

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

-----

In Re: Levaquin Products	)	File No. 08-md-1943
LIABILITY LITIGATION.	)	(JRT/AJB)
	)	
	)	
	)	Minneapolis, MN
	)	May 12, 2009
	)	1:30 p.m.
	)	

-----

BEFORE THE HONORABLE **JOHN R. TUNHEIM**  
UNITED STATES DISTRICT COURT JUDGE

**(STATUS CONFERENCE VIA TELEPHONE)**

Court Reporter:	Lorilee K. Fink, RPR-CRR
	1005 U.S. Courthouse
	300 South Fourth Street
	Minneapolis, MN 55415

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

APPEARANCES

For the Plaintiffs:

Zimmerman, Reed, PLLP  
RONALD S. GOLDSER, ESQ.  
DAVID M. CIALKOWSKI, ESQ.  
Suite 501  
651 Nicollet Mall  
Minneapolis, MN 55402

Lewis Saul & Associates  
LEWIS J. SAUL, ESQ.  
Suite 3rd Floor  
29 Howard Street  
New York, NY 10013

CHRISTIAN RASMUSSEN, ESQ.  
ALYSSA DANIELS, ESQ.

For the Defendants:

Halleland, Lewis, Nilan  
& Johnson, PA  
TRACY J. VAN STEENBURGH, ESQ.  
Suite 600  
220 South Sixth Street  
Minneapolis, MN 55402

Drinker, Biddle & Reath, LLP  
JOHN DAMES, ESQ.  
Suite 3700  
191 North Wacker Drive  
Chicago, IL 60606

LeClairRyan  
WILLIAM H. ROBINSON, JR., ESQ.  
Suite 700  
225 Reinekers Lane  
Alexandria, VA 22314

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25





1           MR. GOLDSER: Your Honor, my apologies, my cell  
2 phone cut off.

3           THE COURT: That's fine.

4           MR. DAMES: Ron, I was just going through the  
5 number of cases.

6           MR. GOLDSER: Okay.

7           MR. DAMES: We also have six New Jersey state  
8 court cases from different counties of New Jersey, including  
9 Middlesex, Atlantic County and let's see what the last one  
10 was, Ocean County. Ocean County, Middlesex County and  
11 Atlantic County. We have one case filed in Missouri. Of  
12 the tendon rupture -- or tendinopathy cases, there are seven  
13 pending in state court.

14           MR. GOLDSER: What about the Mississippi case,  
15 John? I have not heard anything about that in a while.

16           MR. DAMES: The Mississippi case, I'm not counting  
17 it as tendon rupture or tendinopathy case. There is a case  
18 in Mississippi and it -- I'm not sure exactly yet what it  
19 is. We haven't done enough discovery yet, I don't think.  
20 But I can get that to you, Ron, if you need particulars on  
21 that one.

22           MR. GOLDSER: I just wanted to make sure it was  
23 open and pending. I have not heard from the plaintiff's  
24 lawyer in a while. I've tried to reach out to him and I  
25 have not heard back. My understanding is shoulder tendon

1 rupture.

2 MR. DAMES: That may be why I have confusion in my  
3 own little blurb in the case. If that is correct, we have a  
4 Mississippi case included in the state court case.

5 THE COURT: 83 in the MDL and three yet to be  
6 transferred that have been filed?

7 MR. DAMES: Correct.

8 THE COURT: Okay. And in the category of  
9 anticipated, Mr. Goldser or Mr. Saul, what do you have there  
10 for us?

11 MR. GOLDSER: Yes, Your Honor, this ties in with  
12 item number two on the agenda, the status of the New Jersey  
13 litigation. Let me start there, if I may.

14 There has not been an application for mass tort  
15 consolidation filed in New Jersey. That's their state  
16 procedure that's very similar to the MDL process. I'm not  
17 sure if it's a judge or a judicial officer decides whether  
18 consolidation should occur and if so, to whom it should be  
19 assigned.

20 As I understand it, there are three judges in various  
21 parts of the state of New Jersey to whom all such mass torts  
22 go, you know, one or the other of them. So, there's been an  
23 application filed for a consolidation and the application  
24 seeks to assign the cases to Judge Higbee in Atlantic  
25 County, I believe it is. And she has had a number of these

1 cases in the past, including the Vioxx litigation. That's  
2 where the plaintiffs in New Jersey seek to send the case.

3 Mr. Saul and I have reached out to plaintiff's counsel  
4 in New Jersey. We understand that they have fairly  
5 significant numbers of cases in their inventories. They  
6 make the representation that there are other lawyers with  
7 whom they in turn have been contact who also have  
8 significant numbers of cases in their inventories. All  
9 told, as Wyeth has now receded into the distance with New  
10 Jersey filings and other plaintiffs becoming active, we can  
11 see that the number of cases of Levaquin tendon ruptures and  
12 serious tendinopathies will number in the thousands.

13 Whether they will be in state court or federal court,  
14 whether they will be coordinated between the courts or not,  
15 all of that remains to be seen. But I can assure you, Your  
16 Honor, that on plaintiff's side, we are making every effort  
17 to coordinate with the New Jersey folks to ensure that this  
18 litigation runs smoothly.

19 As soon as a court is appointed in New Jersey, we will,  
20 of course, let Your Honor know, identify the judge for you,  
21 you can then choose to, of course, reach out to that judge  
22 or not as you see fit. Obviously, we would hope that you  
23 would and we would hope we would have some coordination  
24 between the federal court and the state court, but that too  
25 remains to be seen.

1           Oftentimes in litigations of this kind, there is  
2 someone who is appointed from the state court to be the  
3 liaison with the federal court and vice versa, and we hope  
4 that we can have such a person so that all communication is  
5 facilitated between the various groups involved in this  
6 litigation.

7           So that kind of consolidates the items that I had in  
8 mind as to one and two on the agenda.

9           MR. DAMES: Your Honor, again, it's John Dames. I  
10 will just add that the defendants are filing an opposition  
11 to consolidation. But in addition, they are also seeking to  
12 have the cases, if they are consolidated, in Middlesex  
13 County, which is the county of the headquarters where J&J  
14 sits, and that is Judge Happas in Middlesex County.  
15 Similarly, quite experienced in consolidations, so there  
16 have been several that Judge Happas has been handling.

17           We have not yet filed our papers. The deadline is  
18 still a bit away and then we want -- there's no particular  
19 guidance that I can give the Court or probably anyone can  
20 give the Court as to probably how long after that it will  
21 take for the Court to come to a consolidation decision. We  
22 don't expect it to be very long thereafter.

23           The only thing I will add in terms of the number of  
24 cases, and in the final analysis, only plaintiffs can  
25 possibly know this, but we've -- we've not seen recently any

1 dramatic surge in cases. As the court will see, neither the  
2 state court cases nor the federal court cases have surged,  
3 but there are increasing numbers filed that are at a  
4 relatively regular rate.

5 I'm personally a little surprised that we haven't had  
6 more New Jersey filings. Before the petition for  
7 consolidation was filed, one would have thought that maybe  
8 that would have been more persuasive if they had filed many  
9 more cases. I'm modestly skeptical as to ultimately how  
10 many we will end up with, but we'll obviously wait and see  
11 what happens.

12 THE COURT: Is it the State Supreme Court that  
13 makes a decision on consolidation?

14 MR. DAMES: Yes, sir.

15 THE COURT: And as far as we know, there are only  
16 two other individual state cases, one in Missouri and one in  
17 Mississippi?

18 MR. DAMES: Yes.

19 THE COURT: Okay. Okay, well, certainly, I'm sure  
20 that you will all let me know once a decision is made on the  
21 consolidation and where it might occur. I do intend to  
22 reach out to whichever judge is chosen to make sure that we  
23 can proceed cooperatively.

24 Okay. Next item, Mr. Goldser.

25 MR. GOLDSER: Number 3, sequencing of trial

1 selection. As we have been moving forward and looking over  
2 the horizon, Your Honor, we've responded to a potential  
3 issue in the scheduling that relates to the actual  
4 bellwether cases that will be tried and how we develop  
5 case-specific experts for those cases and the deadlines for  
6 that.

7 Pretrial order number four is currently laid out that  
8 the parties are required to meet and confer on or about  
9 September 15th following the close of the case-specific  
10 discovery that is now going on and see if we can reach some  
11 agreement on what cases should be tried subject, of course,  
12 to the Court's approval.

13 Anticipating, as we often do, that we will have our  
14 respective positions that cannot be compromised on such a  
15 question, we anticipate the likelihood of needing the  
16 Court's help in selecting those cases. The deadline for all  
17 expert witnesses under the current pretrial order is  
18 October 15th. We believe that we can hold fast on that  
19 deadline for all of the generic expert witness reports.

20 As I have said many times in these status conferences,  
21 the plaintiffs have been working diligently with their  
22 expert witnesses, the progress is well underway for their  
23 reports. We certainly hold that date for the generic  
24 reports.

25 As we've discussed with defense counsel in our various

1 conferences, both sides want very much to hold on to the  
2 scheduled trial date, August of 2010. We don't want to move  
3 that if at all possible. We can see the possibility, if  
4 we're lucky enough to select cases for trial on  
5 September 15th, we might be able to meet the October 15th  
6 deadline for case-specific expert reports, or at least come  
7 close to it. But if we don't select those cases on that day  
8 and we need the Court's help, there will be some time that  
9 elapses between selection of the cases and the  
10 originally-envisioned date. That will make it very  
11 difficult to hold the October 15th date for case-specific  
12 experts.

13 We're not coming to the Court yet with a specific  
14 proposal what dates should move when and how and for what  
15 purpose, other than to say, we think we might be able to  
16 move case-specific expert reports hopefully not a lot and  
17 hopefully that doing so will not throw off the remaining  
18 schedule by very much, if at all. It certainly does not  
19 throw off the August 2010 trial date.

20 So, we don't yet know whether we need the Court's  
21 assistance. I think it's more likely than not that we will.  
22 We wanted to identify this issue now that we have seen it,  
23 get any input that you might have for us today or in coming  
24 conferences so that we can govern ourselves accordingly.

25 THE COURT: Mr. Dames, did you have anything on

1 that? Oops. Anyone from the defense have anything to say?

2 MR. DAMES: I'm sorry, Your Honor, did you want me  
3 to respond?

4 MR. ROBINSON: Yes, Your Honor, this is Bill  
5 Robinson. I think Mr. Goldser summarized it very  
6 accurately. We don't really have any objection to some  
7 modification of the case-specific expert deadlines. That,  
8 of course, would -- might trigger some extra motions on  
9 case-specific experts down the road, but our primary concern  
10 is as expressed, that we don't want to lose the anticipated  
11 trial date in August of 2010. So, we're willing to work  
12 with them to try to get this resolved or -- and perhaps we  
13 can and then -- if necessary.

14 THE COURT: Okay, well, certainly any time you  
15 need the Court's assistance on this, it does seem to make  
16 sense if there is a delay in choosing the cases, that there  
17 might have to be a short delay in the case-specific expert  
18 identification. You know, that 30-day period seems like an  
19 appropriate time period. It could be that if the case --  
20 identification of the cases are delayed for two weeks, we  
21 could delay the expert disclosure by two weeks or something  
22 like that. But I'll leave that as we get closer and we'll  
23 see what we need to do, okay.

24 MR. GOLDSER: That would be fine, Your Honor,  
25 thank you very much.

1 THE COURT: Okay, discovery, how it's going?

2 MR. GOLDSER: Discovery, it is going feverishly.  
3 We're getting busier and busier. First off, at our last  
4 status conference, we had suggested to you that counsel were  
5 going to meet in Mr. Robinson's office in Richmond to go  
6 over the discovery process to date, how we got to where we  
7 are, the issues we've had with document production, how  
8 they've been produced, what has been produced, and what have  
9 you. Unfortunately, one of the key members of  
10 Mr. Robinson's staff has had some family issues and setbacks  
11 and has been unable to meet and we've had to reschedule that  
12 meeting until May the 21st. So, it's going to happen, we  
13 just didn't -- we just haven't been able to make that happen  
14 yet.

15 Now, that fits with what I was probably saying right  
16 when I got cut off on the phone earlier today and that is, I  
17 did not know until you announced it, Your Honor, that we  
18 have a May 26th hearing on a motion to compel. I haven't  
19 seen motion papers yet, did not -- if I had somehow received  
20 some notice from defense on this motion, it went right by  
21 me. I did not see a notice date on that motion. We  
22 anticipate having some fairly strenuous objections and  
23 motions to compel of our own coming out of the meeting in  
24 Richmond on May 21st.

25 If Your Honor would like, of course, the defendant has

1 scheduled their motion to compel, we can go forward with  
2 that as it's planned. I presume I will see moving papers  
3 today since the 26th is 14 days from today and that would be  
4 the deadline.

5 On the other hand, when we had suggested to the defense  
6 before when they raised that they wanted to raise this  
7 before, we suggested that we have a discovery day -- a  
8 discovery motion day that we hear everything all at the same  
9 time. I leave that up to Your Honor's discretion, but from  
10 our side, we'd rather make the trip once, have a relatively  
11 long day of motions requiring multiple hours -- although I'm  
12 not entirely clear how many that will be until we get our  
13 motion filed -- but multiple hours, then we will roll on  
14 defendant's motion to compel to defend their arguments why  
15 it's important for them to bring their motion to compel  
16 prior to a consolidated day of discovery motions. So, the  
17 meeting is coming up, we will have a motion.

18 There's another issue in that context that I will  
19 highlight when we get to some of the more specific  
20 deposition issues a little bit farther down to the agenda.  
21 For right now I'll leave the issue of scheduling.

22 MR. SAUL: Your Honor -- this is Lewis Saul  
23 speaking. What I was hoping that during the next status  
24 conference, that the Court could set aside four or five  
25 hours for arguing these motions. This is -- our motion will

1 be to compel defendant's almost its entire production of  
2 documents. For instance, there are hundreds of attachments  
3 that are missing from documents that have been produced.  
4 There have been redactions made. There's a whole litany of  
5 issues that we need to address. So, we thought it would be  
6 most appropriate that if the Court would set four or five  
7 hours aside during our next status conference and do them  
8 altogether.

9 MS. VAN STEENBURGH: Your Honor, this is Tracy Van  
10 Steenburgh. May I respond?

11 THE COURT: Sure, go ahead.

12 MS. VAN STEENBURGH: When I called Ron to set up a  
13 hearing date for the motion that is currently pending on the  
14 26th, he indicated to me that there would be possible  
15 motions, but there was nothing specific and he wanted to  
16 wait until maybe June for a motion day. We said we didn't  
17 really want to wait that long, so we were going to try to  
18 have it heard today, but it wasn't possible to do that with  
19 the briefing schedule. So, I said we'd get the different  
20 day, we got the 26th. It will be served today. We've had  
21 the meet and confer, he knows what the motion is about.

22 We're happy to have the motion at a later time, but we  
23 don't want to wait until plaintiff's determine what motions  
24 they do want. All of the meet and confers do happen at  
25 their motions. We don't want to put this off. We want to

1 go ahead and have another day for motions if that's  
2 necessary down the road.

3 THE COURT: Mr. Goldser, anything else?

4 MR. GOLDSER: Nothing that's new. For me it's a  
5 matter more of scheduling and convenience than it is  
6 anything else. I don't want to have to do these kinds of  
7 issues twice. As part of our reply about what they're  
8 entitled to is what we're entitled to. If they're going to  
9 make arguments about what we're entitled to or not entitled  
10 to, then what's good for the goose is good for the gander;  
11 the same rules should apply. That's why I think discovery  
12 motions that are pending should be heard at the same time.

13 THE COURT: Well, let's go ahead for now with the  
14 26th. If something comes up that -- that suggests a delay  
15 is necessary, you can get in touch with the Court and  
16 request that. I don't see a problem splitting them up. We  
17 can give a hearing date on the plaintiff's motions just as  
18 quickly as they're ready to be filed perhaps sometime in  
19 June if that works out.

20 Let's keep the 26th date for now and surely as we get  
21 closer, if there's any reason for delaying it, I'll listen  
22 to that presentation by phone.

23 MR. GOLDSER: What time is it scheduled for on the  
24 26th?

25 MS. VAN STEENBURGH: 11:00 o'clock.

1 THE COURT: Okay. Anything else about discovery?

2 MR. GOLDSER: Well, about 4(b) in the deposition  
3 schedule and all of those issues. I'd like to tick down  
4 those items, if I may.

5 THE COURT: Go ahead.

6 MR. GOLDSER: In terms of defense witnesses, we  
7 obviously have a number we have taken and a few more that  
8 are to be scheduled or to be resumed. We are now in the  
9 phase of getting into sales and marketing and sales  
10 representatives. We have made a number of requests for  
11 sales representative witnesses. We've identified them in  
12 particular. The ball is in defendants's court to respond to  
13 us about whether or not those people are going to be made  
14 available or not and what kind of schedule. So, we're  
15 waiting to hear back on that. And we're hoping to get those  
16 wrapped up quickly because we'd like to take those in the  
17 same context as the plaintiff's prescribing doctors. They  
18 dovetail with each other.

19 It's important for preparation of the doctors that we  
20 know what the sales representatives told the doctors. So,  
21 to the extent we can take the sales reps first, we'd like to  
22 do that. We've made requests for those people and we don't  
23 have the responses back yet and I'm hoping we're going to  
24 get them soon so we can schedule them hopefully before the  
25 prescribing doctors, if that's at all possible.

1           On the plaintiff's witnesses, we are now in the process  
2 of scheduling the prescribing doctors, the treating doctors,  
3 the plaintiffs themselves. We had our first prescribing  
4 doctor deposition take place in Coleraine, Minnesota  
5 yesterday. There are a number of others on the board and  
6 scheduled, dates have been proposed for a number of the  
7 individual plaintiffs we're in the process of scheduling --  
8 excuse me -- all of those. And that is moving forward.

9           On the Aventis witnesses we're going to resume the  
10 deposition of Carla Canabarro. That's going to happen on  
11 May 27th in New Jersey. I hope we can get through the  
12 defendant's motion to compel in time for me to get out to  
13 New Jersey to take that deposition the following day. I  
14 think that should be workable.

15           We've made a request of Aventis for a number of other  
16 witnesses and I'm waiting to hear back from them whether  
17 they are going to produce them, when and where. That's out  
18 there on the board.

19           The Ingenix witnesses. We have taken William West, he  
20 is completed. We're going to resume Alex Walker, who is the  
21 senior author on the epidemiology study that was done by the  
22 Ingenix folks on behalf of Johnson & Johnson. That happens  
23 on the 27th. And on June 30th and -- no, July 1st and  
24 July 2nd we're going to resume with the deposition of  
25 Dr. John Seeger.

1           In the context of Dr. Seeger, Your Honor, I think it's  
2 important that you be alerted to a discovery issue that will  
3 be out there probably in the planned motion coming down the  
4 pike next and that's a simple fact that begs a remedy.

5           Witness study. As I think we all know, it's important  
6 for science to be reproducible and we have wanted to be able  
7 to examine the raw data upon which this study was based.  
8 That raw data includes significantly the medical records and  
9 abstract forms upon which decisions were made by Ingenix to  
10 include or exclude individuals with Achilles tendon rupture  
11 cases in their models. We have asked to see those forms and  
12 those documents. They have, as I understand it, been  
13 destroyed.

14           Dr. Seeger has so stated under oath in his deposition.  
15 We can't reproduce the study, certainly not by obtaining the  
16 raw data in the possession of Ingenix if it no longer  
17 exists. We have been trying to reproduce that data  
18 independently, thus far, to no avail and at great cost and  
19 effort.

20           There is a problem there, from our side, about whether  
21 that's -- let me also add, Your Honor, several witnesses  
22 have now testified. This includes Dr. Fife, from Johnson  
23 & Johnson, Dr. Seeger from Ingenix, and Dr. Yee (phonetic)  
24 from Johnson & Johnson have all said, if it's not blinded,  
25 its validity is called into question. The study has to be

1 blinded from quinolone use. Given whether or not a patient  
2 has Achilles tendon has to be given independent of any  
3 knowledge whether that person was or was not on  
4 fluoroquinolone. It appears by Dr. Seeger's admissions,  
5 that was not blinded to that. And that, of course,  
6 invalidates the study. We need to be able to demonstrate  
7 the whys and wherefores of that fact and why it's  
8 significant.

9       The absence of the medical records and abstract forms  
10 is a very important fact for us. We don't yet know what the  
11 remedy is for that. We have not decided upon what remedy we  
12 think we should ask the Court for, but as you can hear, this  
13 is a fairly significant issue to us. We think we need to  
14 raise it sooner rather than later.

15       We expect it to be on the agenda of motions that we  
16 bring when we have our discovery motion day coming down the  
17 road, hopefully in June. I wanted to call it to your  
18 attention at this point so that you're aware of it and can  
19 see some of the seriousness of at least one of the motions  
20 that we're going to be bringing when we get to the discovery  
21 motion phase.

22       I can stop with my litany on witnesses and depositions  
23 at this point and have others chime in, particularly on the  
24 Ingenix issue if they would like, or I can just quickly  
25 complete the last couple of items on category 4(b), whatever

1 is the Court's pleasure.

2 THE COURT: Why don't you complete going through  
3 there and then I'll hear from anyone else.

4 MR. GOLDSER: Okay. On Daiichi we have a subpoena  
5 out to Daiichi, the United States branch. I'm working with  
6 a lawyer out of New York on that. I think I mentioned that  
7 at the last status conference. We're anticipating some  
8 production of documents. We don't know how large it's going  
9 to be. My guess, it's going to be smaller rather than  
10 larger. I'm not sure what's going to be in it to know  
11 whether or not we have to take any further steps on that and  
12 whether there will be Daiichi witnesses in the United States  
13 that will be available for deposition. So, that process  
14 moves forward.

15 Finally, the last item, deposition questioning  
16 procedure is an issue that Mr. Robinson wanted to put on the  
17 agenda and I will leave to him to describe his concerns on  
18 that item.

19 THE COURT: Okay, defense.

20 MR. ROBINSON: Yes, Your Honor, this is Bill  
21 Robinson. I will be very brief. With respect to the sales  
22 reps that Mr. Goldser talked about, we are in the process of  
23 trying to track down the sales reps who called on these 14  
24 prescribers in the cases identified in the order. Some --  
25 many of them are no longer with the company. We're going to

1 try to find last-known addresses for those people and we're  
2 -- we are working on that and trying to get that  
3 accomplished.

4 As to Dr. Seeger, I'm -- I'm not going to respond on  
5 the substance of that. Mr. Goldser is correct that  
6 Dr. Seeger did testify that the abstract forms which had  
7 copies of medical records attached were destroyed when they  
8 moved their offices in, I believe, 2006. That was something  
9 that was -- that event was unknown to the defendants in this  
10 case, and if a motion is made, we'll respond accordingly at  
11 the appropriate time.

12 In terms of the deposition questioning procedure,  
13 plaintiffs had requested sometime ago that they be permitted  
14 to have two questioners for the depositions in this case and  
15 the Court granted them that -- that permission. We want to  
16 ask for an amendment to that, more in the sense of fairness  
17 to the witnesses than anything else, in that what we would  
18 ask the Court to do is to not permit rotation of questioners  
19 in the sense that -- and although it has not been abusive by  
20 the plaintiffs, it has happened on a couple of occasions  
21 where questioner number one will ask questions and then  
22 questioner number two will ask questions. And then they'll  
23 go back to questioner number one for additional questions  
24 and then on the second day of questioning it may be a  
25 completely different attorney and so forth.

1           We would ask, simply, that if there are going to be  
2 multiple questioners, that one questioner do the questions  
3 he or she wants to do and then quit, and then the second  
4 questioner do their questions, and that's the end of the  
5 deposition.

6           The second thing we would ask is very simply that --  
7 the questioner's not duplicate questions, that they really  
8 should question on different topics. That's our request.

9           MR. SAUL: If I may respond. This is Mr. Saul.

10          THE COURT: Go ahead.

11          MR. SAUL: I requested the defendants to modify  
12 the procedure if they thought we did anything inappropriate,  
13 let us know, and I'd like to file the transcript with the  
14 Court. They said we haven't done anything unappropriate,  
15 but that they wanted to make sure that we could not go back  
16 and forth between questioners. We have not gone back and  
17 forth between questioners. What we have done is that if --  
18 if each of us handles a different area in these depositions  
19 and if something happened to be brought up that needed  
20 clarification that the other questioner was handling, that  
21 we switched over at the end of the deposition. It's  
22 happened very rarely and as Mr. Robinson said, it has not  
23 been at all abusive in any way. So we would ask that that  
24 not be modified.

25          Additionally, we agree with Mr. Robinson that the same

1 questioner should not ask the same question as the previous  
2 questioner or even in that area. And we agree with that and  
3 we have not done that, and we wouldn't intend to do it.

4 We'd like to stick to the original order that the Court  
5 entered and that was that we have two questioners, that we  
6 don't ask duplicative questions and we will honor,  
7 obviously, that order or any order that Your Honor thinks  
8 would be appropriate. But there's been no abusive conduct  
9 by us in any way and we see no reason to alter the order  
10 that Your Honor has thus put on.

11 THE COURT: Anything else on that?

12 MR. ROBINSON: No, Your Honor. I'm sorry, Bill  
13 Robinson. No, Your Honor.

14 THE COURT: Okay. Let's -- I think it's -- it's  
15 not a good practice to go back and forth. I'm not sure  
16 whether that's really what is happening at these depositions  
17 or not. Let me propose this: Let's discuss this at the  
18 hearing on the 26th and then each side can probably be  
19 slightly more prepared for it and we can have some examples  
20 of what's going on. Okay.

21 MR. ROBINSON: Okay.

22 MR. SAUL: Okay.

23 THE COURT: Anything else we need to go over  
24 today?

25 MR. DAMES: Your Honor, this is John Dames.

1 THE COURT: Yes, John.

2 MR. DAMES: I just wanted to add one thing because  
3 Ron was describing the sequence of the depositions of the  
4 sales representatives and the prescribing physicians and  
5 there was a statement in there I guess I wanted to -- to  
6 clarify for the Court.

7 Ron suggested that they wanted to do the sales  
8 representatives previous -- prior to the depositions of the  
9 prescribing physicians and that was a statement they had  
10 told us as well. We did not agree to that primarily because  
11 the prescribing physicians had been sought and the notices  
12 had been sent out before any requests for sales reps had  
13 been made. We didn't want so stop and retard the progress  
14 of having the prescribing physicians move forward.

15 We discussed it among ourselves and the defendants, and  
16 what we decided to do, which I think probably alleviates the  
17 decision, we won't set any arbitrary -- in other words, we  
18 won't set it as a condition precedent that the prescribers  
19 go first, or the other way around. The schedule is tight  
20 enough and we will all work to get it done. To the extent  
21 that people are available, they should be set and taken.

22 I just wanted to clarify that we certainly don't agree  
23 that we have to await the depositions of the prescribing  
24 physicians until the sales reps had been done. We're all  
25 trying to schedule things out on available days and

1 availability of attorneys and witnesses, and frankly, it's  
2 going to turn out without regard to any sort of formalistic  
3 process about who goes first. Those who have been  
4 previously noticed and we've got confirmed dates, we're  
5 going to move forward and we are going to be providing dates  
6 for the sales reps to Ron and to Lewis.

7 MR. SAUL: This is Lewis. The plaintiffs agree  
8 with that, for those that are already scheduled, that's  
9 fine, we'll do it that way. But we'd like it, when  
10 possible, to take the reps depositions first. We'll work  
11 with you on that.

12 MR. GOLDSER: This is Ron Goldser. I agree as  
13 well. The only thing that concerns me at all, not a lot but  
14 a little, we on the plaintiff's side don't have any control  
15 whatsoever over getting the sales reps to the table. That's  
16 an issue that's under the defendant's control and, you know,  
17 as nice as Mr. Robinson and Mr. Dames seem they are, they  
18 can choose to get their schedules in order to facilitate  
19 getting the doctor's depositions first. I will take it on  
20 their word in good faith that they are making their best  
21 efforts to get the sales reps timely scheduled before the  
22 prescribing physicians.

23 MR. ROBINSON: Bill Robinson, Your Honor. One of  
24 the issues we have internally, if anybody has been reading  
25 the newspapers, there have been massive layoffs of

1 pharmaceutical reps on the last six months. Many of these  
2 reps that show up on these call notes from 2002 to 2006 no  
3 longer work for the company. We're doing our best to  
4 contact them and to make them available, but our control  
5 over them is a lot less, obviously, than our control over  
6 the people who work for us.

7 THE COURT: I think that's certainly understood  
8 and I think ultimately if we have a mix timingwise on these  
9 depositions of sales representatives and doctors, that's  
10 probably for the best. Certainly we want to move them along  
11 and we don't want to delay.

12 Okay, anything else for today?

13 MR. GOLDSER: I don't have anything, Your Honor.  
14 This is Ron Goldser. Lewis, is there anything on your mind  
15 that we haven't addressed?

16 MR. SAUL: Nothing more, Your Honor.

17 MR. DAMES: I think nothing more from the  
18 defendants, Your Honor.

19 THE COURT: Okay, that sounds good. We'll see  
20 everyone on the 26th then.

21 MR. SAUL: Thank you, Your Honor.

22 MR. DAMES: Thank you.

23 THE COURT: Thank you, we'll be in recess.

24 \* \* \*

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, Lorilee K. Fink, certify that the foregoing is  
a correct transcript from the record of proceedings in the  
above-entitled matter.

Certified by: s/Lorilee K. Fink  
Dated: Lorilee K. Fink, RPR-CRR