

Exhibit A

1 the record be reopened that's a question that your Honor has
 2 to decide, it has to be briefed. Alternative number one is
 3 that you will conclude, as we will urge you, that the record
 4 is complete.

5 THE COURT: Correct.

6 MR. FRANK: And you've said in that event you'll
 7 have an afternoon hearing.

8 I have a question rather than a contention. I
 9 suspect that it would be helpful to you if we had briefed
 10 the question before we got to the hearing, because you will
 11 be recalling evidence that's a year or two old.

12 THE COURT: You're absolutely right. And I don't
 13 press for July. We could do that in September. I don't
 14 care when we do that.

15 MR. FRANK: And all I -- all we would want is the
 16 certainty of knowing when it would be rather than, as long
 17 as -- it doesn't matter to us, either.

18 THE COURT: That makes, that makes good sense, in
 19 terms of my clerk lineup and staffing for the case, July or
 20 September makes no difference to me.

21 So, even if I keep the record closed, we could find
 22 an afternoon in September and argue the matter.

23 MR. FRANK: With respect -- and the second half is
 24 the possibility that you would conclude that the record
 25 would be supplemented. And I, I believe here I'm telling

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it, and it's going to be a very busy summer for you people.

But I'm not there yet. They must make a motion and
 support it. You get fourteen days to respond to it. I will
 decide it on the merits, and then we'll see where we are.

MR. FRANK: Thank you very much, your Honor.

THE COURT: All right, thank you. Let's get the
 others back in here unless they want more time.

MR. MADRID: Thank you, your Honor.

THE COURT: No, thank you all.

(Pause in proceedings.)

THE CLERK: Five minutes they need.

THE COURT: Five minutes. All right, then I'll
 stand in recess. We'll recess.

THE CLERK: All rise. Court is in recess.

(Recess.)

THE CLERK: All rise. Court is in session, please
 be seated.

THE COURT: Are we agreed?

MS. BEN-AMI: I think, your Honor, we're in
 agreement on everything germane to the motion and perhaps
 other things if the Court will approve them.

THE COURT: That's fine. I have an eye appointment
 this afternoon, so if you could reduce it to writing, I
 would be very grateful. But that's fine.

MS. BEN-AMI: Okay.

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1 you what I think you should want and that's dangerous. But
 2 I would, I would urge you not to do what you've suggested.
 3 And the reason I would urge that is because of the extreme
 4 difficulty, I suggest, of your being able to keep straight
 5 in your own mind stuff that is in the record from a year or
 6 two ago, and sometimes three or four years ago, and the
 7 stuff that you are hearing then currently in September. And
 8 I think that risk that you will, that any human being in
 9 that situation would get tangled up between the two
 10 proceedings is pretty great. And candidly, I would just as
 11 soon not impose on my client the cost of sitting here
 12 through the Roche trial. And furthermore, we're not, we
 13 can't see the Roche record. It's closed to us. So, if we
 14 get involved in the Roche proceeding, we're at a pretty
 15 substantial disadvantage.

16 THE COURT: You're arguing and I'm going to cut you
 17 off. Explain all that to me as to why, additionally, why I
 18 shouldn't reopen the record. If I reopen the record, I've
 19 got to figure out a schedule. That's my proposed schedule
 20 because I'm, I'm just not going to let anyone go. I'm not
 21 going to let Roche go, I'm not going to let TKT go, and
 22 Amgen will have long-term leases on apartments and the like
 23 here in the Boston area. Because I'm going to be done with
 24 this case with a final judgment. But, if we need an
 25 evidentiary record, I've got to figure out a way to develop

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MR. DAY: Could we put this on the record, your
 Honor, very quickly? I think we could.

MS. BEN-AMI: It would take two seconds.

THE COURT: Oh, that's fine. I was planning to
 give you until 4:00, and I don't have to be out of here
 until 20 after 4:00.

MR. DAY: I don't think it should take more than
 five minutes, your Honor.

THE COURT: Go right ahead.

MS. BEN-AMI: So --

MR. DAY: So if I could.

MS. BEN-AMI: Okay.

THE COURT: Well, whoever. Ms. Ben-Ami was up.
 Let's go with her and you can confirm it.

MS. BEN-AMI: Okay.

THE COURT: Go ahead.

MS. BEN-AMI: All right. I understand that our
 agreement is, as follows.

By June 13th, Roche will respond to the Amgen
 reports that were put in on June 1st and June 4th, and
 whatever needs to be done there for any new arguments that
 have been presented.

On June 20th, Amgen will have up to three reports
 to respond to the Roche reports.

Are we in agreement so far?

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1 MR. DAY: No, we're not. Because I thought we made
2 it clear that there would be no more than seven
3 supplemental -- Roche will --
4 MS. BEN-AMI: I didn't say that? I'm sorry.
5 MR. DAY: No, you didn't say that.
6 MS. BEN-AMI: I'm sorry.
7 MR. DAY: They've already -- they served one
8 supplemental report yesterday. They want to serve seven
9 more for a total of eight --
10 MS. BEN-AMI: We have an agreement, it's just that
11 I misspoke.
12 MR. DAY: -- supplemental reports that they want to
13 serve by June 13th.
14 THE COURT: Well, you're okay with that, eight?
15 MS. BEN-AMI: Yes, seven, seven more reports by
16 June 13th. I'm sorry if I misread it.
17 THE COURT: Go right ahead.
18 MS. BEN-AMI: June 20th, Amgen puts in three
19 reports. Agreed?
20 MR. DAY: I agree.
21 MS. BEN-AMI: Yes. Okay. June 30th will be the
22 end of expert discovery. Agreed?
23 MR. DAY: Yes, except there is one other --
24 MS. BEN-AMI: We have a proviso.
25 MR. DAY: There's a proviso to all this. And that
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MS. BEN-AMI: Okay. Each side will have, be
limited to ten trial experts. We will identify who those
trial experts are by July 7th.
We will ask the Court for a two-part pretrial
conference. This is -- I'm now characterizing. Mr. Day and
I would like to have a pretrial conference, or my co-counsel
tells me it should be a case management conference, in
mid-July, or when it's convenient for your Honor, to discuss
really how we're going to handle this whole trial so that we
can get all our ducks in a row. But we would like our
pretrial papers to be in August 1st. So that normally your
pretrial papers have to be a certain time before.
THE COURT: I understand. You're making sense to
me.
MS. BEN-AMI: So that we know what's going on. I
think some of these things may take a little bit of time for
the Court to decide exactly how you want to do it.
THE COURT: I understand. I have a variety of
questions and we ought to sit down and do exactly that.
MS. BEN-AMI: And so, kind of like a two-part
pretrial conference.
And then we might need a second pretrial conference
right before trial or the first day of trial or whatever to
sign the pretrial order, whatever that might be.
THE COURT: All right.
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1 is that one of our experts, Dr. Joseph Eschbach, is, and
2 this is extremely sensitive and confidential but --
3 THE COURT: It doesn't have to be done in open
4 court.
5 MR. DAY: He's gravely ill. And we do not believe
6 that he will be able to testify at trial. This happened
7 very recently. And so we're trying to find a replacement.
8 And this deal expressly excludes any time constraints on
9 finding that replacement.
10 MS. BEN-AMI: And we've agreed to that some weeks
11 ago that they would find a replacement. We moved that
12 portion of the expert to some other time.
13 THE COURT: Fine.
14 MS. BEN-AMI: That we agreed to previously.
15 July 30 -- July 3rd would be the last day to file
16 summary judgment motions.
17 In agreement there?
18 THE CLERK: That's a problem.
19 MS. BEN-AMI: Each side --
20 THE COURT: Well, we'll let --
21 (Whereupon the Court and the Clerk conferred.)
22 MS. BEN-AMI: We can move that if it's --
23 THE COURT: No.
24 MS. BEN-AMI: No? Okay.
25 THE COURT: You go ahead.
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MS. BEN-AMI: And then we have as a separate issue
this issue with the witness who's ill and our responsive
witness that we have already agreed we are doing to deal
with.
THE COURT: Fine.
MS. BEN-AMI: And I believe the only issue, I think
that, and I don't want to put words in Mr. Day's mouth now,
but I understand that Amgen in response to this will
withdraw its motions that are currently pending, but the
only issue is right now -- am I right about that?
MR. DAY: Go ahead.
MS. BEN-AMI: But the only issue is that we said in
response to all of this, we would like them to not oppose
our motion for leave to amend that we filed some time ago to
just catch the pleadings up on inequitable conduct to all
the expert statements and whatnot. And my understanding is
that Mr. Day will not agree to that.
THE COURT: But I don't -- well, first of all, all
that's fine. And when you say withdraw the motions, what I
came out here prepared to entertain is the emergency motion
for expedited case management conference and Roche's
response thereto. Correct?
MS. BEN-AMI: Yes, your Honor. Yes.
THE COURT: Those are the motions we're talking
about?
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