information technology expert  
 13 adviser to AstraZeneca in connection with this case and  
 14 will work also with Mr. Ball.

15 THE COURT: Okay. Let me turn to the pending  
 16 motions that are in my bailiwick. Number 492 is  
 17 AstraZeneca's motion regarding documents to be obtained  
 18 from Eli Lilly. What's the plaintiffs' problem with the  
 19 proposed order with that?

20 MR. CAMP BAILEY: On the motion they filed, we  
 21 have a disagreement as to the appearance that the only  
 22 issue being disputed is just the language of the order.  
 23 We said on the record last time we were down here that we  
 24 did not have a problem in assisting them in getting  
 25 plaintiff's medical records and other things that the

1 HIPAA authorization would allow them to otherwise get.

2 I think Buffy and the special master -- actually,  
 3 Orran Brown has been dealing with that and I know that  
 4 they have been in contact with Pepper Hamilton, the  
 5 lawyers for Eli Lilly, and they have some very strong  
 6 thoughts on disclosing any of information related to the  
 7 settlement amounts and the settlement documents and  
 8 submissions related to the settlements. And Buffy may  
 9 want to add something as far as her conversations with the  
 10 PMO.

11 MS. MARTINES: Good morning, Your Honor. Buffy  
 12 Martines on behalf of plaintiffs.

13 The concern I have with the motion is that there may  
 14 be some overlap in what we're trying to do with Special  
 15 Master Brown and this particular motion. The motion that  
 16 I reviewed calls for three things to be produced from  
 17 Lilly: Medical records, litigation documents such as fact  
 18 sheets, pleadings, et cetera, and Section C which seems to  
 19 imply documents underlying settlements. And Section C is  
 20 the concern.

21 What we have been trying to do with Special Master  
 22 Brown, and he can jump in any time he'd like, is that  
 23 Lilly does have very strong feelings about the  
 24 confidentiality of Zyprexa settlements and the documents  
 25 underlying them. The Special Master has already

1 undertaken in camera review of the confidentiality  
 2 language of those settlements. And I believe, and I'll  
 3 allow him to jump in, I believe he agrees that the  
 4 confidentiality provisions are very strong. So I don't  
 5 believe the parties are very far apart on the production  
 6 of the medical records and perhaps the litigation  
 7 documents.

8 But Section C which discusses the underlying  
 9 documents related to settlements can be a sticking point.  
 10 I have also provided to the Special Master's office a  
 11 contact person from Lilly, and they would like to speak  
 12 with him on this matter.

13 So I think the biggest problem is there may be some  
 14 overlap between what we're trying to do with the Special  
 15 Master's office and this motion. And I don't know if  
 16 Special Master Brown has a comment on that. But I believe  
 17 within the next week he will be able to talk to the folks  
 18 at Lilly and hopefully try to figure this thing out.

19 MR. BROWN: This is Orran Brown. Would it be  
 20 helpful if I added to that?

21 THE COURT: Well, let me ask defendants first.  
 22 I thought you had an agreement with Lilly they didn't  
 23 object to this?

24 MR. MAGAZINER: This form of order has been  
 25 submitted to counsel for Lilly at Pepper Hamilton. And as

1 recently as yesterday afternoon, counsel for Lilly  
 2 confirmed to me that they have no problem with the order  
 3 that we have submitted to the Court.

4 Now, the order does not contemplate, as Your Honor  
 5 will see, that Lilly will tell us the amount of a  
 6 settlement that has been made with the plaintiff. What  
 7 the order contemplates is Lilly will give us any  
 8 submissions made by individuals who are plaintiffs in this  
 9 litigation in support of their efforts to settle their  
 10 claim against Lilly.

11 That's right on the face of order. Lilly does have  
 12 an issue with our obtaining from plaintiffs, not from  
 13 Lilly, from plaintiffs, information about the amount that  
 14 was paid to a plaintiff or has been agreed to be paid to a  
 15 plaintiff to settle the claim against Lilly. But that's  
 16 not covered by this order.

17 As to that latter subject, we intend to ask  
 18 plaintiffs, as we have already done in depositions taken  
 19 to date, how much they have been paid by Lilly or how much  
 20 Lilly has agreed to pay them. If Lilly has a problem with  
 21 that, and I understand that they do have a problem with  
 22 that, then Lilly is going to have to raise that problem in  
 23 some appropriate forum which I take it might be in this  
 24 Court, could be in Judge Weinstein's court, could be in in  
 25 front of the special master, we will have to see how that

1 resolves. Special master, meaning the PMO, Mr. Brown.  
2 But that's not covered by this order.

3 So as to this order that we have submitted, Lilly's  
4 counsel has --

5 THE COURT: I want this resolved, and I'm going  
6 to renounce this motion with Lilly being served and get  
7 their response on the record. I don't understand. I  
8 mean, I don't want to prejudge anything, but just because  
9 they want to keep it secret -- it has an affect on this  
10 litigation. We have got to find out what's going on.

11 MR. MAGAZINER: I certainly agree with that,  
12 Your Honor. It seems to me it's fundamental that we're  
13 entitled to find out how much someone has been compensated  
14 for an injury that --

15 THE COURT: That's at least arguably related to  
16 the injury -- the claim here.

17 MR. MAGAZINER: Absolutely. And I understand  
18 Lilly has secured from each of the plaintiffs a promise  
19 that the settlement amount would be kept confidential.  
20 And that creates an issue to me.

21 THE COURT: It's a dilemma for the plaintiffs  
22 which -- well, I mean you know my general attitude about  
23 confidentiality on this thing. I mean, I'm just --

24 MR. MAGAZINER: As Your Honor said, it creates a  
25 dilemma for the plaintiffs. But I do ask if the Court

1 would approve the order that we have submitted, it would  
2 at least get us started. And I don't understand even from  
3 what Ms. Martines said there is any issue with this order.  
4 This order does not require that plaintiffs divulge or  
5 Lilly divulge the amount of any settlement between the  
6 plaintiff and Lilly.

7 THE COURT: All right. Next is defendant's  
8 motion for extension of time to complete some more of the  
9 custodial production. What's plaintiffs' position?

10 MR. LAMINACK: Rick Laminack for plaintiffs,  
11 Your Honor.

12 It's our position -- I guess if they need to file a  
13 motion on everything they produce because it's our  
14 position that we've never been given from day one adequate  
15 documentation.

16 Here's the situation we're in so the Court knows. We  
17 start general liability depositions next week. First up  
18 is the person in charge of direct to consumer marketing.  
19 As one might suspect, their promotional materials would be  
20 relevant to that deposition. Unfortunately, we don't have  
21 those. Or more accurately, we don't have them in a format  
22 that we can access the information.

23 So in a week we're supposed to depose the person with  
24 most knowledge of the documents involving Lilly --  
25 AstraZeneca's promotional materials and we don't have

1 them. And we can sit here all day and cite examples of  
2 this. As we depose doctors -- you heard Mr. Brown talking  
3 about how difficult it is to schedule doctors. One of the  
4 key things we asked for in doctor's depositions prior to  
5 the deposition is how much money has AstraZeneca paid you.  
6 And time after time we get sworn affidavits from  
7 AstraZeneca lawyers saying nothing only to find out that  
8 that's not true.

9 So we are taking depositions without correct  
10 information. We are about to begin taking depositions  
11 without the necessary information. And obviously what  
12 we're going to need -- and I want to make it real clear to  
13 the Court, we do not want to postpone these depositions.  
14 That would be rewarding their bad behavior. We are going  
15 to need time, additional time to file reports because we  
16 don't even have the documents necessary to show our  
17 experts. We're probably going to take more than the 25  
18 general liability experts because what we know now is we  
19 have had to pick the 25 in the dark without the benefit of  
20 the documents. So I have no doubt that they need more  
21 time. But you see the problem that creates for us. And  
22 want to emphasize we don't want them to benefit by  
23 problems of their own making by postponing these  
24 depositions.

25 Thank you, Your Honor.

1 MR. MCCONNELL: Your Honor, I'll be very brief,  
2 Your Honor, because I actually didn't hear much discussion  
3 of the motion. And I get the strong sense that Your Honor  
4 reads these motions pretty careful and I'm not going to  
5 repeat what we said.

6 We just -- because of the issues with European  
7 privacy laws, and we had problems being able to process  
8 the documents for the Canada custodians. Three domestic  
9 custodians is just sort of a puzzle why we can't find the  
10 stuff. We're trying to find it. That's why asked for the  
11 extension because we just were unable to produce the  
12 documents by the October 1 date, and that remains the  
13 case.

14 I don't even know where to begin to address  
15 Mr. Laminack's points which are things that we have heard  
16 before. I will say that he made a reference to sworn  
17 affidavits from AstraZeneca lawyers about nonpayment to  
18 doctors. I don't know what he's talking about. It's  
19 absolutely not true. And I will say this, I can only talk  
20 about what I know from personal experience. I was at a  
21 deposition last week of two doctors in one of these cases.  
22 The PMO did a great job getting them scheduled. We showed  
23 up. The inquiry by the plaintiffs' attorney was  
24 searching, comprehensive, effective, made use of the --  
25 all the call notes and those materials. I did not observe

1 any disability. Granted that's only one deposition. And  
2 that's really all I have to say about those other points  
3 raised by Mr. Laminack.

4 THE COURT: Well, at some point we're going to  
5 have to come to grips with the effects of the issues that  
6 we have had to date completing the opening rounds of  
7 discovery and how that affects parties' ability to prepare  
8 the rest of the case. I'll simply make the observation  
9 that most of the issues that are raised in the motion is  
10 justification for not being able to meet the deadline. It  
11 really seems to me to be things that from a year ago,  
12 really now over a year ago, could have and should have  
13 been anticipated so that they weren't coming up as an  
14 impediment now.

15 I'll make a ruling on that motion.

16 All right. Let me -- next item on my agenda is the  
17 issue of what I'll call Florida-related cases. Plaintiffs  
18 filed a list of cases that they have indicated plaintiffs  
19 agreed to have transferred here. I suspect the defendant  
20 has other cases that they think are Florida related that  
21 ought by the same consideration be transferred here. I'm  
22 back to the issue I raised a couple months ago is how we  
23 accomplish the actual transfer of the ones plaintiffs have  
24 agreed and for the ones that AstraZeneca wants to add to  
25 that list, how we tee that up for either this Court's

1 consideration of the panel or the transferor court.

2 Let me ask plaintiffs, with respect to the ones that  
3 you listed, who do you think is required jurisdictionally  
4 to accomplish the transfer?

5 MR. CAMP BAILEY: Under my understanding if the  
6 parties agree and the plaintiffs agree to lay venue here  
7 directly in the Middle District of Florida, we can either  
8 file an amended complaint or we can have an order allowing  
9 us to file, in essence, a new original complaint which  
10 relates back to the original complaint laying venue in  
11 this Court and proceed forward as if it were an original  
12 filed case in this jurisdiction and go forward as if it  
13 was a --

14 THE COURT: Without any order from the  
15 transferor courts or from the multidistrict panel?

16 MR. CAMP BAILEY: That's my understanding is if  
17 we agree as parties to the litigation to lay venue here as  
18 an original matter, it's treated as an original matter as  
19 opposed to a 1407 transfer.

20 THE COURT: Mr. Magaziner, do you want to  
21 address what I anticipate to be your position based on  
22 what we discussed earlier?

23 MR. MAGAZINER: Yes, sir.

24 Just to dispel any confusion here maybe, we're not  
25 going to agree or consent to the filing of amended

1 complaints in a handpicked group of cases.

2 THE COURT: I assume that.

3 MR. MAGAZINER: So Mr. Bailey's suggestion is  
4 correct, that if we were willing to agree by agreement, we  
5 could no doubt effect a transfer or create new cases here  
6 and dismiss cases that have been filed elsewhere with some  
7 such procedure, if we agree. But we're not going to agree  
8 to a selective transfer.

9 So Mr. Bailey might address the question of what --  
10 how cases would be transferred in the absence of our  
11 agreement since that is in fact the state. Now what we --

12 THE COURT: What I'm interested in is, quite  
13 frankly, getting the Florida cases here and not just hand  
14 selected ones. I really want any that -- and there may be  
15 some on the margin where there's a debate about whether  
16 they're really Florida cases or has moved, but for the  
17 ones that somebody decides have a Florida connection, I  
18 think they ought to be here. How many do you think are in  
19 that universe?

20 MR. MAGAZINER: My recollection is that there  
21 are something like 200, in the neighborhood of 200, Your  
22 Honor.

23 THE COURT: And plaintiffs have listed 100  
24 something or --

25 MR. MAGAZINER: No. They have listed 94.

1 MR. CAMP BAILEY: I think there's 160 some odd  
2 that are not subject to a motion for dismissal that are  
3 actually still live cases in the MDL. And I think 38 or  
4 so were on the list.

5 MR. MAGAZINER: I don't --

6 MR. CAMP BAILEY: They consented now to an  
7 immediate transfer or to voluntarily lay jurisdiction  
8 directly here in this Court.

9 MR. MAGAZINER: I don't want to either agree or  
10 disagree with Mr. Bailey's numbers because I'm not exactly  
11 sure.

12 THE COURT: Ballpark here.

13 MR. MAGAZINER: But it is a ballpark of, let's  
14 say, between 160 and 200 Florida resident cases. There  
15 may be some of them in which the Florida resident recently  
16 moved here and all the pertinent events occurred somewhere  
17 else.

18 THE COURT: That's what I'm saying. Those are  
19 ones that maybe shouldn't be transferred.

20 MR. MAGAZINER: Right. But as to the rest, we  
21 would think that they should all be transferred here and  
22 we think we can do that by filing a forum non conveniens  
23 motion asking the Court to transfer those cases. The  
24 Court has jurisdiction over those cases now because  
25 they're part of MDL and they could be transferred to this

1 Court forum non conveniens basis.

2 THE COURT: But who has to that under lexicon?  
3 The transferor court? The panel? Or can this Court?

4 MR. MAGAZINER: I -- we briefed that issue  
5 before. I'll be happy to brief it again -- or actually,  
6 review the briefs we filed before and reeducate myself.  
7 But I think that what lexicon clearly prohibits is a  
8 transfer to this Court of a case that has nothing to do  
9 with Florida other than for the purpose of trying it here.  
10 I don't know that lexicon --

11 THE COURT: I'm not sure it speaks to it either.  
12 That's why I'm a little bit at sea myself.

13 MR. MAGAZINER: Lexicon prohibits this Court  
14 from transferring a case on a forum non conveniens basis  
15 that it would be consistent with transfers that courts  
16 usually make where the -- all the events at issue occurred  
17 in the forum different from the forum where the case was  
18 filed, which would be the case here because all of these  
19 cases that we're talking about are -- almost all been  
20 filed in Massachusetts which has nothing to do with any of  
21 the events at issue. So we would contemplate filing an  
22 appropriate motion to transfer all of the Florida cases  
23 from the district in Massachusetts to the Middle District  
24 of Florida.

25 THE COURT: Well, here's what I would look do to

1 tee this up. And there's a reason I'm doing all of this.  
2 I'll explain in just a moment.

3 I want you to go ahead and file that motion to -- and  
4 since, as you just discussed Mr. Bailey's proposal  
5 doesn't work unless you agree and you're not going to  
6 agree to their selection of the ones. And whether that's  
7 lawyers or plaintiffs, I don't really care. I certainly  
8 understand your point on that. So you would be moving to  
9 transfer the 160 or the 200 or however many it is based on  
10 your reading of Lexicon. And then plaintiffs could  
11 respond and say, "We think lexicon prohibits that. We  
12 think if you're going do it, you have to do it this way or  
13 you can't do it, or we can't do it until everything is  
14 over," whatever your position is. I'm not telling you  
15 what your position is, but I'll -- and then if there's  
16 also some of them on the 160 to 200 that you just don't  
17 think fit even under their theory of forum non conveniens,  
18 if they're not really Florida cases, you can raise that as  
19 to the specific ones. And I'll review -- I don't know  
20 whether I'm going to do that or Judge Conway, but one of  
21 us will look at the -- ultimately I think if I have to do it,  
22 it would be on a report and recommendation. If Judge  
23 Conway does it, obviously an order. But we will look at  
24 those issues and then make a determination whether we can  
25 do it in our view of the law and the facts of what I'll

1 call the marginal cases.

2 MR. CAMP BAILEY: And I'm not an expert on  
3 lexicon, but I do think we would -- we think that the  
4 lexicon decision would prohibit a voluntary transfer by  
5 this Court to itself under the Lexicon decision.

6 THE COURT: Well, that's certainly one reading  
7 of the tenor of lexicon. But this set of facts is not  
8 what was before the Court in Lexicon. So I think that's  
9 an open issue. What I'm leaning towards, and I'll be  
10 frank about it, again without prejudging anything or at  
11 least I'm not prejudging it, it's my goal to get, if we  
12 can, consistent with the law, the truly Florida related  
13 cases here as Middle District of Florida cases.

14 And I'm judging a little about the fact that Florida  
15 has three judicial districts. But leaving that aside for  
16 the moment, that that gives us a separate set of cases and  
17 not the two or three we had originally, but a real number  
18 of cases that we could at least consider pulling out for  
19 trial here. And Judge Conway's prepared, if necessary, to  
20 tap some of her colleagues and do a bunch of these trials.  
21 So that's where we're going.

22 How long do you need to file your motion to  
23 accomplish your purpose?

24 MR. MAGAZINER: Ten days, Your Honor.

25 THE COURT: All right. Then the response.

1 MR. MAGAZINER: With the Court's permission,  
2 Your Honor asked us to file the Lexicon motion but what  
3 I'd like to do is file a motion based on Lexicon or  
4 whatever other authority we think would be appropriate.

5 THE COURT: I'm referring to Lexicon as  
6 shorthand.

7 MR. MAGAZINER: Thank you, Your Honor.

8 THE COURT: Whatever method is sustainable.

9 MR. CAMP BAILEY: And I would just say as an  
10 aside, in the Zyprexa litigation the way it was  
11 accomplished there is that plaintiffs filed 27 cases  
12 originally in Judge Weinstein's court. He took those up  
13 as a big enough subset to do case-specific discovery and  
14 those ultimately we're going to be the trial pool to go  
15 forward on and that took, I think, a year and a half to  
16 get through those 27 cases before that even got to trial  
17 is when the whole settlement occurred and the whole --

18 THE COURT: I understand that.

19 MR. CAMP BAILEY: -- thing went away.

20 THE COURT: We don't have that pool right now,  
21 and I just don't choose to proceed that way.

22 All right. To your agenda, counsel has already  
23 touched on this a little bit, but plaintiff indicates some  
24 issue about corporate witnesses.

25 MS. WHEELER: Yes. Good morning. Holly



1 Wheeler.

2 To give you an update where we are on that ties in  
3 with what Mr. Laminack has already said. We have  
4 requested 25 corporate witness depositions this time. We  
5 have received dates for 17 of those depositions, and those  
6 have been noticed for October and November and December.  
7 So we're still waiting upon a few. We just wanted to make  
8 the Court aware of where we are on that, and also just  
9 impress upon the Court, again, the need for the materials  
10 that have been the subject of so much debate of late. So  
11 that's pretty much all we needed to say on that.

12 THE COURT: Okay. Third party discovery.

13 MS. WHEELER: Since we were here last we  
14 actually made quite a bit of progress on this. We have  
15 received documents from three of the third parties. Five  
16 of the third parties have told us that they are ready to  
17 go. We just have very minor issues with respect to the  
18 protective order that was entered on September 19. They  
19 need clarification on one of the sentences in that order.

20 Some of them have very, very minor cost issues. We  
21 have asked AstraZeneca to share not only the copying costs  
22 incurred by those third parties but also any location cost  
23 and possibly attorney's fees associated with those  
24 subpoenas. Some of the parties -- most of the parties  
25 have in fact provided pretty detailed estimates to us

1 regarding those costs. We are still waiting on those  
2 estimates. But five are just about ready to go.

3 We have filed motions to compel against six of the  
4 third parties. Four were combined into one motion that is  
5 now pending in the Southern District of New York. Two  
6 were combined in one motion that is now pending in Eastern  
7 District of Pennsylvania. I know where the New York  
8 motion has been assigned. I don't know yet about  
9 Pennsylvania.

10 THE COURT: Just for your information, I did as  
11 I indicated I might, send out an e-mail to all magistrate  
12 judges in the country alerting them that such motions  
13 might be coming and inviting them to defer the motions  
14 back here. There's -- in response to that, I got a copy  
15 of an order that was entered up in Boston by one of my  
16 colleagues accomplishing the same purpose in a different  
17 case by taking a different tack. It was during the MDL  
18 authorization to -- which we have talked about which I  
19 agree with. But just an issue I didn't particularly want  
20 to bite off. But assuming in the transferee court the  
21 authority to make rulings in other -- in effect in other  
22 districts, some of you may be aware of that order.

23 So I'll see if the judge in New York or Pennsylvania  
24 will refer those back to me, and, if so, I'll pick them  
25 up.

1 MS. WHEELER: Just to let you know, we did  
2 provide quite a thorough analysis of the case law  
3 permitting transfer of those matters to the MDL. I don't  
4 know if the Court has had an opportunity to review the  
5 motions we have filed. We did --

6 THE COURT: I didn't look at the substance of  
7 them.

8 MS. WHEELER: We did e-mail to your chambers.

9 THE COURT: I saw it was there and didn't really  
10 look at it. Who was the judge in New York?

11 MS. WHEELER: Judge Victor Marrero.

12 Now Par Excel (phonetic), one of the other third  
13 parties, has filed a motion to quash in the District Court  
14 of Connecticut. That has been assigned to Judge Hall.  
15 Docket number 3:07MC264. And we have a response prepared  
16 to file in that. We have had some issues locating  
17 Connecticut counsel. The court's there require that we do  
18 have local counsel. We have been unable to locate one of  
19 at this point. So our intention is to file a motion for  
20 pro hac vice which time we will then be able to file the  
21 response. But we intend to address that this week.

22 THE COURT: All right.

23 MS. WHEELER: That's the problem. We're trying  
24 to locate attorneys. We have got a couple leads. So  
25 we're working on that.

1 Let's see, Your Honor. The issue with the protective  
2 order, paragraph 8, indicates that the nonparties may  
3 designate discovery materials as confidential so long as  
4 the nonparty has a written agreement to be subject to and  
5 governed by the requirements of this order. Many of the  
6 third parties have asked me what does that mean. I know  
7 that the Court provided an endorsement with the protective  
8 order, but the way that it's worded doesn't necessarily --  
9 doesn't really mesh with the third parties. So we need  
10 some direction about what needs to be done there. Do we  
11 need to draft an order that's similar to the endorsement  
12 that those third parties can sign when they turn over the  
13 documents or does the Court envision something else?

14 THE COURT: Well, the endorsement was a form  
15 submitted by AstraZeneca, I guess. If it's creating a  
16 problem, we can create a second form of endorsement.

17 MS. WHEELER: It's not necessarily a problem.  
18 It's just the way that I read the endorsement is it's  
19 parties who receive or who view the documents that have  
20 been designated as confidential or bound by the order. In  
21 this case we obviously got third parties who are producing  
22 and designating materials as confidential and they need  
23 some language that would require them to be bound by the  
24 order. I don't think it would be a difficult thing. But  
25 I'll be happy to draft it. It would probably be very

1 similar to the endorsement that's already with the  
2 protective order.

3 THE COURT: Why don't you see if you could get  
4 it in the next day or so.

5 MS. WHEELER: I'm sorry?

6 THE COURT: See if you can get that in the next  
7 day or so.

8 MS. WHEELER: That would be easy. They just  
9 need clarification on that.

10 And the last issue I want to address very quickly is  
11 the cost. That's, I think, going to end up being the  
12 primary issue. Most of the parties and the plaintiffs  
13 have been able to narrow the scope of the subpoena. It's  
14 really the costs that seem to be the problem. Some of the  
15 third party costs could be very reasonable. Others have  
16 estimated costs in excess of 100,000 or \$200,000. That's  
17 where we're really running into some problems. And so I  
18 anticipate that will be the primary issue that the Court  
19 will need to address when those motions are transferred to  
20 this Court.

21 THE COURT: Talking about a photocopy cost or  
22 search cost?

23 MS. WHEELER: No. Search costs and attorney's  
24 fees. The photocopying costs are not the problem.

25 THE COURT: All right. I'll address those then.

1 Some of those things bears cost of doing business in the  
2 big world.

3 So sales force and marketing databases.

4 MR. PENNOCK: Your Honor, in further considering  
5 this issue that's on the agenda, we think it's probably  
6 going to fall under the purview of what Mr. Ball will be  
7 looking at.

8 THE COURT: That's what I thought. If we get in  
9 some substantive legal issues about the scope, it will  
10 come back to me. If it's just a matter of mechanics and  
11 logistics, he will be able to bring to bear his expertise  
12 along with the designees of parties to solve that.

13 MR. PENNOCK: Very good. Thank you, Judge.

14 THE COURT: There was a rather vague designation  
15 by AstraZeneca about issues on a specific discovery. I  
16 don't mean that pejoratively. I just don't know what  
17 you're talking about.

18 MR. PENNOCK: Neither do we, Judge.

19 MR. MAGAZINER: And in light of the conversation  
20 the Court has had with Mr. Brown and his report, we don't  
21 have any issues. We thought the 60-day transition might  
22 be something to be discussed.

23 With Your Honor's permission go back to the question  
24 of Florida transfer. Your Honor entered an order, which  
25 unfortunately I can't seem to find in my notebook, that

1 require plaintiffs to list the cases that they wanted to  
2 have transferred and then for us to respond by October 5th  
3 to their designation.

4 With Your Honor's permission what I would suggest is  
5 that we file a motion 10 days from now.

6 THE COURT: All that's folded in what we're just  
7 talking about.

8 MR. MAGAZINER: Okay. Thank you.

9 THE COURT: All right. Next issue I wanted to  
10 broach with you, and I don't know if you're going to want  
11 to give me anything firm here today, but maybe able to  
12 give me some initial responses and then you can try to  
13 bring this back down to earth in the future, plaintiffs  
14 have expressed, and it's obvious from the nature of things  
15 that there may be some issues about meeting -- the  
16 parties, both sides, their ability to meet the previous  
17 set deadlines. I'd like to you give some global thought  
18 as to the overall goals for this MBL as to, for example,  
19 how far should each case be -- we talked about this a  
20 little bit. We allowed to it, for the cases to be  
21 prepared prior to remand. There are a lot of choices. We  
22 can ramp up the case-specific discovery on a limited basis  
23 to starting in January to 100 or a 1,000 cases a month to  
24 get all of those done within some timeframe.

25 We could pick some cases for full discovery, whether

1 those are the selection from the Florida cases leading to  
2 a trial schedule, which has a certain appeal to me, and  
3 how many of those we do and how we select them are obvious  
4 issues. And I don't know what Judge Conway's views are,  
5 frankly, as to how far she wants to take all these cases.

6 So whether she wants them, as we have discussed, is  
7 one possibility to do it all, however many cases survive  
8 various motions, when we're done with it it should be  
9 ready for final pretrial conference and a trial in the  
10 transferor districts or whatever district transferor court  
11 may ultimately send them to. Do we -- is it our goal  
12 simply to resolve global issues that we have scheduled  
13 that you had arguments on for some of the issues and other  
14 deadlines coming up next year, to get those resolved and  
15 then send the cases back for routine final discovery at  
16 trial.

17 Those are all possibilities.

18 Some of this will relate back to something we talked  
19 about last time which is anticipation from the defendants  
20 of some motions to dismiss based on the case specific  
21 discovery. You -- Mr. Magaziner, do you have just a  
22 ballpark figure as to how many -- based on what you have  
23 done so far, how many of those you would have ready to do  
24 in the next month or if you chose to do them now? I'm  
25 just trying to -- talking about a tenth of them, a third

1 of them?

2 MR. MAGAZINER: They fall into various

3 categories. We're studying very closely to figure out

4 what would make sense. There are some, and it's a very

5 small number of cases, where the discovery suggests that

6 there is a very clean statute of limitations motion, for

7 example, or a very clean motion based on non-usage, for

8 example, which we're hoping maybe when we bring these to

9 the attention of plaintiffs' counsel who are involved in

10 those particular cases, they will decide this is not a

11 case they wish to pursue. But there are a very small

12 number of them. There are a larger group of cases which

13 we're studying much more carefully in trying to decide can

14 these be teed up now? Do we need to take some further

15 discovery? Do we need to see what the plaintiffs' experts

16 have to say. We will report back to the Court.

17 THE COURT: You have got a strategic decision

18 whether it's -- they're really appropriate to take that

19 shot at them now or you want to wait and get all your

20 arrows together on them.

21 MR. MAGAZINER: I would like the opportunity,

22 perhaps a month from now when we see Your Honor, to report

23 to the Court on where we are and perhaps we will have

24 filed some motions by then.

25 But unfortunately --

1 THE COURT: You asked last time for some

2 guidance on how to do that, and I did talk to Judge Conway

3 about that, and the best we can do is similar to the

4 thought process you're going through which is just do any

5 kind of logical way. We would prefer if you can group

6 them in some logical way. I'm not going to tell you which

7 logic because it's going to depend on your strategy which

8 you're entitled to do. But for the -- for your

9 convenience, for the plaintiffs' convenience and the

10 Court's convenience, if -- however you can group them

11 either in time or subject matter or otherwise, and I know

12 some of them overlap, so it won't be an easy decision for

13 you but I'll just ask that you -- to the extent you can

14 group them in a logical fashion --

15 MR. MAGAZINER: We're going to try to do that.

16 Just so Your Honor understands why I can't say more

17 now than I have said, the number of cases, despite the

18 heroic efforts of parties and -- both parties and the PMO,

19 the number cases that have been fully discovered, that is

20 where all four of the depositions have --

21 THE COURT: Fully limited discovery.

22 MR. MAGAZINER: Yeah. The limited discovery has

23 been completed is a relatively small number. So trying to

24 extrapolate in those relatively small numbers say, okay,

25 how are we going to proceed with the motion practice, what

1 we anticipate to be a large number of cases, is very

2 difficult. But next month I think we will have

3 sufficiently large number of cases that have been -- in

4 which the limited discovery has been completed that I can

5 say something more useful than I'm able to say today.

6 THE COURT: While I got you on that particular

7 spot, let me ask you, because one of the purposes of this

8 was to do exactly what you're talking about but also to

9 feed into the consideration of ADR or settlement

10 discussions. In terms of data gathering that was part of

11 your client's processing of that, where do you stand?

12 MR. MAGAZINER: To speak very frankly --

13 Mr. Penneck or Mr. Bailey may disagree -- the cases we

14 have seen to date do not seem to us to be cases that we

15 would ever consider settling. That isn't to say there may

16 not be some such cases. As a matter of fact, we have

17 counseled among ourselves with the client what sort of

18 fact person would we want to see which would perhaps

19 suggest that something should be considered for

20 settlement. But what we have seen to date, and it may

21 just be because the numbers are so small that they're not

22 representative, maybe that they're all like this, we don't

23 know, but what we've seen to date are cases in which if I

24 were to provide the Court the details of the testimony of

25 the plaintiffs and the doctors I think the Court would

1 understand these are not cases that have frankly any

2 value.

3 And, again, I'm not saying that that's true of all

4 plaintiffs' cases. I'm saying the cases that have been

5 fully discovered when we take into account the plaintiff's

6 testimony and doctor's testimony, and the sales rep's

7 testimony, they don't seem to us to be going anywhere.

8 We have cases where the plaintiff, for example, was

9 diagnosed with diabetes long before the first Seroquel.

10 Not likely a kind of case we would consider settling. We

11 have cases where the plaintiff was on Risperdal and

12 Zyprexa and Seroquel and other antipsychotics during the

13 entire period where the plaintiff doctor has testified

14 that the plaintiff had numerous risk factors for diabetes

15 before ever taking any antipsychotics, where the plaintiff

16 has a long and troubled tragic history of medical problems

17 which in and of themselves create more risk factors for

18 diabetes. Those are -- that is not a case where -- which

19 at present juncture we would think we ought to consider

20 settlement.

21 So again, I'd like to be able to say something more

22 to the Court on that score next month. I know the Court's

23 interest in that subject, and as we said we have not -- we

24 are not ruling out the possibility of ADR and appropriate

25 cases. But we have not seen cases to date from this very

1 limited number that have been subject to limited discovery  
2 and completely discovered in a limited way. We haven't  
3 seen cases that seem to us worthy of consideration. But  
4 next month, if I may, I would like to report further to  
5 the Court on that subject.

6 I'll step down unless Your Honor has further  
7 questions.

8 THE COURT: No. That's --

9 MR. PENNOCK: Your Honor, to address the Court's  
10 initial sort of question regarding globally where do we go  
11 or do we change anything. There's one thing that I think  
12 is for sure, and that is that nothing can be remanded  
13 until the general discovery and any general matters are  
14 dealt with. And, you know, it's no secret that our  
15 position all along that should be the primary focus of  
16 what we're all doing and we --

17 THE COURT: Yeah, that clearly is the big --  
18 that's the easy obvious goal to do that. An MDL does  
19 nothing else it has to do that.

20 MR. PENNOCK: And the Court's making strides for  
21 getting that done with everything the Court's been doing.

22 As far as ratcheting up case-specific cases, I mean,  
23 this is just off the cuff, I would suggest that the  
24 relatively small morass in which we have found ourselves  
25 despite the defendant's commitments and promises, even

1 despite this Court putting together PMO, is just a small  
2 morass to where we would be if we start ratcheting up  
3 case-specific discovery at any time, let alone starting  
4 again. So we would be strongly opposed to that. I think  
5 we have very strong factual basis now that we have seen  
6 what's transpired. As opposed to our prediction of a  
7 morass, and our prediction that the defendants might not  
8 be able to fulfill getting these things done despite their  
9 hundreds of lawyers, we actually have a factual record for  
10 that, and we would like to discuss that further if the  
11 Court wants to explore it further and perhaps brief it and  
12 lay that out.

13 In terms of ADR there are a few observations, if the  
14 Court doesn't mind, I'd like to make. Number one, I  
15 believe I can go back to a transcript and find where  
16 Mr. Magaziner said that after we see 100 cases, we will be  
17 prepared to go to ADR. I think what I'm now hearing is  
18 well, now, what I meant to say is after I see -- and  
19 again, I'm not attempting to disparage Mr. Magaziner but  
20 it sounds as though the position has changed. And it's  
21 now, well, after I see 100 cases that I might want to  
22 settle maybe we will go to ADR. You know, ADR or  
23 discussions regarding settlement I don't think ever should  
24 come from a posture of we're only going to settle the  
25 cases -- we're only going to discuss cases that you can

1 w.n.

2 In any mass tort there are cases that the plaintiffs  
3 will have great difficulty winning and plaintiffs that  
4 will -- defendants will have a great difficulty winning.  
5 And what you typically do to get to a resolution, if  
6 that's the direction you intend to go as opposed to  
7 scorched earth and try every case, is that all cases are  
8 discussed and there are, you know, for lack of a better  
9 term, but a term that is used frequently in this business,  
10 there is significant discounting that occurs depending  
11 upon the circumstances.

12 Mr. Magaziner mentioned three categories of cases. I  
13 would like the opportunity between now and the next  
14 hearing to perhaps show the Court that I don't think those  
15 are categories that they have been seeing, but individual  
16 cases. In other words, he's mentioned three examples. I  
17 think there are only three examples or close to three  
18 examples for what has been mentioned as the type of cases  
19 they're seeing. I think that we on our side between now  
20 and the end of the month could give the Court sort of a  
21 report on, well, here are the rest of the cases or here  
22 are 25 cases or 30 or 40 that they have taken discovery in  
23 where there aren't these blatant and obviously very  
24 significant impediments to discussions. So I'd ask the  
25 Court's permission to submit that by the next hearing.

1 Even in terms of the cases that he mentioned, they  
2 are all imminently triable and the reason is as with any  
3 type of toxic exposure and drug exposure, there is the  
4 gasoline on the fire theory. And the very person that you  
5 don't give a drug to that you know or should know could  
6 cause a problem, is a person that's already seriously  
7 predisposed to that.

8 So notwithstanding any predisposition in a plaintiff  
9 to having a particular disease or ailment, I think that  
10 those cases can be tried and should be discussed if we are  
11 able to get to discussing these cases.

12 I also would like to mention to the Court that in New  
13 Jersey where I'm one of the leading players for the  
14 plaintiffs in the state court litigation, with Judge  
15 Haggas, she's the new coordination judge there, formerly  
16 Judge Garruto until last month, I have served on the  
17 defendants formal demands or offers of judgment for dozens  
18 of cases, and I have asked them to respond to that  
19 command. I think these commands are imminently reasonable  
20 in terms of the dollar value. And I just wanted to  
21 mention that to the Court.

22 We have our first conference with Judge Haggas is on  
23 October 10th, and we will see that perhaps we may end up  
24 with a mediation program in New Jersey based on those  
25 offers of judgment that we make here.

1 And that kind of ties me back into the request for  
2 the Lilly settlement money. You know, unless and until  
3 the defendants say, yes, we're ready to move forward to  
4 mediate cases, I don't understand why they need to know  
5 those dollars aside from the confidentiality issues. What  
6 possible benefit did they obtain at this juncture from  
7 knowing how much our client settled for. Now, if we were  
8 going to trial or verdict, of course it would be a  
9 different issue in terms of offset. But right now it  
10 seems to me that this is just a grab at information to  
11 help them strategize with respect to the mediation. But  
12 if they're telling us that they're going to mediation and  
13 they're willing to mediate every case, then I would agree  
14 that maybe this is something that we would want Lilly to  
15 come in here and explain. But short of that, I don't  
16 think they should be getting it.

17 In any event, Your Honor, we would like that  
18 opportunity to explain to the Court why ratcheting up the  
19 case-specific discovery is not a good idea. We're willing  
20 to do that by the next hearing. And if I may suggest,  
21 Your Honor, I would ask that the next hearing be before  
22 the end of this month.

23 There are two motions that I met and conferred with  
24 the defendants that I know I have to make because they  
25 won't agree. I'm planning on making those motions this

1 week. And there is an additional motion that I need to  
2 speak to them about. I don't know what their position is,  
3 but I'd like to get that lined up if they don't agree to  
4 that.

5 We have the Florida issue and if we can't resolve  
6 that, which I think there is still a possibility for that,  
7 we need to get that taken care of.

8 And so as this Court has been typically doing, I'd  
9 ask for a short date for the next hearing so that those  
10 motions that we're going to file this week could be heard.

11 Thank you, Judge.

12 THE COURT: All right. I'll note also there's a  
13 motion pending to file a reply on some of the motions that  
14 were argued last week. I'm going to leave that for Judge  
15 Conway to look at. It was just filed yesterday.

16 In terms of next status conference, I was looking at  
17 30th of October which is a Tuesday and also it's -- also  
18 it's a week that I have criminal duty assignments, so  
19 again might not be able to go as long as we have in some  
20 prior hearings, but we can do it in an hour and a half.  
21 30th sound all right?

22 MR. PENNOCK: That's perfect, Judge.

23 THE COURT: Start that at 10:30 on 10/30 is  
24 that -- because I have got a 10:00. 10:30 on 10/30.

25 Let me review where we are. Special Master Brown is

1 going to submit a proposed order by the end of the week  
2 regarding the transition to earlier designation and timing  
3 changes on matters within his consideration. Special  
4 Master Ball is going to be meeting with the designated  
5 representatives of parties immediately and I'll get him a  
6 more specific order about the scope of his duties but he  
7 can go ahead and start meeting and talking before then.

8 I will issue an order directed to Eli Lilly to  
9 provide me with any thoughts they have got about the scope  
10 of issues they may claim confidentiality on.

11 Let me ask Mr. Magaziner that after the hearing you  
12 provide the clerk or my law clerk with a -- whoever their  
13 designated person is from Reed Smith, whoever their  
14 counsel.

15 MR. CAMP BAILEY: Pepper Hamilton.

16 MR. MAGAZINER: I've communicated to them. I  
17 have been speaking to Andrew Rogoff.

18 THE COURT: You can do that later.

19 MR. KEN BAILEY: Your Honor, that's a different  
20 person that's at Pepper Hamilton that has been designated.

21 THE COURT: Well, talk amongst yourselves,  
22 figure out who it is. Otherwise, we will just serve on  
23 him.

24 MR. MAGAZINER: Actually, I don't care which  
25 Pepper Hamilton lawyer we talk to. I assume they're

1 working together.

2 THE COURT: Within 10 days AstraZeneca will file  
3 its motion and response regarding all Florida-related  
4 cases, and plaintiffs can respond to that.

5 I'll take a look at these motions that have been  
6 filed in the districts and see what's going on with those.  
7 Next, by the end of the week plaintiff will submit,  
8 hopefully, agreed language to be provided with third  
9 parties for their endorsement of the confidentiality  
10 order. And I'm going to enter an order directing the  
11 parties to submit their positions with respect to these  
12 scheduling and ADR type issues. I'll flesh that out a  
13 little bit. But it will be -- it will track what we have  
14 just been talking about as to your views on what the goals  
15 for the MDL should be in light of how things have  
16 developed. And assuming we do identify some cases for  
17 trial this court can try, what we're going to do with  
18 that, how far we should go with limited case discovery,  
19 and how that dovetails in with the settlement  
20 considerations. I think that's where we are. But let me  
21 ask each side in turn to anything else?

22 MS. WHEELER: I just learned that the  
23 Pennsylvania motion to compel has been assigned to Judge  
24 Thomas O'Neill. So I just wanted to let you know that.

25 THE COURT: Anything else from plaintiffs?

1 MR. PENNOCK: No, Your Honor. Thank you.

2 THE COURT: Defendant?

3 MR. MAGAZINER: No, Your Honor.

4 THE COURT: All right. We're in recess.

5 (End at 11:15 a.m.)

6 C E R T I F I C A T E

7 I certify that the foregoing is a correct  
8 transcript from the record of proceedings in the  
9 above-entitled matter.

10  
11  
12  
13  
14 \_\_\_\_\_  
15 Sandra K. Tremel  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25