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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: AVANDIA MARKETING : CIVIL ACTION
SALES PRACTICES AND PRODUCTS
LIABILITY LITIGATION : 07-MD-01871

PHILADELPHIA, PENNSYLVANIA
WEDNESDAY, SEPTEMBER 22, 2010

BEFORE: THE HONORABLE CYNTHIA M. RUFÉ, J.

DAUBERT HEARING

DAY 3

SUZANNE R. WHITE, CM
FEDERAL CERTIFIED REALTIME REPORTER
FIRST FLOOR U. S. COURTHOUSE
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(215) 627-1882

PROCEEDINGS RECORDED BY STENOGRAPHY-COMPUTER,
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

1 APPEARANCES:

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REPRESENTING DEFENDANT

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- - -

1 (CLERK OPENS COURT.)

2 THE COURT: GOOD MORNING.

3 ALL COUNSEL: GOOD MORNING, YOUR HONOR.

4 THE COURT: WE MEET AGAIN SO SOON.

5 PLEASE BE SEATED.

6 MR. MELLON: YOUR HONOR, SIR TURNER
7 BRANCH HAS JOINED US AT COUNSEL TABLE FROM NEW MEXICO.

8 THE COURT: WELCOME.

9 SIR TURNER BRANCH: GOOD MORNING, YOUR
10 HONOR.

11 THE COURT: GOOD MORNING.

12 THE FIRST ORDER OF BUSINESS IS TO RESOLVE
13 THE CONCLUSION OF THE DAUBERT HEARINGS, THE DAUBERT,
14 ALSO FRYE HEARINGS AS WE HAVE LABELED THEM.

15 IT IS MY UNDERSTANDING THAT GSK HAS
16 ELECTED NOT TO PRESENT ANY LIVE WITNESSES.

17 MS. GUSSACK: THAT'S CORRECT, YOUR HONOR.

18 THE COURT: ALL RIGHT. WE WERE APPRISED
19 OF THAT THIS MORNING. I THINK SOME OF MY STAFF KNEW
20 THAT LAST NIGHT, AND THE PLAINTIFFS ALSO WERE APPRISED
21 OF THAT LAST NIGHT, I THINK.

22 MS. GUSSACK: YES, YOUR HONOR.

23 MR. ZONIES: ABSOLUTELY, YOUR HONOR.

24 THE COURT: THAT IN EFFECT WOULD CLOSE
25 THAT RECORD, AND WE WISH TO DO THAT FORMALLY ON THE

1 RECORD AND TAKE THE MATTER UNDER ADVISEMENT.

2 I SPOKE TO JUDGE MOSS THIS MORNING AND
3 SHE WILL ALSO TAKE HER DECISION UNDER ADVISEMENT, AND WE
4 KNOW THAT THE STENOGRAPHIC NOTES OF TESTIMONY WILL BE
5 MADE AVAILABLE TO COUNSEL. THEY CAN DEAL DIRECTLY WITH
6 OUR STENOGRAPHER AND THE REST THEY SAY IS, IN THE CAN?
7 IS THAT CORRECT? WE GOT ONE IN THE CAN BUT NOT REALLY
8 BECAUSE JUDGE MOSS AND I HAVE WORK TO DO AND SO DO THE
9 OTHER STATE COURT JUDGES THAT HAVE REQUESTED THAT THEY
10 BE INFORMED OF THE PROCEEDINGS HERE.

11 MS. GUSSACK: YOUR HONOR, YESTERDAY WE
12 REFERENCED A PROPOSED SCHEDULE FOR SUBMISSION OF
13 FINDINGS OF FACT AND CONCLUSIONS OF LAW. I DON'T KNOW
14 WHAT YOUR PREFERENCE IS AS TO A DEADLINE THERE. I
15 BELIEVE WE HAD SUGGESTED 30 DAYS. I HAVE NOT HAD AN
16 OPPORTUNITY TO DISCUSS WITH COUNSEL FOR THE PSC WHETHER
17 THAT IS CONSISTENT WITH THEIR VIEWS, AND THE OTHER ISSUE
18 I WOULD RAISE IS, TO THE EXTENT THAT OTHER STATE COURT
19 JUDGES ARE OBTAINING THE TRANSCRIPT, WE WOULD BE PLEASED
20 TO FACILITATE PROVIDING THEM WITH COPIES OF THE SLIDES
21 THAT WERE USED DURING THE HEARINGS SO THAT THEY COULD
22 FOLLOW ALONG SO ALL WE WOULD NEED IS A LIST OF WHICH
23 JUDGES ARE GETTING --

24 THE COURT: AS THEY ARE REQUESTED. FROM
25 ME DIRECTLY OR THROUGH MISS NAST, I THINK SOMETIMES THE

1 REQUEST GO THROUGH OUR LIAISON WITH THE STATE COURTS.
2 I'M AWARE OF ONE JUDGE RIGHT NOW THAT REQUESTS
3 EVERYTHING FROM US AND THAT IS OUR CALIFORNIA STATE
4 JUDGE, CAROLYN KUHL.

5 MS. GUSSACK: WE WILL MAKE SURE THAT
6 JUDGE KUHL SHE HAS A COPY OF THE MATERIALS THAT WERE
7 USED DURING THE HEARINGS.

8 THE COURT: THAT IS THE ONLY JURISDICTION
9 THAT HAS ACTUALLY SET TRIAL DATES ALTHOUGH THEY ARE FAR
10 IN ADVANCE, AND WHETHER OR NOT THEY HAVE DISCOVERY
11 ONGOING, THEY ARE NOT READY TO DECIDE. BUT NO OTHER
12 JURISDICTION, THAT I AM AWARE OF, NEEDED TO PARTICIPATE
13 LIVE BECAUSE THEIR CASES JUST ARE NOT IN THE SAME
14 PROCEDURAL STATUS AS OURS AND PERHAPS THE COMMONWEALTH
15 OF PENNSYLVANIA.

16 THAT BEING SAID, IT OCCURS TO ME THAT THE
17 SLIDES SHOULD BE INCORPORATED AS AN EXHIBIT AND IF THEY
18 ARE FILED, THEY CAN BE ACCESSED AS ANYTHING WOULD BE ON
19 THE RECORD AND IS THAT POSSIBLE TO DO?

20 MS. GUSSACK: YES, YOUR HONOR, I BELIEVE
21 IT IS.

22 THE COURT: CAN THE PLAINTIFFS ALSO DO
23 THAT?

24 MS. GUSSACK: WE HAVE AN ISSUE ABOUT
25 CONFIDENTIALITY --

1 MR. ZONIES: YES.

2 MS. GUSSACK: -- OF CERTAIN DOCUMENTS THAT
3 SPECIAL MASTER SHESTACK HAS ESTABLISHED A PROCEDURE FOR
4 REVIEW AND AS SOON AS THAT PIECE IS CONCLUDED, EITHER
5 ALL OR A SUBPORTION WILL BE AVAILABLE ON THE DOCKET.

6 THE COURT: RIGHT. I SAW A FEW DOCUMENTS
7 IN THE COURSE OF THE HEARINGS THAT MIGHT BE IMPLICATED
8 IN THAT BUT NOT TOO MANY.

9 MS. GUSSACK: NOT TOO MANY --

10 MR. ZONIES: I AGREE.

11 MS. GUSSACK: AND IN FACT YOUR HONOR SAID
12 ONE OF THEM WAS IRRELEVANT FOR THE PROCEEDINGS. I THINK
13 THAT NARROWS IT FURTHER. I THINK THERE ARE VERY FEW.

14 THE COURT: I DON'T THINK THAT IS GOING
15 TO BE A PROBLEM --

16 MR. ZONIES: I AGREE WITH THAT.

17 THE COURT: -- FOR COUNSEL TO WORK OUT
18 WITH MASTER SHESTACK.

19 MS. GUSSACK: AND YOUR HONOR, JUST
20 RETURNING TO THE SUBMISSION ABOUT FINDINGS OF FACT AND
21 CONCLUSIONS OF LAW, WE HAD SUGGESTED 30 DAYS BECAUSE WE
22 KNEW THAT THAT WOULD BRING THAT TO THE COURT IN ADVANCE
23 OF THE SPECIFIC CAUSATION HEARING THAT YOUR HONOR HAS
24 ESTABLISHED. IF 30 DAYS MAKE SENSE, WE WOULD BE
25 DELIGHTED TO WORK TOWARD THAT GOAL.

1 THE COURT: I THINK WITH THAT IN MIND --

2 MR. ZONIES: IF I MAY, YOUR HONOR.

3 THE COURT: -- IT'S VERY CLOSE.

4 MR. ZONIES: YES, TWO THOUGHTS ON THAT.

5 I OBVIOUSLY DON'T THINK THAT THAT IS NECESSARY IN THE
6 FIRST INSTANCE. IT'S MORE PAPER WHERE THERE HAS BEEN A
7 LOT BUT --

8 THE COURT: THE COURT THINKS IT MAY BE
9 NECESSARY.

10 MR. ZONIES: RIGHT, AND WITH THAT IN
11 MIND, YOUR HONOR, I THINK THAT IT'S SOMETHING THAT IN
12 TWO OR THREE WEEKS WE COULD PROBABLY -- FRANKLY, I THINK
13 IT'S WRITTEN FROM BOTH SIDES ALREADY BUT IT JUST TAKES
14 SOME EDITING.

15 THE COURT: I AM ACTUALLY REMEMBERING
16 WHAT THE OCTOBER SCHEDULE IS FOR ME, AND I WOULD LIKE TO
17 BE ABLE TO REVIEW THIS AND DO WORK ON IT PRIOR TO THE
18 LAST WEEK OF OCTOBER AND RIGHT NOW WE DO HAVE THE
19 SPECIFIC CAUSATION HEARING IN THE FIRST TWO TRIALS
20 SCHEDULED FOR OCTOBER 29TH.

21 MS. GUSSACK: CORRECT.

22 THE COURT: SO IF I WAIT FOR 30 DAYS THAT
23 WON'T HELP ME DO THAT. THE REASON BEING THAT PART OF
24 THAT TIME PERIOD, IMMEDIATELY BEFORE THE SPECIFIC
25 CAUSATION HEARING DATE, I AM AT THE MDL CONFERENCE AND

1 SO THAT WILL NOT GIVE ME AN ABILITY TO ACTUALLY FINISH
2 MY RULINGS. SO I THINK I'M GOING TO ASK YOU FOR THREE
3 WEEKS. CAN YOU DO THAT, COUNSEL?

4 MS. GUSSACK: YES, YOUR HONOR, I THINK
5 THAT IS FINE. SO IS THAT THE -- I'M JUST LOOKING AT
6 THAT OCTOBER CALENDAR HERE. SHOULD WE AIM FOR
7 OCTOBER 18TH OR 20TH OR THE WEEK EARLIER? WHAT ARE WE
8 UP TO? OCTOBER 17TH.

9 THE COURT: OCTOBER 17TH IS A SUNDAY.

10 MS. GUSSACK: IS IT? I AM SORRY.

11 YES, YOU ARE RIGHT. I'M IN THE WRONG
12 MONTH. 18TH?

13 THE COURT: 18TH.

14 OCTOBER 18TH WOULD BE MOST PLEASANT,
15 COUNSEL.

16 MS. GUSSACK: OKAY. THANK YOU, YOUR
17 HONOR.

18 MR. ZONIES: CONSIDER THAT DONE.

19 THE COURT: ALL RIGHT. WITH THAT, THE
20 SCIENCE HEARINGS PURSUANT TO DAUBERT IN THE MDL AND
21 PURSUANT TO ANY STATE COURT RECORD ALSO CURRENTLY BEING
22 CREATED BY THE SAME MDL RECORD IS HEREBY CLOSED. THANK
23 YOU.

24 (HEARING CONCLUDED 11:15 AM.)

25

1 I CERTIFY THAT THE FOREGOING IS A CORRECT
2 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
3 ABOVE-ENTITLED MATTER.

4

5

6 DATE

SUZANNE R. WHITE

7

OFFICIAL COURT REPORTER

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