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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: TAXOTERE (DOCETAXEL)
PRODUCTS LIABILITY LITIGATION

Civil Action No. 16-MD-2740
Section "N"
New Orleans, Louisiana
October 16, 2018 at 10:00 a.m.

THIS DOCUMENT RELATES TO ALL CASES

TRANSCRIPT OF STATUS CONFERENCE
HEARD BEFORE THE HONORABLE MICHAEL B. NORTH
UNITED STATES MAGISTRATE JUDGE

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P R O C E E D I N G S

(Call to order of the court.)

THE COURT: All right. I got the agenda that was sent over yesterday. The first -- the first matter on the agenda is the plaintiff's request to exceed the numerical limits on the interrogatories, the 505(b)(2) defendants. It should not come as any surprise that I'm going to grant that request. That's a -- I don't understand why you all have to send letter briefs on -- on such a benign issue. So in the future, I wish that you all could figure out a way to sit down and work that out without having to involve me.

Granting extra interrogatories in a case such as this is -- is pretty garden-variety material. So I'm going to allow those interrogatories to stand and give you all 20 days or 30 days to respond to them.

These Cantwell documents, who for the PSC -- is there somebody --

MR. SCHANKER: Good morning, Your Honor, Darin Schanker speaking on behalf of the PSA -- PSC and also Ms. Cantwell --

THE COURT: All right --

MR. SCHANKER: -- the firm represented and has spoken with --

THE COURT: Okay. Let me ask you a question. When you -- as you said in your paper, you reached out to her upon

1 receiving your receipt -- subpoena. When you reached out to
2 her, did you represent her at that time?

3 MR. SCHANKER: So we represented her prior to this.
4 You understand, Your Honor, she elected not to pursue
5 litigation and she reached out. It's my belief that an
6 attorney-client relationship was established when she reached
7 out.

8 THE COURT: Do you have an attorney-client
9 relationship with her now?

10 MR. SCHANKER: Yes. I believe we do, Your Honor.
11 Yes.

12 THE COURT: Didn't --

13 MR. SCHANKER: Go ahead.

14 THE COURT: Didn't you tell me in your paper that you
15 don't represent her?

16 MR. SCHANKER: For the limited purpose, Your Honor,
17 similar to defense counsel last week representing a former
18 employee in the context of a deposition, I believe that
19 that's a good analogy as to what our representation is at
20 this point with Ms. Cantwell.

21 THE COURT: How do you establish -- for purposes of
22 protecting a privilege because it's Ms. Cantwell's burden --

23 MR. SCHANKER: Right.

24 THE COURT: -- how do you establish that you have --
25 where is the proof that you have an attorney-client

1 relationship with her currently?

2 MR. SCHANKER: I believe that that would come from
3 her state of mind, Your Honor, and it's her belief in
4 reaching out to us as her lawyers on an issue that we
5 represented her, on a subpoena that arose out of that. It's
6 her belief that we're her lawyers with regard to anything
7 arising out of that issue naturally.

8 THE COURT: Let me hear from --

9 MS. BYARD: The information that we have, Your Honor,
10 is not only set forth -- Adrienne Byard for defendant Sanofi.
11 You may recognize my voice. My opposing counsel has
12 excerpted videos of my voice from previous depositions. You
13 usually have the audience of my partner, Harley Ratliff.

14 The information that we have, Your Honor, is not only
15 that as -- as of last week when plaintiff's counsel submitted
16 their briefing to Your Honor saying that they no longer
17 represented her. The information we have is not that
18 Ms. Cantwell reached out to plaintiff's counsel, but that
19 they reached out to her on the courtesy of our subpoena and
20 also that Bachus & Schanker terminated their representation
21 of Ms. Cantwell in 2018 because she was actually a plaintiff
22 in Taxol as well as Taxotere; Taxol being the alleged
23 alternative that wouldn't cause permanent hair loss in the
24 plaintiff's theory of the case. So the information that we
25 have is that they terminated their representation of her.

1 That's something that Ms. Cantwell communicated to the
2 Taxotears; so not only communicating that they had terminated
3 the representation of her by letter in 2018, but that also,
4 you know, she's e-mailing information about these -- this
5 legal advice that she's supposedly giving to this large group
6 of women waiving the privilege very many ways.

7 THE COURT: Who is Mr. Weinberger again?

8 MR. SCHANKER: Your Honor, Mr. Weinberger was a
9 lawyer who represented some of the plaintiffs in this case at
10 a point in time and then we took over representation and
11 actually worked with Mr. Weinberger for some period of time.

12 And if I could clarify, Your Honor, Ms. Cantwell did
13 reach out to us when she was served with a subpoena. We were
14 provided a courtesy copy, I believe, on Thursday, October 11,
15 and then late that afternoon, Ms. Cantwell reached back out
16 to us and said, "I've been served. What do I do in this
17 situation?"

18 THE COURT: That's not what's in this letter. Let me
19 say what's in this letter.

20 On behalf of Bachus & Schanker, the PSC provides the
21 following, and it goes on to say she is no longer a client of
22 Bachus & Schanker. That's a -- that's a declarative
23 sentence. It also says that -- hold on.

24 After receiving Sanofi's subpoena, Bachus & Schanker
25 reached out to Ms. Cantwell, and Ms. Cantwell provided

1 documentary evidence of communications between herself and
2 Mr. Weinberger and her staff -- and his staff, which is a
3 different set of lawyers, providing important context with
4 respect to why she deleted her comments.

5 So on the basis of these statements, I'm wondering
6 why we're even having this conversation, why a lawyer who
7 doesn't represent this woman is representing her in an effort
8 to quash a subpoena that's been sent to her.

9 MR. SCHANKER: Your Honor, as I stated to you, the
10 facts are that she reached out to us after we contacted her,
11 and she said, "Yes, I've been served with a subpoena and what
12 do I do in this situation?" And so it's my impression that
13 she believes that an attorney-client relationship has been
14 established.

15 She sought guidance from us as to what to do with
16 this, the magnitude of it, understanding it, which she
17 didn't. And we communicated with her in that respect
18 certainly -- and the -- the circumstances under which she
19 declined to pursue the case. And, yes, at that point,
20 certainly we said we no longer represent you, but then it's
21 my belief -- and, again, I believe it would be established by
22 the client's impression of whether an attorney-client
23 relationship is established, but she sought guidance from us
24 as lawyers who had represented her previously.

25 And as I attempted to clarify, Mr. Weinberger joined

1 our firm at some point, and that's why -- again, I apologize
2 for any confusion that may exist --

3 THE COURT: All right. When is the return date on
4 the subpoena?

5 MR. SCHANKER: October 23rd.

6 THE COURT: All right. I am not going to touch the
7 subpoena except to do this: I'm going to extend the return
8 date for two weeks, and I'm going to -- you're obviously in
9 contact with Ms. Cantwell. If she wants to have a lawyer who
10 purports to represent her file a motion to quash the subpoena
11 as a nonparty, I will entertain that motion, but we're not
12 going to do it this way.

13 I mean, I don't know who represents her. I don't
14 know if you represent her because you're referring to her
15 state of mind. I'm not going to make decisions on the basis
16 of somebody's interpretation of another person's state of
17 mind who's not here, not in the face of a letter that says
18 you don't represent her.

19 MR. SCHANKER: Fair enough, Your Honor, and that's
20 what I want is your guidance on how to do it. You've just
21 given it to us.

22 THE COURT: All right. I'm extending the return date
23 for two weeks, and within that period of time, if
24 Ms. Cantwell wants to have an attorney file a motion to quash
25 the subpoena, we'll deal with it that way.

1 MR. SCHANKER: Fair enough. Thank you, Your Honor.

2 MS. BYARD: Your Honor, I think I just would be
3 remiss if I didn't mention two things. My impression from
4 their -- their letter briefing is that they understand the
5 subpoena to be narrowly focused to those communications
6 between Mr. Weinberger instructing her to delete the
7 information about hair treatment. Our subpoena's actually
8 much broader than that and looks to find what information she
9 has from the Taxotears Facebook page as well as from the
10 Taxotears Google group.

11 THE COURT: My expectation is that whatever
12 resistance to the -- to complying with the subpoena is going
13 to be limited to the issues that you all raised in this
14 letter.

15 MR. SCHANKER: Certainly, Your Honor. And we raised
16 -- first of all, just to clarify, nobody is saying that
17 Mr. Weinberger instructed anyone to delete anything.

18 THE COURT: I get that.

19 MR. SCHANKER: And certainly we address more than
20 just that issue in the letter brief and will respectfully
21 obviously be appropriate in our -- in our --

22 THE COURT: All right.

23 MR. SCHANKER: -- in any motion --

24 THE COURT: Whoever files a motion on her behalf
25 needs to represent to me that they represent this person.

1 Mr. SCHANKER: Fair enough.

2 THE COURT: So the minute entry is going to reflect
3 that the return date on the subpoena is going to be extended
4 by two weeks.

5 MR. SCHANKER: Thank you.

6 THE COURT: I want to move on to the two issues
7 raised by Sanofi, and I'm going to hold off on the motion for
8 issuance of letters rogatory until the end.

9 As to the issue of *ex parte* contact with the treating
10 physicians, I've gone back over and reviewed Pre-Trial Order
11 70A as I -- as I interpret that order as it's written. It
12 provides -- it does not provide, I don't think, for
13 post-deposition *ex parte* contact with the plaintiff's
14 treating physicians by the plaintiff's counsel. I think it
15 only speaks to pre-deposition contact. I think it --
16 although in this regard it is unclear, I think there is a gap
17 in what it provides.

18 What I'm going to do is -- I think it is reasonable
19 to expect that there would be *ex parte* contact with a
20 treating physician before trial testimony, and I'll make that
21 observation. I think that what I want is for the parties
22 with that in mind to discuss -- and this shouldn't be very
23 complicated -- to discuss a provision or an addendum to
24 provide for appropriate notice. And it'd be real easy for me
25 to just say the same rule on pre-deposition contact applies

1 for pre-trial, but 48 hours is not enough time. So I want
2 you all to see if you can sit down and agree to a procedure
3 and just -- and just jointly submit it to the Court. And if
4 not, after you all agree to disagree, if there is still
5 disagreement, then that will be an issue for you all to
6 submit to me for the next status conference in your letter
7 briefs, and we'll deal with it that way.

8 And I may deal -- I may handle it. If it is still a
9 dispute, I'll probably talk to Judge Milazzo about whether
10 she wants me to do that or whether she wants to do it because
11 70A was issued by Judge Engelhardt. But I don't really think
12 that that's a big problem. So I think that you all should
13 provide for that sort of contact. I don't think it's
14 unreasonable to think that a plaintiff's attorney would have
15 contact with the plaintiff's treating physician before trial.

16 MR. MICELI: Your Honor, can I ask just for one
17 housekeeping clarification point?

18 THE COURT: Uh-huh.

19 MR. MICELI: David Miceli for the record.

20 I've communicated with Ms. Byard and Ms. Menzies.
21 This arose out of an attorney -- excuse me -- a doctor
22 contacting about a payment for their time. After I
23 communicated, as you read in the letters from both sides, it
24 was requested that we not speak with him any further and we
25 haven't. However, his bill is still out there. We sent him

1 payment by the invoice that he had provided to Ms. Menzies,
2 and I think then to us. He then sent it back to us and said
3 it was incorrect. We have to reissue another bill, but we
4 haven't spoken to him. I'll be happy to have a joint
5 conversation with him just about that bill, but because we
6 have agreed not to --

7 THE COURT: You all ought to be able to pay
8 witnesses -- I mean, you ought to be able to handle these
9 sorts of minutia without having to worry about accusing each
10 other of having improper *ex parte* communication --

11 MR. MICELI: I agree, Your Honor.

12 THE COURT: That's not improper. Okay. Getting
13 somebody's bill paid is not an improper *ex parte* contact.

14 MR. MICELI: Thank you, Your Honor.

15 MS. BYARD: Your Honor, just one point on that, would
16 Your Honor be willing to have us revisit the issue of finding
17 out about those payments if they take place after the
18 deposition? Because at the time of the deposition, those
19 payments ordinarily have not been made, so we didn't have --

20 THE COURT: Remind me --

21 MS. BYARD: -- visibility of the fact of the payments
22 --

23 THE COURT: -- what PTO 70A says in terms of what
24 information is supposed to be provided.

25 MS. BYARD: The dates, the durations, the items

1 reviewed. It doesn't include any mechanism for disclosure of
2 payments made at that time.

3 THE COURT: You all talk about that because I think
4 that's appropriate information. I mean, if a treating
5 physician's been paid for his deposition or for consulting,
6 for his time, that's grist for the mill, and if it's
7 happening after the deposition, it ought to be disclosed to
8 defense counsel. That's pretty straightforward.

9 MS. BYARD: Thank you, Your Honor.

10 THE COURT: All right. On the non-Bellwether ESI
11 deficiency protocol, the PSC's vehement disagreement that
12 such protocol is necessary at this time is noted by me and is
13 overruled as we previously discussed.

14 What I want at the next status conference is a
15 comprehensible -- by me -- readable, agreed to joint
16 submission that explains to me any differences of opinion as
17 to what the protocol ought to look like. We are talking
18 about -- I think it's Pre-Trial Order 71A, ESI deficiencies.
19 I want you all to talk -- I had asked for that to be
20 accomplished some time ago. It has not yet been
21 accomplished. I want it to be accomplished by the next
22 status conference.

23 And what I want you all to jointly present to me is
24 some document that I can read and understand and comprehend
25 where the differences of opinion are, whether it's a redline

1 or some side-by-side comparison so that you all can -- and
2 then show me what the differences are and explain your
3 positions.

4 The one thing that I will say is that I do not
5 anticipate being convinced that any deficiencies in the
6 plaintiff fact sheets are going to be touched by this
7 protocol. There is a deficiency protocol for plaintiffs fact
8 sheets. This is separate, and as far as I'm concerned, never
9 the twain shall meet. I know that's a matter of disagreement
10 among you all. As to substance on this issue, that's my only
11 comment. And, again, that will be in the minute entry in
12 terms of my expectations on that issue.

13 All right. Shirley Ledlie, who for the PSC is going
14 to handle this matter? Mr. Coffin?

15 MR. COFFIN: I am, Your Honor.

16 THE COURT: Do you have anything to say that you
17 haven't said in the PSC's letter or in the brief that you all
18 filed?

19 MR. COFFIN: I do.

20 THE COURT: Let me hear it.

21 MR. COFFIN: Two main issues, number one, the CMOs
22 that have been laid out in this case, the CMOs are very
23 particular about the number of depositions that are to be
24 taken by both sides in Phase I and Phase II. When you look
25 back at those CMOs, you recognize that in Phase I, the

1 defendants are entitled to a plaintiff plus three
2 depositions, and in Phase II, it's broader. Obviously, all
3 of those depositions have to be relevant in order for them to
4 go forward, but the question then becomes if the deposition
5 is permitted, what case is it being taken in because we've
6 removed her from our may call list. It can't be relevant to
7 those trial plaintiffs. We see no relevance. They had no
8 communication with her. So which case is the deposition
9 being taken for?

10 And I think when you look back at the CMOs, you have
11 to determine -- we have to determine, assuming the Court
12 allows it, which case it goes to because we don't think it's
13 relevant to any case. That's my first point that's not in
14 the papers.

15 The second point that's not in the papers is the
16 proportionality issue. This is an MDL in which both sides
17 have expended massive amounts of resources, and now the
18 defense is coming in and talking about a witness that is no
19 longer on a witness list, that is not going to be called, a
20 witness that's not going to be called by the plaintiffs, yet
21 they feel that it's proportional to have us expend the
22 resources to fly to France and take -- so they can take this
23 woman's deposition, again, which we feel is entirely
24 irrelevant. So proportionality I don't believe was mentioned
25 in our papers, and that's -- that's the second issue.

1 The only other thing I would say, Your Honor, is that
2 it feels over and over as if we are spending time going down
3 this Taxotears group trail, and we're spending a lot of
4 resources on it. And we've heard from both Judge Milazzo and
5 Your Honor that we're supposed to be focusing on these trial
6 plaintiffs, which is the purpose of the MDL. The purpose of
7 an MDL, despite what the defendants continue to say, is not
8 to work up every single plaintiff case for trial. And even
9 if it were in this case, Judge, they need to show which
10 plaintiff's case it's relevant to because none of them that
11 are set for trial is Ms. Ledlie relevant to. That's all I
12 have to say for now, Your Honor.

13 THE COURT: All right. I don't want to start with
14 the fact that we've been talking about the Shirley Ledlie
15 deposition since April of this year and that after all that
16 time and effort we now have finally a motion for issuance of
17 letters of request to take the deposition. And we have an
18 opposition to that motion which I mentioned on the phone last
19 week to Mr. Coffin and others. It was both a surprise and a
20 disappointment to me.

21 On April 25th, we had a hearing during which Sanofi
22 was arguing that the Court should grant in excess to a
23 wide-ranging assortment of discovery as to the Taxotears
24 Google group up to and including a court-ordered preservation
25 order issued to Google under the Stored Communications Act.

1 Sanofi was seeking extensive discovery of parties and
2 non-parties related to the Taxotears group.

3 As you all remember, I know, because I know I
4 certainly do, the PSC was arguing, as it just did through Mr.
5 Coffin this morning, that such wide range in discovery was
6 unnecessary, was inappropriate, was, I guess,
7 disproportionate, and in seeking to stave off that discovery
8 made a number of observations and statements to the Court.

9 At the April 25th status conference, Ms. Menzies told
10 the Court "There is an avenue for counsel to obtain discovery
11 from Ms. Ledlie. Even though she is a third party, we named
12 her as a witness, as we told you in our paper. They can
13 notice her deposition, and they can request everything she
14 has. I have talked to her about that and we understand
15 that."

16 A little later in the same hearing, Ms. Menzies said,
17 "So they" referring to Sanofi "want us to do their
18 third-party investigation for them. Your Honor, they have
19 Shirley Ledlie."

20 I made the observation which remains true today that
21 I am but a humble magistrate judge. I said I'm not an expert
22 in these matters. I have one set of lawyers telling me one
23 thing, information is accessible, and I have another set of
24 lawyers telling me it's not.

25 And I ask the question, "How do I answer that? How

1 do I get to the bottom of what the truth is?"

2 Ms. Menzies offered, "What I would suggest, Your
3 Honor, is that they're trying to avoid discovery against the
4 originator of the support group, Shirley Ledlie. We have her
5 on our witness list. We will produce her even though she is
6 in France. We will produce the documents. They can request
7 everything she has about the Taxotears group. I can tell you
8 if anybody has a large number of e-mails left over that
9 started back in 2008, 2009, it's going to be her. They have
10 a right to do discovery against her because we have disclosed
11 her as a witness."

12 That's the transcript at Record Document 2401.

13 So following that conference on May 9th, I issued an
14 order providing in part that Sanofi could depose Ms. Ledlie,
15 and germane to the point that Mr. Coffin just made and that
16 that deposition will not count against any limits previously
17 imposed by the Court. I made it clear as to non-party
18 Shirley Ledlie that Sanofi should comply with the Rules of
19 Civil Procedure and any other provisions or laws applicable
20 to discovery on non-parties and/or citizens of other
21 countries.

22 That is Record Document 2522. The PSC did not appeal
23 that order.

24 So in May of 2018, five months ago, we got an order
25 stating that Sanofi could depose Ms. Ledlie subject to the

1 procedural requirements of her home country. A month later
2 in June of 2018, Sanofi brought to my attention that the PSC
3 was refusing to produce Ms. Ledlie for a deposition after
4 affirmatively suggesting or stating to me that they would.
5 Responding to that argument in their June 12, 2018,
6 submission to the Court, prior to the status conference,
7 Ms. Menzies wrote in a footnote "Sanofi attempts to treat
8 statements made by counsel during a hearing as an offer by
9 the PSC to do what it cannot. While the PSC stated it does
10 not object to the deposition of Shirley Ledlie, a non-party
11 who provided the PSC with e-mails from Pamela Kirby, that is
12 not the same as saying the PSC will or even can respond to a
13 document subpoena or produce her for a deposition."

14 Now, that may be true, but what is the same as saying
15 that is saying what Ms. Menzies said in the hearing, which is
16 "We will produce her even though she is in France. We will
17 produce the documents. They can request everything she has
18 about the Taxotears group."

19 Now, obviously we went through that. We had a
20 follow-up conference. Ms. Menzies explained at the hearing
21 that that statement that she had made at the previous hearing
22 was incorrect. She apologized to the Court for making it.
23 And that's fine. I accepted that apology. I understood that
24 it was a statement made in the heat of battle during a
25 contested hearing, and I had no problem with that. I didn't

1 penalize or punish the PSC or anyone for making that
2 statement.

3 What I did do was on June 13th, I issued another
4 order restating verbatim what I had already ordered in May,
5 that the deposition was to go forward, that it wouldn't count
6 against any previously imposed limits, and it would be taken
7 subject to the procedural rules of whatever country
8 Ms. Ledlie resided in at the time.

9 That was Record Document Number 3074. That order was
10 not appealed.

11 As recently as three weeks ago, I asked the PSC to
12 provide Sanofi with an address for Ms. Ledlie given their
13 substantial contact with her, and I was told at the hearing
14 that -- I think Mr. Miceli had given that information to
15 counsel for Sanofi. And Mr. Ratliff stood up and said, "Just
16 by way of preview, Judge, we will imminently issue to you a
17 motion for issuance of letters rogatory." And the lawyers
18 for the PSC sat right where you're sitting right now in
19 silence, said nothing, raised no objections, just let that
20 go, and we moved on to the next topic.

21 So now that we've -- six months down the road,
22 Sanofi's put together its motion, which by all appearances to
23 me complies with French law, including translating all of it
24 into French, and we're here with the PSC objecting on grounds
25 that could have been raised six months ago.

1 After all this time and after all the time I've
2 spent, you all have spent, Sanofi's lawyers have spent on the
3 issue, after the PSC invited the deposition of Ms. Ledlie in
4 April, after it actually agreed to produce her and her
5 documents at the same hearing, after it failed to appear not
6 one -- appeal not one, but two orders allowing for the
7 deposition to go forward, I am met with numerous objections,
8 many of which the PSC does not have standing to make on
9 behalf of a non-party who they do not represent, and I'm met
10 today with two additional objections that there is a Case
11 Management Order on the number of depositions. My orders, my
12 two orders, of May and June explicitly provide that those
13 limits are not relevant as to Ms. Ledlie's deposition.

14 The question of proportionality could have been
15 raised and should have been raised in April and May. Rather
16 than raise proportionality in April and May, the lawyers for
17 the PSC were inviting the deposition to take place, were
18 complaining that Sanofi was resisting taking this deposition.
19 But now we have an objection which I consider to be an
20 11th-hour objection.

21 I think it's an improper objection. I think it is --
22 if not gamesmanship, is bordering on gamesmanship, and is
23 interposed strictly for the purpose of delay. If Sanofi had
24 asked me to award sanctions under these circumstances, I
25 probably would have.

1 Now, I know that everybody in this room are smart
2 lawyers, and I think that you all should be smart enough to
3 know that I am not going to be convinced by these arguments
4 at this point in this case after six months of litigating
5 this issue against the factual context, all of the factual
6 context that I just repeated. I'm going to sign the order.
7 Any resistance to the deposition as far as I'm concerned is
8 going to be denied and the matter will be left to Ms. Ledlie
9 and her -- her lawyers, whoever else wants to take issue with
10 whatever it is that Sanofi wants to depose her about or
11 whatever documents that they want to get from her.

12 But, frankly, I don't know the right word to use to
13 describe my reaction to the PSC's position that they took
14 when I got this motion. It's not brought in good faith in my
15 view. These are all arguments that could have been brought
16 six months ago. If you really believe that these were
17 arguments that should carry today, you shouldn't have waited
18 for six months. You raised the issue -- when I say you, I
19 mean the PSC lawyers who are here -- continued throughout
20 those six months to raise the prospect of taking this woman
21 off your witness list and mooting the whole issue, but that
22 hasn't occurred unless maybe it's occurred in the last couple
23 of days. So if that's the cure to the problem, it should
24 have occurred long ago.

25 From my perspective, from this Court's perspective,

1 Ms. Ledlie's deposition will be taken. Her documents will be
2 produced. If a court in another country has a different
3 opinion, then so be it, but the ball will be in that court's
4 court. Okay?

5 I would suggest in the future that you all -- I mean,
6 you all are intimately familiar with every contour and detail
7 of all of the pre-trial orders and all the case management
8 orders much more so than I am. I suggest that when you take
9 positions on various legal issues and factual issues in this
10 court you go back and read the transcripts from the prior
11 hearings because I remember everything that happens in the
12 courtroom. And I remember everything that you all give me.

13 And if there is a gap in my memory, I will go and
14 fill it because I have ready access to the record. So I
15 suggest you all be prepared to do the same thing, and before
16 you take positions like the position that you all took today
17 with regard to this motion, you go back and revisit the
18 history of the issue over the last six months because I think
19 if you had done that you might have come to a different
20 decision as to whether you should even resist the current
21 motion.

22 All right. I want to set the next status conference.
23 Actually I both brought my calendar with me and looked at
24 dates before I sat down. Now I just need to find my notes.

25 The first -- the best date currently is November 7th

1 at 2:00.

2 MR. MICELI: Your Honor, that's the date that expert
3 reports are due to be disclosed.

4 THE COURT: You all want to be here instead?

5 MR. MICELI: I certainly hope that all of those
6 reports are prepared to go at 9:00 in the morning, but they
7 may not be. But just in case, I wanted to bring that to the
8 Court's attention.

9 THE COURT: We're not going to do that. We're not
10 going to do it then.

11 How about -- can we do the next day at 10:00?
12 November 8th at 10:00?

13 MR. OLINDE: Your Honor, I am not able to do it
14 because that's the Xarelto status conference with Judge
15 Fallon.

16 MR. COFFIN: Can we do it later in the day, Your
17 Honor?

18 MR. OLINDE: 2:00 would be fine.

19 THE COURT: I can't do it at 2:00.

20 MR. OLINDE: Even at 11:00.

21 THE COURT: I might be able to do that. Hold on.

22 Let's do 11:00. That will give me an extra hour to
23 digest whatever you all e-mail me the night before.

24 MR. OLINDE: Thank you very much.

25 THE COURT: All right. So right now there are two

