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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 "H"
NEW ORLEANS, LOUISIANA
THURSDAY, MAY 30, 2019, 10:00 A.M.

THIS DOCUMENT RELATES TO:
ALL CASES

TRANSCRIPT OF DISCOVERY/STATUS CONFERENCE PROCEEDINGS
HEARD BEFORE THE HONORABLE MICHAEL NORTH
UNITED STATES MAGISTRATE JUDGE

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P-R-O-C-E-E-D-I-N-G-S

M O R N I N G S E S S I O N

THURSDAY, MAY 30, 2019

(COURT CALLED TO ORDER)

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7 THE COURT: Good morning, everyone. How is everybody
8 doing?

9 VOICES: Good, Your Honor.

10 THE COURT: Okay. I've read everyone's submissions and
11 the responses to the submissions, and obviously I've been down
12 this road with you now all for a while on a number of these
13 issues.

14 First, I'm going to address these Shirley Ledlie
15 issues. The PSC is seeking additional documents from Sanofi
16 related to Ms. Ledlie's French CRCI claim, and then Sanofi is
17 seeking reimbursement for its costs for proceeding to the
18 Hague Convention to obtain Ms. Ledlie's testimony in France.
19 From a discovery standpoint, as far as I'm concerned,
20 Ms. Ledlie's role in this litigation is at an end.

21 The document request I want to address first.
22 The PSC's document request to Sanofi, I think that that request
23 falls outside the scope of permissible discovery in the case
24 and outside the scope of my February 6, 2019, order.

25 Documents related to this foreign nonparty's

1 claim in another country are just, in my view, not relevant to
2 this matter. This is particularly true given the personal
3 nature of much of what's been requested.

4 As recently as yesterday, in its letter to the
5 Court, the PSC called discovery that's already been taken of
6 Ms. Ledlie *disproportionate*, stating Ms. Ledlie's testimony
7 simply lacks relevance to the merits of the claims of thousands
8 of women who have sued Sanofi for their injuries. Sanofi
9 nevertheless insisted on pursuing discovery of a foreign
10 individual who was removed from the plaintiffs' witness list.

11 It's hard to describe the PSC's position in
12 seeking additional documents in a foreign proceeding that
13 relate to Ms. Ledlie as anything other than *doublespeak* based
14 on the arguments that the PSC has made throughout this
15 litigation as to Sanofi's efforts to conduct discovery as to
16 her both here and in France.

17 Ultimately, I don't think any of the information
18 that's been requested, and I'll borrow again from the PSC's own
19 arguments, can be described as *having a direct and precise link*
20 *with the trial plaintiffs' trials*, and for that reason, the
21 requested additional discovery concerning Ms. Ledlie is denied.

22 MS. MENZIES: May I make a statement for the record?

23 THE COURT: Yes.

24 MS. MENZIES: So, the record is clear --

25 THE COURT: Just identify yourself -- oh, she's got it.

1 I'm looking. She knows who you are now.

2 MS. MENZIES: We go back.

3 Okay. The main points we want to make for the
4 record, Your Honor, is that, one, there is an agreement between
5 the parties that has been entered into a formal order in this
6 court. It's Document 1072, related to discovery of French
7 information, where Sanofi has agreed not to raise the French
8 Blocking Statute or anything else to request for documents in
9 France.

10 Where we see the relevance in the narrow request
11 that we're talking about has nothing to do with Shirley Ledlie;
12 in fact, it would be fine if they redact her name out. What is
13 relevant to us for purposes of the deposition we're about to
14 take next week is the fact that internally Sanofi is not
15 only -- you recall your order allows us to ask about
16 communications for possible legal action.

17 What Sanofi was doing at the time in 2009 -- '8,
18 '9, '10, '11 was not only in communication with somebody on
19 potential legal action about permanent alopecia, ongoing
20 alopecia but actively defending a claim for permanent alopecia.

21 So what we see as relevant is the internal
22 documents that Shirley Ledlie would never have anyway, but the
23 internal documents from the risk management department and
24 others at Sanofi that are working up their defense of that
25 claim.

1 So the record is very clear, the document that
2 was used as Exhibit 6 in the Shirley Ledlie testimony in France
3 was not the ultimate adjudication by the CRCI. It was actually
4 Sanofi's legal position paper arguing why her claim is not
5 valid. So when we have an active legal action going on, we
6 don't see how that, at least in the context of discovery, isn't
7 relevant for this upcoming deposition.

8 The second point on that, too, Your Honor, is
9 that we have asked them, "Do these documents exist? If they
10 don't, let us know. If they are too hard to get, let us know."
11 We haven't heard any answer on that at all.

12 So under the umbrella of what --

13 THE COURT: They've objected to producing anything in
14 response to the request.

15 MS. MENZIES: Arguing that it's outside of the scope
16 and irrelevant.

17 THE COURT: Right.

18 MS. MENZIES: What we don't know is do they have these
19 documents and they are not willing to produce them on the basis
20 of irrelevance.

21 So if they have the documents, and given the
22 breadth of relevance related to these issues other than
23 Shirley Ledlie, Sanofi's internal actions defending a claim for
24 permanent alopecia for a patient who took Taxotere, which, by
25 the way, at the same time they were getting communications from

1 other women like Pam Kirby, who we know is in communication
2 with Sanofi also at this same time, so the accumulation of
3 those communications -- and Pam is not the only one. We've now
4 just a few weeks ago received two more letters in the same time
5 period of women. One in Oklahoma.

6 So all of this at the same time is building this
7 awareness of Sanofi that they are going to be facing legal
8 litigation; in fact, they are facing it in other countries.
9 There are claims in Germany and otherwise.

10 So, for the record, we believe that this is well
11 within the scope of the discovery related to the issue of
12 possible legal action for women related to Taxotere and ongoing
13 alopecia.

14 Thank you.

15 MR. RATLIFF: Your Honor, unless you plan to change
16 your mind from your original ruling, I don't really have
17 anything further to say.

18 THE COURT: I'm not going to change my mind. I've
19 stated it in such a way that it will be reflected in the minute
20 entry. Obviously y'all will become familiar with Rule 72 in
21 this case, so if you all need to invoke it again, that's fine.

22 MR. OLINDE: Your Honor, some people on the phone
23 emailed me and said they couldn't hear. Maybe it's just
24 because of the microphone.

25 THE COURT: Well, my microphone is on.

1 MR. OLINDE: Yes, I think it may have been because of
2 the speakers.

3 THE COURT: All right. Hold on. I've turned it up.

4 Okay. All right. As to Sanofi's request for
5 reimbursement of the expenses associated with its discovery of
6 Ms. Ledlie, I'm going to deny that request.

7 It's true that I previously described the PSC's
8 shifting positions on the appropriateness of discovery on
9 Ms. Ledlie generally, as well as their shifting positions on
10 cooperating and obtaining that discovery as *gamesmanship*, and I
11 think that still holds true.

12 I don't believe it rises to the level sufficient
13 to lead me to shift the costs of that discovery to the PSC,
14 which, in the end, vigorously opposed the taking of that
15 discovery.

16 First of all, Sanofi affirmatively sought to take
17 the discovery via the Hague Convention in this court and in the
18 French court, and they did that in the face of the PSC's
19 opposition. It was fully aware at all times of the costs
20 associated in what it sought. There is no evidence, only
21 speculation, as far as I can tell, as to how Ms. Ledlie might
22 have acted differently had the PSC asked her nicely to
23 cooperate in discovery.

24 While I disapproved of the changing positions and
25 tactics with regard to this entire Shirley Ledlie saga on the

1 part of the PSC again, I don't think that they rise to the
2 level necessary to shift the cost of the discovery at this
3 point after it's been completed.

4 All right. As for the other issue that's been
5 raised, the issue of producing third-party subpoena returns and
6 objections, let me make this clear, and I'll make it clear in
7 the minute entry, that there are no exceptions to that
8 requirement.

9 Anything that is received from a third-party
10 pursuant to a subpoena that is sent by any party in this
11 litigation has to be shared and produced to the other parties.
12 Whether it's actual document productions, whether it's
13 objections, whether it's communications or other
14 correspondence, everything needs to be shared among the
15 litigants.

16 To the extent that that has not been done by any
17 party, I'm going to require it to be done within 14 days.
18 Within those 14 days or at the expiration of those 14 days, I'm
19 going to require all the parties to submit -- and, John, you
20 all can submit a single affirmation on behalf of the collection
21 of your clients -- to submit an affirmation that has been
22 accomplished and that there are no documents, objections,
23 correspondences, or communications from third parties pursuant
24 to subpoenas that are in the possession of any of the parties
25 that have not yet been shared.

1 I don't think that is the case currently, based
2 on what Sanofi told me in their position paper, but just to be
3 clear, and because there is a suggestion that maybe other
4 parties have not yet shared some of that information, I've
5 stated what needs to be shared, and I've given you 14 days to
6 do it and to confirm for me by a filing in the record that it's
7 been done. All right?

8 MR. RATLIFF: Your Honor, may I address that very
9 quickly?

10 THE COURT: Sure.

11 MR. RATLIFF: Number 1, in our submission that was
12 filed, I guess, on Tuesday evening, there was a chart of all of
13 our subpoenas and the responses and the documents. There was
14 one error in that, which I just realized this morning, which
15 was one for a subpoena we sent to Dr. Mario Lacouture. He has
16 never -- they never responded to that subpoena, so there was a
17 date on which we produced documents.

18 I talked to my paralegal. That was the date the
19 subpoena was sent out, not the documents had been received.
20 I've communicated that previously to counsel, but I'll
21 communicate that again in writing.

22 THE COURT: I know there is a lag time between when you
23 all receive the documents and when you have to produce them.
24 That's fine. That's understandable. That's built into the
25 process. To extent that there are documents stuck in that lag

1 time when the 14 days expires, just include that information in
2 the declarations that you file.

3 MR. RATLIFF: Then the other thing is just, I guess, a
4 point of clarification as to what you want produced, which
5 is --

6 THE COURT: If you get anything -- anything from a
7 third-party pursuant to a subpoena, it's to be shared.
8 Anything.

9 MR. RATLIFF: Understood. So, like, an email, like, we
10 typically have dealt with their outside counsel, and we send an
11 email saying, what's the status of the production, are we going
12 to hear from that?

13 Is that something -- because I know that happened
14 on both sides because they've issued a lot of subpoenas. We
15 know they've talked to people they've subpoenaed, their outside
16 counsel. Is that something you envisioned as part of you
17 order?

18 THE COURT: If you all want to agree that such
19 ministerial emails need not be produced, I'm fine with that.

20 MR. RATLIFF: I think we would be fine. I just don't
21 know if I can go back and recreate every email that's been sent
22 by my paralegal to an outside counsel.

23 THE COURT: I'm not concerned about those sorts of
24 emails. I'm talking about substantive information that you
25 would want if it were being sent to Ms. Menzies or Mr. Centola.

1 You want to see it. I don't think there is a mystery about
2 what I --

3 MR. RATLIFF: Yeah. Understood. That was the only
4 thing I wanted to clarify for Your Honor.

5 THE COURT: Okay.

6 MR. CENTOLA: Just to confirm, Your Honor,
7 Larry Centola for the PSC. We can talk to Mr. Ratliff about
8 this. We do want the transmission cover letter or the
9 transmission email that says, "The following are attached,"
10 which then we can tie a bow around what has actually been
11 produced.

12 THE COURT: I can envision there are e-mails about what
13 format do you want this in? Can I have a week extension? You
14 know, that sort of thing.

15 MR. CENTOLA: We can work with them and agree to not
16 produce such ministerial emails or cover letters, but the cover
17 letters that describe what is being produced, so we can tie a
18 bow around what is being produced. That is our concern.

19 THE COURT: All right. Anything else?

20 All right. Very good. I'm going to see you all
21 again soon, right? Don't I have something else scheduled? No.

22 MS. BARRIOS: No, Your Honor.

23 Dawn Barrios for the PSC. There was a PTO 85
24 hearing, a show cause hearing that was supposed to be Tuesday,
25 but Sanofi had requested that it be adjourned. I know that

1 they did, in all fairness, they did request a new date for the
2 PTO 85 hearing.

3 THE COURT: They did. I don't have that. Why don't
4 you all come up with a couple of options and just talk to
5 Blanca, and she'll put it on the calendar. Whatever works for
6 you all, as long as it's on the calendar.

7 MS. BARRIOS: Yes, Your Honor.

8 MR. RATLIFF: Thank you, Your Honor.

9 THE COURT: I'll see you all next time.

10 (WHEREUPON, at 10:18 a.m., the proceedings were
11 concluded.)

12 * * *

13
14 REPORTER'S CERTIFICATE

15
16 I, Cathy Pepper, Certified Realtime Reporter, Registered
17 Merit Reporter, Certified Court Reporter in and for the State
18 of Louisiana, Official Court Reporter for the United States
19 District Court, Eastern District of Louisiana, do hereby
20 certify that the foregoing is a true and correct transcript to
21 the best of my ability and understanding from the record of the
22 proceedings in the above-entitled and numbered matter.

23 s/Cathy Pepper

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