In The Matter Of:

MARY K. JONES, individually v.

PFIZER INC., et al,

August 9, 2011

SOUTHERN DISTRICT REPORTERS

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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MARY K. JONES, individually and on behalf of all others similarly situated,

Plaintiff,

v. 10 CV 3864 (AKH)

PFIZER INC., et al,

Defendants.

----------x

New York, N.Y.
August 9, 2011
11:03 a.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

ROBBINS GELLER RUDMAN & DOWD
Attorneys for Plaintiff
BY: WILLOW RADCLIFFE
MATTHEW MELAMED
HENRY ROSEN

CAHILL GORDON & REINDEL
Attorneys for Defendants
BY: CHARLES A. GILMAN
DAVID G. JANUSZEWSKI
AMY D. LAMBERTI
-AND-
CADWALADER WICKERSHAM & TAFT
BY: HAL S. SHAFTEL

(In open court)

(Case called)

THE COURT: All right. Let's start, Mr. Gilman.

MR. GILMAN: Your Honor, plaintiffs are not complaining about the offer and sale of Pfizer securities, but, rather, off-label promotion of Pfizer drugs and management's failure to prevent it.

The FDA permits doctors to prescribe drugs for off-label or nonFDA approved use; but a manufacturer may not promote its drugs for such uses. Off-label promotion is remediable by the government. In 2009, Pfizer paid a heavy price to resolve marketing matters with the government. Management's alleged failure to prevent off-label promotion or halt the wrongdoing of other employees in connection therewith is remediable by derivative litigation. That, too, has already been litigated to final judgment in this court before Judge Rakoff.

Before the start of the alleged class period pled in the complaint, Pfizer disclosed the existence of state and federal investigations concerning the marketing of Bextra and other drugs, and said that those investigations could have a material adverse effect on our results of operations in any particular period.

Throughout the class period, Pfizer disclosed its accounting principles for accruals for contingencies, saying

that accruals for contingencies to the extent the occurrence is probable and related damages are estimable, that's in conformity with SAS-5. But often these investigations are subject to substantial uncertainties, and Pfizer said it could not reasonably estimate maximum exposure. It did say, however, throughout the class period, quote, it is possible that criminal charges and fines and/or civil penalties could result from pending government investigations. It said throughout the class period that these investigations, quote, could result in the payment of a substantial fine and/or civil penalty.

Even when Pfizer settled its civil litigation --

THE COURT: These were statements in the K's?

MR. GILMAN: In the K's, in the Q's, yes, sir. Beginning before the class period, throughout the class period. Those are Exhibits A through N in the compendium.

And if I could approach, I've put them on just three pages, just the document and the quote.

THE COURT: Yes.

Have you shown that to the plaintiffs?

MR. GILMAN: I will hand it to them now. There's no editorial; it's just a quote from the documents, and he has them all.

THE COURT: Sure.

MR. GILMAN: Your Honor, even after Pfizer settled the bulk of its civil litigation, it stated in a form 10-Q for the

relevant quarter that those settlements, quote, do not apply to the previously purported actions relating to Bextra. It reported that the Justice Department investigation was continuing, and it could result in substantial fine or civil penalty.

We respectfully submit, your Honor, that more is required of plaintiffs than pointing to Pfizer's announcement in January 2009 of government settlement, however large, and tacking on a conclusory allegation that the company's earlier statements were false when made.

The failure to predict the outcome of a complex government investigation, the existence of which, the uncertainty of which, and the possible adverse materiality, both civil and criminal, of which were all repeatedly disclosed 16 times prior to and during the class period, while so clear in hindsight to plaintiff is not securities fraud.

THE COURT: The plaintiffs don't style the gravamen of their action the way you do. I think they talk about it in an insufficiency of disclosure, and in the failure to have reserves, which identify the reserves on their balance sheets.

MR. GILMAN: Precisely.

THE COURT: Am I right? That is the gravamen.

MR. GILMAN: That's what they say.

But, your Honor, it comes back to what I'm saying. The failure to have a reserve is the failure to

predict the outcome of a complex investigation.
THE COURT: Well, no, a reserve is an accounting procedure to set aside a certain amount of money, or to apply a certain amount of money to show that profits are subject to an uncertainty that might have to be reduced.
MR. GILMAN: It is only permitted under Generally-Accepted Accounting Principles to accrue a reserve when the loss is both probable and reasonably estimable.
Pfizer announced 16 times that it was not reasonably estimable, and they made disclosure of the investigation and its possible material outcome.
As Judge Cote said in SEC v. KPMG, dealing with Xerox, having a reserve too early, the rainy-day cushion reserve that we all litigated 30 years ago, your Honor, is just as wrong as having no reserve where it is probable and estimable and one should be had. And if we had a $2.3 billion reserve in 2007 for a settlement that didn't happen until 2009, we would have been sued in 2007 for doing that.
THE COURT: Probably not, but that doesn't answer the question, which is was a loss like that probable, and was it reasonably estimable.
MR. GILMAN: There is no fact pled with particularity in the complaint from which this Court permissibly can infer that at the time those statements were made, that we cannot accrue a reserve larger than we have because of uncertainties.

There is no fact pled that anyone did not believe that in good faith to be true at the time it was said.
Your Honor, as for the other particulars, they are saying that the disclosures that were made did not say that Pfizer was engaged in off-label promotion. They say the words "off-label" were not in any of the 10-Ks.
What was said in the 10-Ks is the investigations concerned the marketing of Pfizer products for indications other than those approved by the FDA. That's the definition of off-label, and they say it in paragraph 4.
THE COURT: You give me a chart. Where do I find that on the chart?
MR. GILMAN: Your Honor, that would be the November 5, '04 10-Q, the second item in the chart, the bolded concerning possible promotion of those products with such indications.
This Court --
THE COURT: Let me read it.
MR. GILMAN: Yes, sir.
(Pause)
THE COURT: So the first one in the 2003 10-K and annual report mentions Bextra in relationship to its marketing and sale, but it doesn't disclose the nature of the investigation, what it's for. And I think plaintiffs take issue with that.
The second item, November 5, 2004 10-Q, makes

reference to investigations and the possibility of large judgments and settlements which could be material.
MR. GILMAN: And it also says, your Honor, the investigations concern promotion of products for nonFDA-approved uses, which is the definition. That's the judicial and the statutory definition.
THE COURT: "Documents and information concerning clinical trials of certain of our pharmaceutical products for indications other than those approved by the FDA, concerning possible promotion of those products for such indications."
What does "indications" mean?
MR. GILMAN: A patient ailment.
THE COURT: Is that a word of art?
MR. GILMAN: I believe so.
But, your Honor, a use nonapproved by the FDA is, in fact, the definition of off-label promotion. In their complaint they so concede in paragraph 4 of their complaint, where they define, for purposes of this lawsuit, off-label promotion as, quote, the practice of promoting drugs for unapproved uses is referred to as off-label marketing.
That's exactly what was disclosed.
And, your Honor, the disclosures that you're looking at on the first page and the top half of the second page all precede the beginning of the class period. That is all before the start of the class period. And then throughout the

class --
THE COURT: Let me read the one -- the first one during the class period.
MR. GILMAN: Certainly.
(Pause)
THE COURT: So you're saying that the reference to material adverse effect warns the reader that settlements could be sizable.
MR. GILMAN: Oh, certainly. And it continues on.
They use phrases like "it is possible that criminal charges and fines and/or civil penalties could result from pending government investigations."
It speaks to their efforts to resolve them. It speaks to precisely that which is alleged.
This isn't the first complaint, your Honor, that's paraded these allegations.
The first was the resolution, as it were, with the government on the off-label sales. The second was a derivative litigation which was fully litigated to final judgment in this court, settlement approved earlier this year by Judge Rakoff.
Virtually identical allegations to the complaint in this case.
THE COURT: That resulted in the recovery on behalf of the corporation against the same individuals that are sued here?

MR. GILMAN: Yes. Largely the same. There were a couple of individuals additional in that array of defendants, and a couple of individuals here that perhaps are not named, but largely the same.

THE COURT: So the recovery for the corporation for wrongs committed by the individuals -- withdrawn.

That really covers a different aspect of damages.

Here, the class is suing these individuals for responsibility for making statements that caused losses on shares. In that instance, the company was suing derivatively to recover expenses paid and various waste that occurred by reason of tortious act.

MR. GILMAN: It was also to recover the injury to the corporation from the failure to stop off-label sales.

But your Honor is quite correct.

The point I'm making though is that Judge Rakoff, looking at the same disclosure documents, looking at the same 10-Ks, the same --

THE COURT: Yeah, but that was not a disclosure case.

MR. GILMAN: That's only because he said it's not a disclosure case.

THE COURT: It's not. It's not a disclosure. It's a derivative case; it's for waste and mismanagement. It's a different damage.

MR. GILMAN: They pled a securities violation by the

corporation. They pled a failure to disclose. He dismissed with prejudice the securities claims --

THE COURT: It's irrelevant to his jurisdiction.

The derivative claims are for waste and mismanagement, not the security violation. That may color in the background, but it doesn't really go to the gravamen of the lawsuit.

MR. GILMAN: My only point was --

THE COURT: This is a different issue, Mr. Gilman.

I think the main point you're giving to me is that there were substantial disclosures all along; and, therefore, that's inconsistent with the lawsuit which claims there were misstatements.

MR. GILMAN: Yes, sir.

THE COURT: So let me hear from the plaintiff.

MS. RADCLIFFE: Good morning, your Honor.

Willow Radcliffe from Robbins Geller.

THE COURT: How are you, Ms. Radcliffe?

MS. RADCLIFFE: I'm good, thank you.

I'd like to start with the attachment that was handed to you.

THE COURT: Yes.

MS. RADCLIFFE: There's some language in there that indicates that Pfizer may have a material adverse risk. I'd like to point out the context in the exhibits the defendants submitted with respect to their statements that they would have

no material adverse risk.

The quote that they provided, for example, to Exhibit I isn't actually found that I can find in their exhibits.

THE COURT: I'm looking at Exhibit I.

MS. RADCLIFFE: Exactly.

And this goes to basically the heart of what you went to, is whether the disclosures the defendants made regarding these series of investigations were false and misleading at the time. Defendants have injected a truth-on-the-market defense. It's a very high burden. It typically is not decided at the pleadings stage.

So if you look at exhibit --

THE COURT: I'm sorry, Ms. Radcliffe. Say that again.

MS. RADCLIFFE: I'm sorry.

Defendants have essentially submitted a truth-on-the-market defense; that their disclosures were adequate. They've admitted they had a duty to disclose, but they indicate that they disclosed fully and with the necessary credibility and intensity which is required under the Second Circuit in order for their disclosures to be not misleading.

THE COURT: Those are wonderful words, credibility and intensity.

MS. RADCLIFFE: Intensity. And that's from Ganino.

And I probably mispronounced that.

THE COURT: Who wrote that?

MS. RADCLIFFE: Now you got me. I'll look it up.

If you look at Exhibit I, and you have to sort of put this in a contextual view, because Pfizer had discontinued its Bextra drug in 2005. It discontinued it for marketing -- I mean, excuse me, for safety reasons related to heart issues and other indications. So Bextra is no longer on the market. The market already knows there's concerns with the sale of Bextra previously.

THE COURT: And when was it no longer on the market?

MS. RADCLIFFE: I believe it's April of '05.

THE COURT: OK.

MS. RADCLIFFE: So in their 2006 financial statement that they've submitted as Exhibit I, which is directly related to the class period, this is after they've already promised the government and investors that they do not commit off-label marketing violations; that they are in compliance with FDA rules, under government investigations and requests for information --

THE COURT: I'm with you.

MS. RADCLIFFE: And if you look at prior to that, the top heading on the previous heading page, "Legal Proceedings and Contingencies."

THE COURT: OK.

MS. RADCLIFFE: OK. And I believe it's the second sentence, the bottom of the paragraph, says: "We do not

believe any of them will have a material adverse effect on our financial condition."

Now, a subheading to that is on the next page, the excerpt they provided, which is subheading F, which provides that Pfizer is highly regulated and involved in a lot of investigations. And it says we have received -- I'm sorry. It's the third paragraph down.

It says: "Since 2003, we have received requests for information and documents concerning the marketing and safety of Bextra and Celebrex from the Department of Justice and a group of state attorneys general. We have been considering various ways to resolve these matters."

Plaintiffs have pled that that disclosure is inadequate; it is, in fact, misleading; it does not disclose the risk that Pfizer faced as a result of its blatant off-label marketing.

THE COURT: It does not what?

MS. RADCLIFFE: Disclose the risk that Pfizer faced as a result of its blatant off-label marketing.

THE COURT: And it doesn't say anything material adverse effect.

MS. RADCLIFFE: Yes, and it did have a material adverse effect.

THE COURT: But it doesn't say.

MS. RADCLIFFE: Well, in fact --

THE COURT: The disclosure under government investigations and request for information, does it mention that these are likely to have or could possibly have a material adverse effect?

MS. RADCLIFFE: Well, in context, if you read the subheading we just read on paragraph 19, it says, in fact, we do not believe any of these will have a material adverse effect.

THE COURT: It seems to me paragraph 19 deals with civil litigation, various patent product liability, consumer commercial securities, environmental and tax litigations and claims, government investigations and other legal proceedings that arise from time to time in the ordinary course of our business.

And then comes the statement: "We do not believe any of them will have a material adverse effect on our financial position."

And then the next subparagraph, F, deals with government investigations and requests for information.

Is there a statement about material adverse effect in these paragraphs?

MS. RADCLIFFE: There is not. And I would posit that the caveat under subheading 19 goes to the government investigations referred to as subheading F under the main heading section 19.

THE COURT: I don't understand that.

MS. RADCLIFFE: Well, I believe that subheading F refers to the government investigations that was read in the first sentence that you indicated under subheading 19 that related to government investigations.

THE COURT: It's hard for me to understand how the first subparagraph under 19 is F. I don't have enough extract to know how to follow this.

Do you have the full document?

MS. RADCLIFFE: I do not. And I can certainly submit it to the Court, if necessary.

THE COURT: Mr. Gilman, do you have the full document?

MR. GILMAN: Not with me, your Honor, but we can have it delivered.

THE COURT: Does anybody have a memory of the full document, how it is that you have a 19 -- what's predominant, what's subordinate?

MR. GILMAN: If your Honor would look at the chart -- we're on Exhibit I, counsel has focused you -- that is a quote from the full document. If we are missing a page in the extract, your Honor, I represent to the Court that this will appear on the full document.

And it says: We cannot reasonably estimate potential exposure. And that it could have a material adverse effect on the results of operations in any period. And there could be

criminal charges, fines, and civil penalties.

THE COURT: I should have the full document. You're making a point on this and drawing an issue. I need to have the full document.

MR. GILMAN: We'll work with counsel, and we'll provide you with a full document. And we'll do that, your Honor, with respect to each of the exhibits, just so that you'll have them if you need them.

THE COURT: Please don't inundate me.

MR. GILMAN: We'll try not to, your Honor.

MS. RADCLIFFE: Well, your Honor, I would point out that our complaint alleges with respect to each of the statements during the class period it is accompanied by the language that --

THE COURT: Let me have the paragraph in the complaint. I read the complaint, but it's hard to get a picture.

MS. RADCLIFFE: Well, your Honor --

THE COURT: What paragraph?

MS. RADCLIFFE: I'm sorry, I believe it's paragraph 16.

THE COURT: So what you're saying here is that the off-label policy of Pfizer was going on even while the investigations were pending. Pfizer didn't stop.

MS. RADCLIFFE: What we are saying, your Honor, is

that they had entered into a 2004 corporate integrity agreement, promising not to commit off-label marketing; that it would cease and desist.

When they entered into the $430 million Neurontin settlement, they promised the government that this would not happen at Pfizer. And the U.S. attorneys who were investigating the matter basically said that they were breaking that pledge before the ink was already dry on the plea --

THE COURT: That's not a securities disclosure issue.

MS. RADCLIFFE: No, it's not a securities disclosure issue, but the disclosure of what defendants knew and what they disclosed, and whether what they disclosed was credible and with the requisite intensity to inform shareholders of the risk that Pfizer faced.

And I would take with respect to the accounting provisions that defendants cited, there are two provisions of GAAP that are relevant here: One is FAS No. 5, paragraph 10. And paragraph 10 does not say that you need to have an estimate. It needs to say that you either -- you disclosed the nature of the contingency, and you disclosed the possible range under FAS 510. It doesn't have to be a certainty.

THE COURT: Mr. Gilman argues that the amounts were not quantifiable at the time; they were not estimable.

MS. RADCLIFFE: Well, under accounting principles, how you estimate your contingencies is based on your past

historical experience. And basically, with respect to Pfizer, there's a repeat history of violations, their involvement in violations of off-label marketing, both before and during the class period. Whether it was the subsidiaries they acquired or whether Pfizer itself, they have a past history defined by government statute. They know that they have to disgorge the ill-gotten gains from their off-label marketing.

With respect to Bextra, they knew at the start of the class period, there was $664 million --

THE COURT: So, in a word, you're saying that they should have at least have given the criteria or ascertained penalty and fine.

MS. RADCLIFFE: Yes. And most importantly, your Honor --

THE COURT: What were those criteria?

MS. RADCLIFFE: Well, with respect to assessing the fine and what is the amount of the contingency, under GAAP, if you know any amount, you need to accrue for that amount, if you can reasonably estimate it. It's not a certainty.

THE COURT: What happens in the general run of things is that the accountants run over the accounts, and they're told or they otherwise learn of these pending government investigations, so they come to the company's counsel and they ask for a disclosure of them. And then they consider whether a reserve should be required.

It's at that point that they -- if there is to be a reserve, the question is how much. And it has to be estimable.

So you're saying that there are criteria which suggested that it would be at least a certain amount, and presumably that would be the floor of the reserve.

MS. RADCLIFFE: Correct, your Honor.

THE COURT: What are those criteria?

MS. RADCLIFFE: Certainly.

Your past history with respect to the matter.

THE COURT: How can you say the resolution of a criminal or investigative proceeding creates a precedent for what a later finding would be?

MS. RADCLIFFE: Well, defendants knew at the start of the class period -- they've admitted in the civil settlement -- that there was $664 million of off-label marketing of Bextra prior to the class period. That was the ill-gotten gains, the pecuniary gain from the off-label marketing.

They also know, subject to the statute, that they are subject to a criminal multiplier because they are repeat offenders.

THE COURT: So what you're saying is that they should have said this --

MS. RADCLIFFE: Yes. I'm saying that they should have said this --

THE COURT: -- in words or substance, so that the

reader would understand that the exposure was some kind of a larger amount than had been given up in the past. And that would be estimable to that degree.

MS. RADCLIFFE: Yes, your Honor.

THE COURT: Would you mind if I broke into your argument and asked Mr. Gilman to comment on that point?

MR. GILMAN: Your Honor, the Second Circuit has said: "The FDA permits doctors to prescribe drugs for off-label uses." That's Ortho Pharmaceuticals v. Cosfo.

THE COURT: I know that.

What they are alleging here is that there was a marketing program to get doctors to do that. So although doctors can prescribe, it can be illegal to induce doctors to prescribe by paying them in it.

MR. GILMAN: The point, your Honor, is how do you know which sale is an unlawful sale and which isn't. The fact that it is prescribed by a doctor for an off-label use does not make it unlawful. That is why it is highly complex. That is why it is confusing. That is why you cannot reasonably estimate. And the number is a settlement number, your Honor, not a finding.

THE COURT: I understand, Mr. Gilman.

But the argument would be that the senior management knew in countenance this sales practice, this marketing practice; and so they knew the vulnerability. And presumably they knew the criteria in the statute, and the likelihood that

a successive fine would be larger that previous fines. So they knew that these disclosures were inadequate.

These are allegations; I am not adopting them. But I have to decide in this proceeding whether there is a fair disclosure of this kind of a mispractice. And up to this point, it seems to me that plaintiffs have said enough to warrant going forward.

MR. GILMAN: Your Honor, plaintiff's --

THE COURT: At least on this issue.

MR. GILMAN: Plaintiff's case is predicated on prior settlements, a prior corporate integrity agreement in 2004.

THE COURT: That's right.

MR. GILMAN: OK. Your Honor, that corporate integrity agreement didn't promise there will never be an off-label sale. The corporate integrity agreement promised we will create an ombudsman so that people can report things; and that we will put in place procedures and policies and practices so that hopefully that which happened will not happen again.

There is no allegation in the complaint that they didn't fully comply with the corporate integrity agreement. There is an ombudsman; there is a blue book of policies; there are procedures and practices. And the fact that they allege that there was some up-the-ladder reporting by some qui tam relators, they don't say it was to any of the named defendants; they don't say any of the named defendants were told any of

this. What they say is that the policies and the practices and the procedures, in fact, were working, because people were reporting things, and there was a period of self-confession, and there was a period of ongoing investigation.

THE COURT: This is also not that kind of a procedure either.

But what the plaintiffs are alleging is that there was a persistence of marketing practice that was illegal and contradicted the integrity agreement; and that there was enough credibility in this whole activity to warrant an inference that the insiders knew it.

That's their case. They may be able to prove the case; they may not be able to prove the case. But at this point, that's not my judgment. My judgment is whether or not there's a plausible relationship to the facts as I learn them and the allegations. And I think at this point they've passed that threshold, at least the issues that I've discussed with you. But I think these are the issues that permeate this whole case from beginning to end.

So I'm inclined to believe that this is an acceptable complaint.

MR. GILMAN: I don't think it's a securities fraud complaint. It's a complaint. It's a corporate mismanagement complaint.

THE COURT: Let me just add a word or two.

They've alleged that in various marketing reports in the securities community that the insiders have themselves or acquiesced in others said to the investment community that our accounts are appropriate; they conform to GAAP, they conform -- we audited it according to auditing standards, when, in fact, they knew they didn't because of the continuation of these kinds of activities and the inadequate treatment of those disclosures in the financial reporting.

That's their allegation.

I think they've said enough to satisfy me that that's OK, and that they will be able to prove it. Whether or not they will be able to prove it is another matter.

MR. GILMAN: Your Honor, Bextra was off the market as of April 2005. That's prior to the class period. There was no promotion -- Bextra was the entire criminal fine. It was 100 percent of the $1.3 billion criminal fine. That is not an ongoing wrong. That is not promotion.

THE COURT: Answer that, Ms. Radcliffe.

MS. RADCLIFFE: Yes, your Honor.

He's correct that the criminal fine is related to Bextra. And that's precisely why at the beginning of the class period they should have taken account in their financials for the false -- I'm sorry, for the contingent risk related to Bextra, because they knew it had all happened. Those financials are included in the class period. The year-end 2005

financials, which include Bextra, were reported in the class period. And precisely because the sales of Bextra had ended and they knew about the DOJ investigation, they knew about the business plans to promote Bextra off-label, that's a business plan, that's a 2004 business plan, they knew all of that, and yet during the class period they did not disclose any of that to investors either in their provisions regarding accruals, in what they told investors --

THE COURT: Mr. Gilman.

MR. GILMAN: There's no ongoing wrongdoing, your Honor. There's no promotion. There's no sale --

THE COURT: There's ongoing issues of liability, she says.

MR. GILMAN: There is a government investigation which is fully disclosed. It might result in criminal fines, which is fully disclosed. It might result in civil penalties, which is fully disclosed. It might have an adverse impact in any particular financial period, which is fully disclosed 16 times.

THE COURT: It's not, she says, fully disclosed sufficient to give a reader an understanding.

MR. GILMAN: That's self-flagellation, and this Court has never --

THE COURT: No, it's not.

MR. GILMAN: Your Honor, respectfully --

THE COURT: Mr. Gilman, there are ways to describe

this. I've been through this as a lawyer, as you have more times than I have, but there are ways to describe this. You can't describe the criteria -- and you can talk about the company's belief in its defenses, but you can't describe the criteria for loss. And you haven't done that. You've just got a one-liner, which I think Ms. Radcliffe would argue does not give sufficient credibility and intensity to the risk that is being discussed.

That's her point, Mr. Gilman. She can be right, she can be wrong; but at this point in time, I think she said enough.

So the motion is denied, and we go into the next phase of the case.

MS. RADCLIFFE: Thank you, your Honor.

MR. GILMAN: Thank you, your Honor.

THE COURT: What's going to be the next phase of the case?

MR. GILMAN: Presumably --

THE COURT: You haven't really discussed that with her yet, really thought about it enough, because she probably believed that you would win, as any good advocate would.

I need to have a plan for the case. I'd like to see it run efficiently and without the wasted time of discovery disputes and other kinds of annoyances that afflict too many of these cases.

So what I think we ought to do is give you a chance to plan your discovery, Ms. Radcliffe, discuss it fully with Mr. Gilman, and then to come forward, giving me a plan to the extent you agree and to the extent you disagree.

MS. RADCLIFFE: Yes, your Honor.

THE COURT: And I'm not going to delegate this to a magistrate judge. I don't believe in that. I didn't like it when I was a lawyer, I don't think I should do it now, unless I have to. So I'll keep the case, and I'll be seeing you at various times along the case with the idea of trying to economize on excessive numbers of depositions and excessive discovery requests. It's not to say you won't have decent discovery; you will. But I'd like both of you to think not in terms of the discovery game, but of the end game.

MS. RADCLIFFE: Yes, your Honor.

THE COURT: So what's a good time to see you both?

Go off the record for a few minutes.

(Off record)

THE COURT: We'll have our first status conference on September 23 at 10:30. I have a form for the case management report. I think you need to go beyond the normal -- you can take it off the individual rules. I'd like to learn about any kind of computer issues in terms of what you conceive of is discovery. So focus on that and see if that's going to be a problem, and anything else you can think about.

Your initial discovery will be documents. So I think probably what would make sense is to arrange for a document discovery, and we can have our session together before you start your depositions. You won't know your deposition targets until you go through the written discovery.

So I think in terms of your planning, plan the discovery and plan a period for discovery, and then I'll meet with you to chart the depositions.

MS. RADCLIFFE: Thank you, your Honor.

THE COURT: I'm not a fan of interrogatories or discovery requests. I learned that from Milton Pollack, the late Milton Pollack.

MR. GILMAN: As did I, your Honor.

THE COURT: Yes. So I've tried to emulate a lot of his practices as a judge, not always successfully. He had such a unique manner about him. But I'm grateful if you leave with a conversation. You don't need letters; just have some conversation about what needs to be produced and what special problems. And the letters can come to me in joint form.

I don't take letters individually written. There's a procedure outline in Individual Rule 2E for discovery disputes. But if there is any disputes, if you have a dispute, write a joint letter, each side states its position, and I'll endeavor to rule in a very quick way so you won't waste time.

I don't like making federal cases out of discovery

issues. So I rarely, if ever, write on them; but I decide them fairly promptly, often within 24 hours on the 2E letter.

All right. I guess that's it.

MS. RADCLIFFE: Thank you, your Honor.

THE COURT: All right.

So I'll see you on the 23rd.

MR. GILMAN: Thank you, your Honor.

MR. ROSEN: Thank you, your Honor.

THE COURT: Thank you.

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