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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 MARY K. JONES,
4 Plaintiff,

5 v. 10 CV 3864 (AKH)

6 PFIZER, INC., ET AL.,
7 Defendants.

8 -----X

New York, N.Y.
October 30, 2014
3:00 p.m.

10 Before:

11 HON. ALVIN K. HELLERSTEIN,
12 District Judge

13 APPEARANCES

14 ROBBINS GELLER RUDMAN & DOWD, LLP
15 Attorneys for Plaintiff Jones
16 BY: JASON FORGE
HENRY ROSEN
MICHAEL DOWD

17 LAW OFFICE OF CYNTHIA MONACO
18 Attorney for Third Party Witness Holloway
19 BY: CYNTHIA MONACO

20 WILLIAMS & CONNOLLY, LLP
21 Attorneys for Defendant Pfizer
BY: STEVEN FARINA
JOE PETROSINELLI
AMANDA MACDONALD

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1 (Case called)

2 MR. FORGE: Jason Forge, Henry Rosen and Michael Dowd
3 for the plaintiffs.

4 MR. FARINA: Afternoon, your Honor.

5 Steven Farina, Joe Petrosinelli and Amanda MacDonald,
6 for Pfizer.

7 THE COURT: OK. Very good.

8 I had problems with the in-camera submission. I had
9 my law clerk call to say the papers had to be reviewed and that
10 which could be served should be served. Where do we stand on
11 that?

12 MR. FORGE: Your Honor, Ms. Holloway --

13 THE COURT: Tell me your name again.

14 MR. FORGE: Jason Forge, your Honor.

15 Ms. Holloway's counsel, they are approaching now and
16 they handed me a redacted copy of their papers about a half
17 hour ago.

18 THE COURT: You haven't had a chance to look at it?

19 MR. FORGE: I've looked it, your Honor. I haven't
20 been able to look at any cases but I've looked at the papers.

21 MS. MONACO: Yes, your Honor, Cynthia Monaco, for
22 Ms. Holloway.

23 When we received the request from your chambers, the
24 order from your chambers, we immediately provided, we redacted
25 as quickly as we could, we sent the redacted brief

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1 electronically and we also provided her copies today and I
2 understand we couldn't get it to Mr. Forge fast enough to be
3 printed out at his hotel and we apologize that.

4 THE COURT: The next problem is the supplemental
5 submission by the plaintiffs which I haven't had a chance to
6 read. So I come to this with very little paper preparation.
7 But let me see -- Sorry -- it starts with my order of
8 October 21 which ruled that plaintiffs will proceed to take the
9 deposition of Mary Holloway who I understand was an
10 intermediate executive at Pfizer during the relevant time
11 period and was in charge of the marketing of the particular
12 drug at issue and therefore presumably had knowledge of how it
13 was marketed. And that knowledge may be possibly used by the
14 plaintiff to try to prove scienter on the part of Pfizer.

15 Am I getting it right, Mr. Forge?

16 MR. FORGE: Yes, your Honor.

17 THE COURT: OK. So Ms. Holloway wants to assert the
18 Fifth Amendment and the privilege against having to incriminate
19 herself. The plaintiff says, How can you do that Ms. Holloway?
20 You pleaded guilty to a misdemeanor and you received in effect
21 a waiver by the government having to do with further
22 prosecution and therefore since you can't be subjected to
23 double jeopardy you have no good faith basis to assert the
24 Fifth Amendment. That's the issue of concern.

25 Do I have that right, Mr. Forge?

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1 MR. FORGE: Yes, your Honor. The only thing I would
2 add to that is the time element here, the fact as your Honor
3 knows Bextra's been off the market or over nine years and we
4 did -- I know your Honor didn't get chance to see --

5 THE COURT: The government has a way of dredging up

6 the current time, things that happened a long time ago.

7 MR. FORGE: That's true, your Honor. We did agree to
8 limit all of our questions to questions related just to Bextra,
9 so we're not talking about any other drugs that were sold after
10 that.

11 THE COURT: OK. How did I do on framing the issues,
12 Ms. Monaco?

13 MS. MONACO: Your Honor, I would take exception with
14 the characterization of Ms. Holloway as a mid level employee.

15 THE COURT: How would you characterize her?

16 MS. MONACO: She was a district sales manager or
17 regional manager of one region and one division.

18 THE COURT: Intermediate executive.

19 MS. MONACO: OK, your Honor.

20 THE COURT: Maybe lower intermediate.

21 MS. MONACO: Yes, your Honor. And as to the
22 characterization --

23 THE COURT: Why should I denigrate your client?

24 MS. MONACO: And I think as to the question of whether
25 or not she has any relevant testimony, we don't believe she

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1 does.

2 THE COURT: I know.

3 MS. MONACO: Pfizer's position is she does not.

4 THE COURT: The plaintiff thinks that she does.

5 MS. MONACO: Yes. But in timeframe she left Pfizer in
6 2006 as part of downsizing. The government's investigation I
7 think was ongoing and perhaps at that point her interactions
8 and her guilty plea proceeded generally after she left Pfizer

9 and she pleaded guilty in mid 2009.

10 THE COURT: So you would argue that she has no
11 relevant knowledge past the time she left?

12 MS. MONACO: And there's no evidence.

13 THE COURT: What day did she leave.

14 MS. MONACO: December 31, 2006. And there's no
15 evidence in the record --

16 THE COURT: OK. So let me deal with that first.

17 Mr. Forge, if she left December 31, 2006, that means
18 the period relevance goes back to that.

19 MR. FORGE: That's right, your Honor. Your Honor, the
20 bottom line is she is there throughout the entire time that
21 Pfizer was marketing Bextra.

22 THE COURT: Define the time.

23 MR. FORGE: They pulled Bextra off the market in the
24 year 2005 and that he started marketing it in the year 2002.
25 So for our purposes, for the purposes of this case she was

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1 there for the critical time period because that's the time
2 during which they were marketing the drug.

3 THE COURT: So you would say if she left December 31,
4 2006 and the relevant time period is 2002 to 2005, it doesn't
5 make any difference what time she left.

6 MR. FORGE: That's right, your Honor. And in addition
7 we know that the document destruction related to the Bextra
8 related documents that occurred in the year 2004 and she has
9 knowledge of that also.

10 THE COURT: All right. I am being forced to learn all

11 this information. I was very successful in put --

12 MS. MONACO: May I just clarify I think what is our
13 position on the relevance issues, your Honor?

14 THE COURT: Why not let Mr. Forge -- it's very
15 dangerous to do is that.

16 MS. MONACO: I understand.

17 THE COURT: He may forget something and you would
18 remind him but --

19 MS. MONACO: I agree with Mr. Forge that if the issue
20 is just the marketing of Bextra in those early days then
21 perhaps if the Court is allowing everybody to look at the
22 marketing of everybody on Bextra that's one issue. Our
23 understanding from reviewing papers in this case is that the
24 issue the disclosures by Pfizer executives after that period in
25 time.

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1 THE COURT: The disclose are related whether or not --

2 MS. MONACO: There is evidence Ms. Holloway had any
3 input into them or discussed anything about her case with
4 anybody at Pfizer. She was gone for the three years before she
5 pleaded guilty.

6 THE COURT: OK. I got that.

7 MS. MONACO: OK.

8 THE COURT: Mr. Forge, did you serve on Ms. Monaco the
9 subjects on which you proposed to question Ms. Holloway?

10 MR. FORGE: Yes, sir, we did.

11 THE COURT: Where would I find that?

12 MR. FORGE: These, your Honor, are actually in our
13 supplemental memo. They are at pages two and three of the
Page 6

14 supplemental memo.

15 THE COURT: Let me turn to it.

16 MR. FORGE: OK. And your Honor, if I may before you
17 start reading that we also provided her with all the exhibits
18 we'd like to question her about. I know your Honor is not
19 going to flip through all of these but I do have a copy for the
20 Court.

21 THE COURT: If I need it I'll ask you for it.

22 MR. FORGE: OK, your Honor.

23 (Pause)

24 THE COURT: All right. As to these subjects,
25 Ms. Monaco, the four paragraphs, right, Mr. Forge?

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1 MR. FORGE: Yes, sir, your Honor.

2 THE COURT: What's your position?

3 MS. MONACO: Position is that answering questions
4 about that marketing does implicate her Fifth Amendment rights.

5 THE COURT: It will you say?

6 MS. MONACO: It absolutely will, your Honor. And I
7 want to say one of the attachments to our brief but I think
8 it's of critical importance is her plea agreement with the
9 government which is not like a plea agreement in the Southern
10 or Eastern District of New York.

11 THE COURT: You've shown that --

12 MS. MONACO: Yes, it's a public record.

13 THE COURT: I see. Would you point me to anything in
14 the plea agreement that you want me to take into consideration.

15 MS. MONACO: Exhibit A to our brief, the plea

16 agreement.

17 THE COURT: So we should mark this, should we not or
18 identify them? What Mr. Forge has given to me is the
19 supplemental memorandum of law filed by the plaintiffs on
20 October 30, 2014, in support of requests to compel testimony.
21 And he's referred me to the bottom three paragraphs on page two
22 running onto the top paragraph or continuation of the third
23 paragraph on page three. And this is part of their -- what
24 Ms. Monaco as given me is the plea agreement which is Exhibit A
25 in the in-camera ex parte and under seal submission by

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1 Ms. Holloway on behalf of Ms. Holloway. I have not read this
2 because I do not want to take anything in-camera and under seal
3 unless I have to. And we'll work that out separately.

4 So I understand that Mr. Forge has been able to review
5 the plea agreement. Now I'll ask Ms. Monaco to tell me what in
6 the plea agreement you'd like me to look at.

7 MS. MONACO: Your Honor, we've pointed out three
8 paragraphs in the plea agreement that are relevant. Paragraph
9 one, the plea, which states she agrees she will not make any
10 statements inconsistent with this explicit admission.

11 THE COURT: Go slowly.

12 MS. MONACO: Your Honor, this was excerpted in your
13 brief at pages four and five if that's easier.

14 THE COURT: So she has already allocuted has she not?

15 MS. MONACO: She allocuted to a strict liability
16 misdemeanor after --

17 THE COURT: Well, whatever allocution she did, she
18 made, she's done.

19 MS. MONACO: Yes, on that --

20 THE COURT: But you are saying that possibly facts may
21 come out in the future which may be argued to contradict her
22 representation.

23 MS. MONACO: Yes.

24 THE COURT: And for that you say that will support a
25 plea of the Fifth Amendment.

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1 MS. MONACO: Yes, your Honor. And I would like to --

2 THE COURT: Isn't that so, Mr. Forge?

3 MR. FORGE: Well, your Honor, the reason why I don't
4 think that's the risk here is because we've agreed to limit our
5 questioning to just Bextra related conduct.

6 THE COURT: But presumably when Ms. Holloway pleaded
7 guilty there was a violation of the Food, Drug and Cosmetic Act
8 with reference to Bextra.

9 MR. FORGE: It was, your Honor, absolutely.

10 THE COURT: So if she is now accused of giving
11 information let's say by her allocution or by her statements to
12 the government which can be said to be inconsistent with her
13 admission she's subject to prosecution.

14 MR. FORGE: That's the thing, your Honor, as
15 Ms. Monaco just pointed out, she pled guilty to a strict
16 liability misdemeanor. It's a strict liability. Again, I
17 haven't heard --

18 THE COURT: Strict liability, what relevance does it
19 have for the issue of scienter?

20 MR. FORGE: Well, the issue is, your Honor, that

21 because of the strict liability Pfizer knew they didn't have
22 substantial defenses to it. It wasn't fully disclosed that the
23 nature of the investigation wasn't fully disclosed and
24 therefore investors wouldn't be aware of the fact that there
25 wouldn't have been substantial defenses.

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1 THE COURT: It is hard for me to see relevance in a
2 strict liability standard but of course, the allocution could
3 go beyond the strict liability and deal with the witness'
4 knowledge. But if that's the case that's an element that is
5 very hard to find very precisely and I think Ms. Monaco
6 expresses a legally relevant concern which could be the basis
7 of a Fifth Amendment assertion.

8 MR. FORGE: Your Honor, that's why I've pointed out
9 that was a strict liability because remember the trigger for
10 this provision is if she says something inconsistent with that
11 plea. So I just don't that there --

12 THE COURT: I am saying that although there is the
13 strict liability standard, an allocution offer will go beyond
14 that to probe into the state of mind of the defendant. I'd do
15 that for example. I always want to know if there was awareness
16 by the defendant that what she knew she did was wrong, violated
17 the law, otherwise incorrect and that is relevant not only to
18 the nature of a plea but also the issue on sentencing later on.
19 And judges will frequently have sentencing in mind when they
20 perform their allocution. I have not read the allocution so I
21 can't say. I'm far from being an expert on the Food, Drug and
22 Cosmetic Act 21 U.S.C. Section 331, 333 and 352. But
23 Ms. Monaco states a valid proposition and I agree. So ruled.

24 What's the next point? Who is going to give me the
25 next point? Is that all that's involved, Ms. Monaco?

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1 MS. MONACO: Your Honor, there's more points in
2 support of this argument.

3 THE COURT: You don't need any more support.

4 MS. MONACO: I will take the win and go if you don't
5 want to hear about their waiver of statute of limitation and
6 all the other things.

7 MR. FORGE: Your Honor, again, because we've limited
8 to Bextra and because we're talking about a drug that has been
9 off the market for over nine years, the additional details
10 regarding Ms. Holloway's involvement in the marketing of
11 Bextra, there is not a reasonable possibility that it's going
12 to be used to incriminate her because again --

13 THE COURT: How do we know, Mr. Forge? It seems to me
14 that your interest in, if you are interested in her, the
15 government could be interested in her and would support what
16 Ms. Monaco has concern about. And if she has such limited
17 scope it argues against your need to take her testimony. You
18 have a need to take her testimony. It argues for the relevance
19 of her testimony. And relevance of the testimony supports
20 Ms. Monaco's argument that there are some legitimate if perhaps
21 theoretical concerns.

22 MR. FORGE: Your Honor, if she simply confirms what
23 she said in her own sentencing memo that is very helpful to us.
24 Let me just read you a portion that's in her supplemental memo.

25 THE COURT: But confirmation is relevant to the issue

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1 that I just raised before of the fear of inconsistency. She
2 has a right to take a --

3 MR. FORGE: Except, your Honor --

4 THE COURT: The case does not limit it. It's a
5 constitutional right. And if the case law as I remember it
6 gives scope to the witness so that the witness has a fear of
7 potential incrimination and there is some basis to the witness'
8 fear, the witness wins.

9 MR. FORGE: May I make two more points?

10 THE COURT: But you have another point after that. If
11 she does refuse to testify and the point is relevant, the case
12 of Brinks against the City of New York and others will support
13 an adverse inference.

14 MR. FORGE: I agree with your Honor on that. And we
15 have a record that she has refused to testify.

16 THE COURT: So why do you need more? You have it
17 right now. We're doing it.

18 MR. FORGE: Certainly, I agree with your Honor we have
19 enough through the adverse inference instruction. I am not
20 going to tell you that's not helpful. It is helpful.

21 THE COURT: So aren't you better off?

22 MR. FORGE: I still think we would with be better off
23 with the testimony. As between nothing and the testimony, yes,
24 it's a nice compromise and I see where your Honor's going with
25 this.

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1 THE COURT: Let's go on to another point. Any other
2 points?

3 MS. MONACO: May we be excused, your Honor? That was
4 the only thing we had.

5 THE COURT: But you haven't made a representation that
6 Ms. Holloway -- let me double back. There is some law -- is
7 Ms. Holloway here?

8 MS. MONACO: Yes, your Honor.

9 THE COURT: There is some law that says she actually
10 has to stand up and make that representation.

11 MS. MONACO: She has done so, your Honor. At the
12 first deposition in this matter she sat for several hours and
13 took the Fifth. That was in July.

14 THE COURT: Would you permit me to make a call? I am
15 sorry. It'll take two minutes.

16 (Recess)

17 THE COURT: Now you say that she's already done that
18 with the deposition.

19 MS. MONACO: She had a deposition of several hours in
20 2013 where she invoked as to the same questions that were
21 presented by Mr. Rosen. Mr. Forge wasn't part of that
22 deposition but Pfizer was present.

23 THE COURT: Tell me, Ms. Monaco, if she were asked
24 questions on each of the subjects described in the four
25 paragraphs of this letter, would she take the Fifth Amendment

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1 on all such questions?

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MS. MONACO: Yes, your Honor.

THE COURT: Is that a satisfactory representation, Mr. Forge?

MR. FORGE: Yes, your Honor. If I could just give the same confirmation that I submitted to --

THE COURT: Ms. Monaco.

MS. MONACO: She, yes, would take the Fifth to those exhibits and to the cross-examination topics proposed by Pfizer.

THE COURT: Mr. Farina, how about you?

MR. FARINA: Your Honor, I just want to be heard on one small point. We're not taking a position on her assertion her Fifth Amendment rights. She has told us that she would take the Fifth Amendment, exercise here right to any questions that we asked as well, she's made that clear to us and we accept that.

One thing your Honor said in discussing this issue with Mr. Forge, we don't believe since Ms. Holloway is no longer an employee of Pfizer and we don't control her that her assertion of her Fifth Amendment rights now or in 2013 could give rise to any inference against Pfizer.

THE COURT: You both have to brief that issue. I spoke on the basis of my recollection several years old against the city and I know there were one or two other case that

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follow that, so the parties will have to brief that.

MR. FARINA: That's fine, your Honor.

THE COURT: Now there are defendants. I see them clustered at the back of the courtroom as if to be invisible.

Transcript.txt

5 How do I know what are their positions are going to be?

6 MR. FARINA: I think they will all speak up if they
7 have anything to add but I believe --

8 THE COURT: Ms. Birnbaum, since I know you and trust
9 you would you take a poll of your colleagues and let me know
10 what the --

11 MS. BIRNBAUM: I think we are all sitting very quietly
12 right now, your Honor.

13 THE COURT: This is Sheila Birnbaum.

14 MS. BIRNBAUM: Sheila Birnbaum. Thank you, your
15 Honor.

16 THE COURT: So what is the answer?

17 MS. BIRNBAUM: We all think that this is the right
18 way.

19 THE COURT: No. You all will accept the plea of the
20 Fifth Amendment as made?

21 MS. BIRNBAUM: Yes.

22 THE COURT: OK. All right. So I think we're resolved
23 I ruled that plea is proper and made in good faith. Anything
24 else for today?

25 MS. MONACO: Thank you. May we be excused?

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1 THE COURT: One minute. Anything else for today?

2 MR. ROSEN: Your Honor, Henry Rosen for the
3 plaintiffs.

4 We had a filed stipulation last week on the procedures
5 for giving notice to the class. And I didn't know if your
6 Honor meant to take that issue up today or not but the parties

7 have stipulated and submitted an order that is --

8 THE COURT: I know you have. There's an accumulation
9 on my desk that I haven't gotten to. There's no objection to
10 that notice.

11 MR. ROSEN: No, there isn't, your Honor.

12 THE COURT: You are excused, Ms. Monaco.

13 MS. MONACO: Thank you, your Honor.

14 THE COURT: I'll try to sign it this afternoon.

15 MR. FARINA: Your Honor, we have one housekeeping
16 matter. We filed our motion for summary judgment this morning.
17 The other defendants did as well. We also filed a Daubert
18 motion. I am happy to work out a briefing schedule with the
19 counsel for the plaintiffs but we would like if at all possible
20 to set a hearing on those motions in the first or second week
21 of December if that was --

22 THE COURT: Set a hearing, I don't know if I need it
23 or want it. I am not sure I can get to the motion before trial
24 begins.

25 MR. FARINA: Your Honor, we have a pretrial conference

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1 set for January 2. We were hoping --

2 THE COURT: I'll do my best. There are a number of
3 things that are emergent and I can't promise you. On the
4 Daubert though, what is the nature of the issue?

5 MR. FARINA: Well, there are going to be other Daubert
6 motions in the nature of in limine motions for trial. This one
7 is particularly important because it goes to critical summary
8 judgment argument and that goes to lost causation. And in fact
9 there was another securities case in this district that was

10 just dismissed involving Pfizer on the very same grounds. We
11 believe their lost causation expert has offered an opinion that
12 is completely at odds with the plaintiff's own allegation and
13 the law in this circuit and we have front loaded that
14 particular Daubert motion. We'd like to have a hearing on that
15 as well and that is one of the grounds for summary judgment
16 made by all of the defendants.

17 THE COURT: Let's suppose, Mr. Rosen, I grant
18 Mr. Farina's motion with regard to that particular expert; does
19 that kill your case?

20 MR. ROSEN: Yes, your Honor.

21 THE COURT: So he needn't waste his time making motions
22 for summary judgment.

23 MR. ROSEN: Well, your Honor, we do see a lot of
24 duplication. There's a lost causation section in every one of
25 the seven summary judgment motions that were filed. They

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1 actually filed a motion in limine.

2 THE COURT: But have you one expert on lost causation?

3 MR. ROSEN: Correct, your Honor.

4 THE COURT: The lost causation is critical to your
5 case?

6 MR. ROSEN: Correct, your Honor.

7 THE COURT: So if I hold that this expert is not
8 really an expert and can't be testifying, that kills your case?

9 MR. ROSEN: If I have to admit that again, your Honor,
10 yes, that's correct.

11 THE COURT: Mr. Farina is just wasting his time making

12 a motion for summary judgment. Unless you want me to advance
13 this because it has an implication on all kinds expenses, I
14 wouldn't plan to.

15 MR. ROSEN: We think that your Honor's feelings on
16 lost causation issue were well stated in prior hearings and we,
17 obviously, I don't agree with anything he said about our expert
18 or his characterization of the allegations in the complaint.

19 THE COURT: You should remind me of what I said that
20 was so useful to you.

21 MR. ROSEN: You said that --

22 THE COURT: Not now. You'll only forget again. So I
23 don't know what point there is in doing this.

24 MR. FARINA: Your Honor, it is one of the grounds of
25 summary judgment. There are additional grounds for summary

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1 judgment.

2 THE COURT: Yeah, but you don't need to advance those
3 grounds if you win the motion.

4 MR. FARINA: That is true. We can win on multiple
5 grounds and we'd like to be heard.

6 THE COURT: So spend some time on the other grounds.

7 MR. FARINA: Your Honor, we would like to have a
8 hearing though including an evidentiary hearing if possible.

9 THE COURT: Just make your motion and it'll come on in
10 due course. I have no rules of when motions can be made. The
11 only hearing so far is the final pretrial conference.

12 MR. FARINA: Your Honor, we filed today all of the
13 motions that we would like heard in advance of the pretrial
14 conference and we think that it would if not moot the pretrial

15 conference at least narrow the issues. There are a number of
16 intermediate deadlines that the parties are working towards for
17 the pretrial conference.

18 THE COURT: This is a 2010 case. I am not going to be
19 pushed into ordering a hearing at the last minute in short
20 order. I've got different kinds of needs and requirements and
21 I can't do it. If I find I can, I will. I'll let you know.
22 So work out a briefing schedule and the papers will come and
23 I'll enter it, OK.

24 MR. ROSEN: Thank you, your Honor.

25 MR. CARLINSKY: Your Honor, Michael Carlinsky, with

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1 Sheila Birnbaum, from Quinn Emanuel.

2 Your Honor, we represent defendant Ian Reed who is the
3 current CEO of Pfizer and while we join in the motion, both the
4 Daubert and summary judgment motion and Pfizer files which
5 attacks, obviously, the expert on causation, in the case of
6 Mr. Reed the -- even if the Daubert expert were found to be a
7 proper expert and could give an opinion, we have a separate
8 lost causation argument because the allegations against
9 Mr. Reed have nothing to do with Bextra. They are -- the
10 allegations are that Mr. Reed made oral statements at three
11 analyst conferences regarding two wholly unrelated drugs.

12 The plaintiff's expert in his opinion, his report and
13 in his deposition testimony states that there was a corrected
14 disclosure on January 26, 2009 and it was completely corrected
15 that is there was no more inflation. That disclosure on
16 January 16 says nothing about these two other drugs that the

17 plaintiffs claim were the basis of the misleading statements by
18 Mr. Reed.

19 So I mention that, judge, just to illustrate the point
20 which is we are in the case, obviously, representing Mr. Reed.
21 And the individual defendants all have their own counsel but we
22 don't think Mr. Reed belongs to be in the case. He's situated
23 quite differently given that there is no allegation that he
24 made any statements about Bextra. He wasn't the CEO during the
25 class period. He didn't sign any of the public filings. The

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Conference

1 only thing that's alleged against him is he made three oral
2 statements regarding these two drugs, which the market and
3 their expert concedes, was never something that was part of any
4 corrected disclosure. So we think regardless of what happens
5 on the expert, based on the company's motion, we have a
6 different basis where the Court could say based on clear Second
7 Circuit precedent there's no lost causation.

8 THE COURT: So I'm fascinated but what do you want me
9 to do about this?

10 MR. CARLINSKY: All I am asking for, judge, is if
11 there is a way to be heard so we know whether we're going --

12 THE COURT: January 31 I'll hear you.

13 MR. CARLINSKY: OK. But obviously that means we have
14 to be getting ready for trial which is --

15 THE COURT: That's the idea.

16 MR. CARLINSKY: I recognize that, your Honor.

17 THE COURT: That's what you undertook when you came
18 into the case.

19 MR. CARLINSKY: It is but I was also --

Transcript.txt

20 THE COURT: That's why they hired you.

21 MR. CARLINSKY: It is or the least to try to get a
22 hearing ahead of time so we can get -- before the Court.

23 THE COURT: What I said to Mr. Farina applies to you,
24 sir.

25 Anything else? OK. Thanks very much.
(Adjourned)

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