

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

IN RE: RISPERDAL® LITIGATION :
March Term, 2010, No. 296 :
:
PHILLIP PLEDGER, by BENITA : APRIL TERM 2012
PLEDGER, as Guardian of his :
Person and Conservator of his :
Estate, :
Plaintiffs, :
:
v. :
:
JANSSEN PHARMACEUTICALS, INC., :
JOHNSON & JOHNSON COMPANY, :
and Janssen Pharmaceutical :
Research and Development, :
L.L.C. :
Defendants : NO. 01997

TUESDAY, FEBRUARY 3, 2015

**VOLUME VII
MORNING SESSION**

COURTROOM 425
CITY HALL
PHILADELPHIA, PENNSYLVANIA

B E F O R E: THE HONORABLE RAMI I. DJERASSI, J.,
and a Jury

REPORTED BY:
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CERTIFIED REALTIME REPORTER
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(Hearing is reconvened at 9:43 a.m., and the following transpired in open court:)

MS. SULLIVAN: Your Honor, the Plaintiffs alerted us last night that they are dropping Dr. Goldstein, their causation expert, and would like to substitute an expert. I submit, Your Honor, that's a violation of Pennsylvania Rule of Civil Procedure 4003.5, which says that an expert whose identity is not disclosed in compliance with the discovery rule "shall not be permitted to testify on behalf of the defaulting party at trial. However, if the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting party, the court may grant a continuance or other appropriate relief."

I submit, Your Honor, that the Plaintiff sending an expert to Alabama when he was not licensed under applicable Alabama law is not extenuating circumstances. I request that Your Honor exclude the new expert. It would be dramatically an unprecedented

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evidence that he consulted with an Alabama doctor. They caused this problem. We should not be punished. We complied with the law, they did not. Unprecedented and dramatic prejudice to switch their major causation expert --

THE COURT: Ms. Sullivan, I haven't heard anything yet from the Plaintiff formally. Let's hear from the Plaintiff and then we will look at the situation in the context of what is planned other than causation testimony today.

MR. KLINE: Good morning, Your Honor.

THE COURT: Good morning.

MR. KLINE: Dr. Goldstein has gone home, he is no longer in Philadelphia. Per the Court's discussion with us yesterday, I had a discussion with him. There are just a series of complicating factors which are -- which he cannot be exposed to. And so I put in the works, per the Court's directive that I could have another expert, that which will be done today.

The Plaintiff will be examined, I

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prejudice to us. We have framed our whole case, our opening, our cross-examination is based on their causation theory of this expert. Our experts have been lined up for a year in response to their causation expert and his report. They have specifically referenced findings and material in their expert's report. This dramatically changes the face of the entire case, and so I request that Your Honor exclude the witness.

If Your Honor is inclined not to, the Defendants would request a mistrial in light of the circumstances and the significant prejudice. And also, Your Honor, we submit that no additional witnesses should be called in light of the fact that we don't even have any report, and so we are going to have witnesses testify when we are cross-examining witnesses without notice of the theory of the case. This is unprecedented.

We did not cause this situation, Your Honor, it came to our attention when they tried to hide Dr. Goldstein behind this de bene esse issue. They did not produce any

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expect a report tomorrow, I expect to have the expert testify Thursday.

The surprise and prejudice which is mentioned here is down right silly. The theory of the case, Plaintiff's case has always been and will remain that this boy has gynecomastia as a result of this drug Risperdal, and the bases are also well-known. My word, we have been at this for years. And they knew about this issue, as the Court knows, a year ago and they are the ones who sat on it in ambush, and all I did last night was follow the Court's directive, and I am in the process, at my client's cost, prejudice, and inconvenience, to be examined and to have a new expert report.

The rule that Ms. Sullivan cites, right in that rule, the part she didn't emphasize, gives the Court considerable latitude, and indeed, the Court exercised that discretion.

THE COURT: Which rule are we discussing here?

MS. SULLIVAN: Your Honor, this is Pennsylvania Rule of Civil Procedure 4003.5.

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THE COURT: I am looking at it.

All right, so the first question is, what is planned for today?

MR. KLINE: The plan for today, Your Honor, is to call the sales representative Mr. Gilbreath. I have considerable examination for him. And to the extent that we complete that, I am prepared to put the mom on as well. I want to push the case forward.

MS. SULLIVAN: The problem, Your Honor, with that, without even knowing -- if the Court is going to permit this --

THE COURT: I have not ruled on anything, and we are going to hold it under advisement, but we are going to continue now. We have a jury waiting.

MS. SULLIVAN: Your Honor, we would object to that and move for a mistrial.

THE COURT: Either they have the causation evidence or they don't. If they don't, it will be a nonsuit. So therefore --

MS. SULLIVAN: Your Honor, it's significant prejudice --

THE COURT: Ms. Sullivan. Bring in the

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are now proceeding with Plaintiff's next witness.

MS. SULLIVAN: I object to that, Your Honor, and move --

THE COURT: Mistrial is denied. There is nothing on this record yet the Court has decided that has been prejudicial that I can see to the Defendant in this matter. The Plaintiff is entitled to bring witnesses in the order they see at this time.

MS. SULLIVAN: And I would move for a stay of that, Your Honor, because we don't have a causation expert anymore in this case.

THE COURT: Sit down.

MS. SULLIVAN: You are denying a stay, Your Honor?

THE COURT: A stay of what?

MS. SULLIVAN: A stay of --

THE COURT: I am denying a stay as to the order of the witnesses of the Plaintiff.

MS. SULLIVAN: Thank you, Your Honor.

THE COURT: I will also remind both parties that this particular matter is more complicated than it seems at first because of

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jury.

MS. SULLIVAN: It's significant prejudice, Your Honor, it goes to the timing and onset. The entire case was framed around this expert's opinion. We object to --

THE COURT: The order of admission of witnesses is up to the Plaintiff or the Court.

MS. SULLIVAN: But, Your Honor --

THE COURT: And I am permitting right now new testimony with the jury waiting at ten of 11 from whoever the Plaintiff wants to bring that's admissible. That's the ruling of the Court. Please sit down.

MS. SULLIVAN: Your Honor, the direct and cross examination would differ depending on the causation expert they have.

THE COURT: I am sorry, this is your motion.

MS. SULLIVAN: And, Your Honor, I move for mistrial and I move for a stay of Your Honor's ruling so we can take it up to the Superior Court.

THE COURT: I haven't made any ruling. I said I will hold it under advisement. We

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the late filing of the motion that defense filed yesterday on the eve of the testimony of Dr. Goldstein. It is more complicated; there are provisions for extraordinary circumstances in Rule 4003.5, and also, there are provisions there. "Upon cause shown, the court may further order discovery by other means, subject to such restrictions as to scope and such provisions concerning fees and expenses as the Court may deem appropriate." That is at 4003.5(2).

We will review the matter and hold it under advisement.

I will say this, though, if it's possible to prove causation through existing witnesses, that is also acceptable to this Court. From what I have seen, because I have read Dr. Goldstein's expert report, there are two aspects of his expert opinion, one has to do with the effect of Risperdal generally, and one specifically as to this client. You may be able to prove it by inferential evidence, circumstantial evidence, I just don't know.

(The jury enters the room at 9:53 a.m.)

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1 discussion was held.)
 2 **THE COURT:** I'm going to ask you to
 3 look at the transcripts from yesterday. But
 4 I am certain that I made no ruling yesterday
 5 other than to deny the motion to exclude.
 6 Off the record.
 7 - - -
 8 (Whereupon an off-the-record
 9 discussion was held.)
 10 - - -
 11 **THE COURT:** All right. We'll excuse
 12 the jury.
 13 - - -
 14 (Whereupon an off-the-record
 15 discussion was held.)
 16 - - -
 17 (Whereupon the sidebar discussion was
 18 suspended.)
 19 (Whereupon a short recess was taken.)
 20 - - -
 21 **THE COURT:** All right. Marianne,
 22 let's bring the jury in. We're going to
 23 dismiss them and then we're going to have the
 24 argument here.
 25 **COURT CRIER:** Yes, Your Honor.

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1 (Pause.)
 2 **COURT CRIER:** May I, Your Honor?
 3 **THE COURT:** Yes.
 4 **COURT CRIER:** All rise as the jurors
 5 enter the room.
 6 - - -
 7 (Whereupon the jury entered the
 8 courtroom at 3:30 p.m.)
 9 - - -
 10 (The following transpired in open
 11 court in the presence of the jury:)
 12 - - -
 13 **THE COURT:** All right. Please be
 14 seated.
 15 All right. Members of the jury,
 16 there's always a wrinkle in everything, and
 17 that's like a snow day, and that's what's
 18 happening to us right now as far as -- we're
 19 going to continue this matter until tomorrow,
 20 okay? We're going to continue the case till
 21 tomorrow. There's some legal discussions
 22 that need to be made, and right now we think
 23 that -- or I think anyway that the best time
 24 to do it is right now.
 25 So instead of going forward with the

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1 continuation of the examination of
 2 Mr. Gilbreath, we will wait on that till
 3 tomorrow morning and you are excused for the
 4 rest of the day, okay? How about that.
 5 All right. Now, wait, wait. This is
 6 a reminder, this is a reminder again that the
 7 same rules, same instructions apply, all
 8 right? This is like an early dismissal.
 9 Wear the yellow badges, okay? Please
 10 remember to keep an open mind about the case.
 11 Far from over. And also to make sure that
 12 you do not discuss this case with anybody or
 13 be involved in any way with the TV, media,
 14 Internet, radio, newspapers, magazines.
 15 Anything that might have to do with this
 16 case, please ignore it or don't even look at
 17 it, how's that? Okay. Thank you.
 18 See you tomorrow. Try to be here for
 19 9:30.
 20 **COURT CRIER:** All rise as the jury
 21 exits.
 22 - - -
 23 (Whereupon the jury exited the
 24 courtroom at 3:32 p.m.)
 25 - - -

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1 (The following transpired in open
 2 court outside the presence of the jury:)
 3 - - -
 4 **THE COURT:** All right.
 5 Mr. Gilbreath, you are excused till tomorrow
 6 as well. You're still under oath and you're
 7 also still under this examination, so I'm
 8 going to ask you not to discuss this case now
 9 with any lawyers whatsoever --
 10 **THE WITNESS:** Okay.
 11 **THE COURT:** -- involved in this case.
 12 **MR. KLINE:** Or any Janssen people.
 13 **THE COURT:** Or any lawyers; or any
 14 people from your employer.
 15 **THE WITNESS:** Okay.
 16 **THE COURT:** Okay?
 17 **THE WITNESS:** Agreed.
 18 **THE COURT:** All right. Thank you.
 19 You're excused.
 20 **THE WITNESS:** Thank you.
 21 (Witness excused.)
 22 **THE COURT:** All right. You may be
 23 seated everybody.
 24 As soon as we have this door closed.
 25 All right. This is now a follow-up

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1 on the discussion first raised yesterday by a
 2 motion that had been filed on -- when was
 3 that filed formally, Mr. Murphy? You're
 4 talking about the Defendants, Janssen
 5 Pharmaceuticals, Johnson & Johnson Bench
 6 Memorandum.
 7 **MR. MURPHY:** It was filed yesterday,
 8 Your Honor.
 9 **THE COURT:** Yesterday being
 10 February 2nd.
 11 **MR. KLINE:** In the afternoon.
 12 **THE COURT:** In the afternoon.
 13 I'm not clear, to be very clear, how
 14 much time the plaintiffs had in order to
 15 review that document.
 16 How much time did you have in order
 17 to review that document?
 18 **MR. KLINE:** None. I was handed the
 19 document and the Court at -- sometime, I
 20 believe, after the noon hour. And I
 21 literally was reviewing it while I was
 22 dealing with Dr. Kessler's testimony.
 23 **THE COURT:** All right.
 24 **MR. KLINE:** I had no time at all.
 25 **THE COURT:** So without a doubt, there

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1 was no time for any office study of that
 2 particular document?
 3 **MR. KLINE:** None. I can tell the
 4 Court what I did was I looked at it for the
 5 first time then and assessed it, but had no
 6 time to do any -- to do anything.
 7 **THE COURT:** All right.
 8 **MR. MURPHY:** Your Honor --
 9 **THE COURT:** Please be seated.
 10 I am laying out the scenario for the
 11 record and also for review and for
 12 resolution.
 13 **MR. MURPHY:** Your Honor, just if I
 14 may. I understand.
 15 **THE COURT:** Yes, sir.
 16 **MR. MURPHY:** It was not formally
 17 filed.
 18 **THE COURT:** Pardon me?
 19 **MR. MURPHY:** It was not formally
 20 filed. It was handed up as a bench memo to
 21 you when it was provided to counsel.
 22 **THE COURT:** All right. Well, that
 23 makes it even clearer then as to the
 24 resolution of this matter.
 25 **MS. SULLIVAN:** And, Your Honor, the

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1 issue is joined by the de bene esse.
 2 So what happened here is, there was a
 3 statute always on the books in Alabama.
 4 **THE COURT:** No, no. I'm not getting
 5 to the merits yet. I'm right now just laying
 6 out what happened, because now I'm being told
 7 this motion wasn't even formally filed, even
 8 though it was considered and ruled on by this
 9 Court.
 10 **MS. SULLIVAN:** Well, Mr. Murphy filed
 11 it -- or he moved orally, Your Honor, to
 12 exclude it.
 13 **THE COURT:** I think I was handling it
 14 as if it were an oral motion. But at the
 15 same time, it is clear that the plaintiff did
 16 not have an opportunity to review the actual
 17 document or to study it for any ramifications
 18 as to what may -- might occur if this matter
 19 was resolved without its complete review.
 20 The reason I say that is because
 21 ultimately this Court made a ruling without
 22 the benefit of plaintiff's argument on the
 23 procedural aspect of this filing -- or this
 24 motion.
 25 And this Court ruled that it was

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1 untimely according to the case management
 2 order, which was an argument never made by
 3 the plaintiff. And I now believe that my
 4 ruling on this matter was unripe for actual
 5 decision because the particular grounds that
 6 I found it on was not argued by plaintiff and
 7 may in fact be prejudicial to their interests
 8 in this case.
 9 Therefore, I vacate that order of
 10 yesterday. And this particular matter,
 11 Defendant Janssen, if you wish it considered,
 12 you may have it considered, if it has been
 13 filed or not filed. If it's been reviewed by
 14 this Court, I consider it to be filed. And
 15 I'm prepared to hear argument on this
 16 particular motion at this time.
 17 Because I presume by now plaintiffs
 18 have had the chance, the opportunity to
 19 review this document and be prepared for this
 20 particular matter.
 21 Is that correct, Mr. Kline?
 22 **MR. KLINE:** No, it would not be
 23 correct. I'll tell you why, Your Honor,
 24 because -- because -- because the Court --
 25 I -- the Court said specifically: "And for

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1 that reason I will" -- and I'm talking about
 2 Page 141 of the transcript. The Court
 3 said -- and I will -- and I will talk about
 4 the merits in a moment, if I may.
 5 **THE COURT:** Well, let me -- I don't
 6 mean to cut you off exactly, but I know what
 7 I said, which is I would provide the
 8 plaintiff with a remedy, which I am doing.
 9 **MR. KLIN:** I think I could prove to
 10 the Court that I deserve a remedy under the
 11 merits.
 12 **THE COURT:** That's exactly where
 13 we're going, Mr. Kline.
 14 **MR. KLIN:** Okay.
 15 **THE COURT:** If you allow me to follow
 16 up.
 17 I never promised that I was going to
 18 allow a new expert witness to testify or be
 19 examined unless we had such an order. You do
 20 not have such an order now.
 21 What I did provide was -- and it's
 22 all over the record yesterday -- that you
 23 were the victim of unfair surprise in the
 24 filing of that particular motion to exclude a
 25 particular witness when the facts known

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1 concerning that witness were known as early
 2 as a motion to exclude back in March of 2014.
 3 So from that point of view, I am
 4 vacating the order that I made yesterday.
 5 This particular motion on the merits is on
 6 the table, and that's where we are.
 7 **MR. KLIN:** Okay.
 8 **THE COURT:** You ready to proceed?
 9 **MR. KLIN:** I think even I get it.
 10 **THE COURT:** Okay.
 11 **MR. KLIN:** I'm sometimes accused of
 12 being a little slow and sometimes not.
 13 Your Honor, for the record, I plan to
 14 argue this motion, but I would like to
 15 reserve, if I'm not persuasive enough on
 16 this, I would say to the Court that based on
 17 what happened yesterday -- not to recite
 18 everything -- I certainly did nothing but
 19 devote my energies to getting a new expert.
 20 So just so you know, I haven't been
 21 pouring over their papers.
 22 **THE COURT:** No; I understand that.
 23 **MR. KLIN:** I viewed their papers
 24 as --
 25 **THE COURT:** I understand. But you

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1 were -- I don't mind on the record now a
 2 complete procedural review of the issue
 3 involving Dr. Goldstein and Alabama and the
 4 ethical or criminal rules down there and the
 5 knowledge that was involving the parties.
 6 Obviously this matter is going to be
 7 reviewed. I have no problem with it being
 8 reviewed, but I do want a fair trial. No
 9 surprises.
 10 **MR. KLIN:** All we wanted ever was a
 11 fair trial, Your Honor.
 12 And I might add, it is the most
 13 difficult, laborious task to try a case
 14 against a pharmaceutical company. I'll start
 15 with that. And it is about the most
 16 challenging professional experience that a
 17 plaintiff's lawyer could have. Because right
 18 here as we're sitting here, according to
 19 their records, there are 12 lawyers who get
 20 the live feed and in the courtroom. So make
 21 no mistake about it, this is not easy
 22 business.
 23 Now, I've never been in this position
 24 before, Your Honor. I've been doing this 37
 25 years and I've never been in this position,

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1 never. Never heard of it, frankly, before
 2 yesterday, this attempt to sabotage the case.
 3 I've heard Ms. Sullivan say at least
 4 a half a dozen times some utter, complete
 5 nonsense about we were tipped off to this the
 6 first time that they wanted to take a
 7 deposition. I want to start there.
 8 We wanted to take -- that has nothing
 9 to do with anything. I had a science teacher
 10 at Albright College who said, What does that
 11 have to do with the price of peas in Peru?
 12 Used to say that all the time. Has nothing
 13 to do with the price of peas in Peru.
 14 What that was all about -- and you
 15 need to understand the background -- was
 16 Dr. Goldstein who is a physician in Missouri,
 17 out of this venue and out of this
 18 jurisdiction, I might add -- and not within
 19 my subpoena power either -- came here all
 20 last week and sat around. And I might add, I
 21 would be unhappy if I sat around all week
 22 while another witness testified. And I
 23 cajoled him into coming back after, to come
 24 back, and I wanted to take a deposition of
 25 him, not because I knew some nefarious --

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1 like I had some nefarious plot in my mind.
 2 I'll represent to you as an officer
 3 of the court I didn't have any idea that
 4 there was any issue about this witness,
 5 despite all of the pretrial contact, despite
 6 all of the litigation, and I might add, sir,
 7 despite all of the rancor and difficulty it
 8 is to deal with the other side in this case.
 9 And maybe we're a little difficult
 10 too. But, my word, we can't get anything.
 11 We can't agree on the -- on the time of day
 12 sometimes.
 13 Now -- and that's part of the
 14 difficulty and challenge. But they never
 15 once said anything about this or they never
 16 once say we have a problem or we have an
 17 issue with your expert or anything.
 18 They want to say that because I
 19 wanted to de bene esse him -- by the way,
 20 what I wanted to do was -- and, by the way,
 21 if you notice, Your Honor ruled against me on
 22 that before I could even say anything.
 23 **THE COURT:** Absolutely. Absolutely.
 24 **MR. KLINE:** And, by the way, I didn't
 25 try to say anything because I understand, by

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1 the way.
 2 **THE COURT:** Well, that, for the
 3 record, is a decision that this Court made
 4 not to permit a motion for Dr. Goldstein to
 5 have a videotaped deposition, trial
 6 deposition done at 6 o'clock p.m. last night
 7 after a full day of trial. Yes, I ruled that
 8 out of hand.
 9 **MR. KLINE:** Okay. I didn't -- you
 10 didn't hear me arguing about it or anything.
 11 **THE COURT:** Right.
 12 **MR. KLINE:** But I do want to tell the
 13 Court what was going on.
 14 The man -- there's nothing
 15 nefarious -- it's against my interest to have
 16 him on videotape, against my interest. But
 17 you know what, I wanted to make sure that I
 18 got him in and out of town and I got it
 19 preserved. And, frankly, he's the causation
 20 expert. He's a half-an-hour witness. He's a
 21 "Good morning, Doctor, do you know, have you
 22 examined the boy?" "Have you done the" --
 23 "Witness: Do you believe the boy's
 24 gynecomastia was caused by this?" "Do you
 25 know and understand and appreciate the

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1 medical literature?"
 2 And, of course, knowing me by now,
 3 Your Honor, you know I'll say something like,
 4 "And did you know this drug was worse than
 5 any other drug in producing gynecomastia?"
 6 And then they would cross-examine him either
 7 on a video or not.
 8 Your Honor said we couldn't do that,
 9 okay. So I was prepared --
 10 **THE COURT:** Not on video anyway, no.
 11 **MR. KLINE:** So I was prepared. I had
 12 him in town.
 13 **THE COURT:** Not at that hour.
 14 **MR. KLINE:** What's that?
 15 **THE COURT:** Not on video and not at
 16 that hour, the night before the trial.
 17 **MR. KLINE:** Okay. No, no. I'm not
 18 complaining.
 19 **THE COURT:** That's right.
 20 **MR. KLINE:** But I do want you to know
 21 and understand that contrary to what she
 22 represents, which is often, frankly, a
 23 misrepresentation --
 24 **MS. SULLIVAN:** Here we go.
 25 **MR. KLINE:** -- when she says -- what

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1 she tries to say to the Court is that there's
 2 some way that I knew that my witness was like
 3 a felon and I wanted to hide it, like she
 4 couldn't ask the question on a videotape
 5 under bright lights. It's palpably absurd.
 6 Now, I had him here -- this is an
 7 important part on the merits. I had him here
 8 in Philadelphia, prepared to testify Tuesday
 9 morning until they -- and, by the way, had I
 10 put him on, had I put him on the witness
 11 stand, they presumably could have said to
 12 him, Dr. Goldstein, did you know -- right
 13 here, right in this seat, they could have
 14 said, Dr. Goldstein, did you know that you
 15 were violating Alabama law? And they could
 16 have made him look foolish if they thought
 17 they could. They could have said a whole
 18 bunch of stuff. I would have objected. I
 19 think the Court would have kept it out
 20 because there's no -- because that statute --
 21 please, just if you'd indulge me, Your Honor,
 22 I would appreciate it.
 23 **THE COURT:** No, no, no. The issue
 24 from -- we researched this issue overnight.
 25 Unless there's some issue of competency, it

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1 would have been permitted in this Court most
 2 likely.
 3 **MR. KLINE:** Okay. So there you have
 4 it.
 5 Now, the issue on -- the issue on --
 6 **THE COURT:** His testimony would have
 7 been permitted most likely since I have not
 8 seen anything that would have ruled out his
 9 competency to testify. The weight of it,
 10 absolutely, but not the competency.
 11 **MR. KLINE:** Okay. Now, on the
 12 merits, to continue on the merits, and I'm
 13 going to cite the rule to the Court as well.
 14 On the merits, so where we are is we
 15 then have a hearing or we have a discussion
 16 about it, and the record says what it says.
 17 And I don't want to fight with Your Honor
 18 about this, but it does say [reading]: And
 19 for that reason I will permit a new report or
 20 a new IME. [reading]: Or we can have the
 21 doctor conduct another investigation over the
 22 next week will be permitted.
 23 And it was further said -- that was
 24 on Page 141 of yesterday's testimony. It was
 25 further said [reading]: I would give the

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1 subjected to this. They started this fight,
 2 Your Honor. They injected this -- this
 3 Molotov cocktail into this litigation on the
 4 eve before he's going to testify.
 5 Now, what's a fair remedy, under all
 6 these circumstances? That's really what you
 7 have to --
 8 **THE COURT:** No. What's a fair remedy
 9 under the law is where we're going.
 10 **MR. KLINE:** Okay. Of course. Under
 11 the law and the rules, of course. Of course.
 12 First of all, first of all, this is
 13 the way I see it: I think I have a pretty
 14 good understanding of the appellate law of
 15 this state. Since I was a law clerk for the
 16 Honorable Thomas Pomeroy in 1978, I think I
 17 have a pretty good understanding of what's
 18 discretionary and what's not. And it is my
 19 view, Your Honor, for what it's worth in your
 20 consideration, that what you have here is a
 21 discretionary ruling to be applied under a
 22 discretionary rule on the merits. And what
 23 we have is they've asked to knock him out.
 24 Their -- they want to have it both ways.
 25 They don't want to file the motion and then

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1 plaintiff the opportunity to have a new IME
 2 produced because of the untimeliness of your
 3 motion.
 4 Now, I want to talk merits. I don't
 5 want to go back there. But I do want to tell
 6 you where I stand and what happened to me as
 7 counsel -- and I would add, however this
 8 cuts -- hardly inexperienced counsel, I would
 9 concede.
 10 And so where this cuts is, okay, so
 11 I'm now told what I can do by a court. And
 12 so I would never -- I won't do it then, and I
 13 won't do it now, I won't be part of
 14 subjecting Dr. Goldstein, a nice man of
 15 50-some-year practitioner, or 50 years I
 16 think he told me, I'm not sure the exact
 17 math, a sweet man, I might add, and somebody
 18 who is going to spend the rest of his life
 19 doing this. His wife's a lawyer, by the way.
 20 And so he doesn't only have me, he's got, as
 21 I like to say, a lawyer in the bedroom. And
 22 he is under a cloud by what they say.
 23 Now, there are a number of tentacles
 24 to this, including I don't want to get sued
 25 by the man. I don't want my client to be

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1 they ask in their bench memo for him to be
 2 disqualified because he's no longer competent
 3 to testify. And they don't file it in a
 4 timely manner. That's what they say in that
 5 motion.
 6 By the way, I haven't studied it, but
 7 I can read English. And what they say is
 8 that they should get the benefit of throwing
 9 him -- throwing him and, therefore, the
 10 plaintiff out of court because they
 11 discovered something a year ago, a year ago.
 12 Now, under that circumstance, their
 13 motion can be granted. Now, of course if
 14 their motion is granted, they asked to have
 15 this witness disqualified. Well, the logic
 16 of that should be he shouldn't be
 17 disqualified and then us left with nothing
 18 based on the conduct that we've had here by
 19 them, my word.
 20 What we are entitled to is to put on
 21 our case and get our case heard.
 22 Now, this abject silliness about the
 23 hammering of prejudice, oh, prejudice,
 24 prejudice, prejudice. My word, Your Honor.
 25 We're dealing with a team of 12 lawyers, with

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1 a lawyer who is seen and known to be among
 2 the most skillful in the country, and says
 3 so, by the way, herself.
 4 **THE COURT:** All right. You're no
 5 first-year rookie yourself.
 6 **MR. KLINE:** I'm not any first-year
 7 rookie, but I've never been in this position
 8 before, nor put in that position. I am no
 9 rookie, that's correct.
 10 I tried my first one of these, a
 11 Bendectin case 32 years ago -- a Dalkon
 12 Shield case 32 years ago in federal court. I
 13 volunteered for this one, "volunteered."
 14 Help Mr. Sheller, my friend.
 15 **THE COURT:** You don't pick your
 16 witnesses. That's what they used to say in
 17 criminal court when I was doing prosecution
 18 or defense. You don't pick your clients,
 19 okay.
 20 **MR. KLINE:** You don't -- well,
 21 actually I did pick my clients. When I
 22 examined this, I knew that that woman has a
 23 wonderful, beautiful son, and I felt that
 24 they deserved representation.
 25 **THE COURT:** Got it.

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1 **MR. KLINE:** Now, now, here's where we
 2 are --
 3 **THE COURT:** I understand the
 4 situation, believe me. I want to hear from
 5 the other side.
 6 **MR. KLINE:** Sure. I want to get to
 7 the end point on the merits.
 8 **THE COURT:** What is the remedy that
 9 you're proposing?
 10 **MR. KLINE:** End point on the merits.
 11 The simple solution is, based on
 12 their motion, which was to knock out our
 13 witness, based upon the Court's ruling on
 14 the -- I understand. It was a procedural
 15 ruling yesterday. I get that. But based
 16 upon where we are, the Court has to decide
 17 the following, I believe -- and, again, I
 18 didn't scour the books last night. I was
 19 doing other stuff in case that wasn't evident
 20 in the courtroom today.
 21 The rule that they cited -- and, by
 22 the way, there may be other applicable rules
 23 and I don't want to waive anything because I
 24 didn't come prepared to argue this exactly,
 25 but 4003.5(b), I believe. "An expert witness

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1 whose" -- and this may not be the only
 2 section that applies, or this may not --
 3 sorry. I'm trying to be careful.
 4 But if you just look at that section
 5 it says, "An expert witness whose identity is
 6 not disclosed in compliance with
 7 the subdivision" -- okay. We wouldn't have
 8 provided an expert -- "shall not be permitted
 9 to testify on behalf of the defaulting
 10 party."
 11 First of all, I'm not a defaulting
 12 party. But this does give you guidance, the
 13 next sentence, I believe. "The failure to
 14 disclose the identity of a witness" -- which
 15 is what they're basically saying, we wouldn't
 16 have had identity of this witness -- "is the
 17 result of extenuating circumstances."
 18 Well, my word, we couldn't have more
 19 extenuating circumstances than a motion by
 20 the defendant to knock out a witness that
 21 they sat on for a year.
 22 And it says here, "Is beyond the
 23 control of the defaulting party." I guess
 24 that would be me. It says here, "The court
 25 may grant a continuance" -- we don't want a

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1 continuance -- "or other appropriate relief."
 2 It's wide open. Other appropriate relief.
 3 Well, this is ripe for the other
 4 appropriate relief. If ever there were a
 5 discretionary call by a court on a matter, it
 6 would be this one.
 7 Now, last points. What would be the
 8 prejudice? Let's look at this. I'm going to
 9 get another expert, okay. The expert is
 10 going to provide a report under the rules. I
 11 can represent to the Court that the report
 12 will, I believe -- I'm hoping -- will be
 13 essentially consistent with the ultimate
 14 opinions of Dr. Goldstein.
 15 There's this kind of fantasy argument
 16 out there that they "structured" their whole
 17 case around that. Well, no one could believe
 18 that --
 19 **THE COURT:** It's a three-page report,
 20 from what I could tell, four pages.
 21 **MR. KLINE:** It is a report, yes, much
 22 of which would not have even been in
 23 evidence. I plan to put in --
 24 **THE COURT:** The only part of which
 25 that is really particular to your client is

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1 the diagnosis of gynecomastia?
 2 **MR. KLINE:** Gynecomastia. And that's
 3 what I'm -- that's all I need.
 4 **THE COURT:** Well, isn't that all you
 5 need, is just some kind of independent
 6 diagnosis of the disease itself?
 7 **MR. KLINE:** And, well, I need someone
 8 who also can say that it is a -- that it is
 9 causally related; that it is a substantial
 10 contributing factor.
 11 **THE COURT:** So two questions.
 12 Dr. Goldstein is not available for that part
 13 of the testimony?
 14 **MR. KLINE:** He has -- it's a separate
 15 issue, Your Honor.
 16 He has been thrown into this morass.
 17 And he has been based on what I believed -- I
 18 guess you could say I was wrong, but I
 19 certainly don't see it from what I read the
 20 words in front of me -- what I believed was
 21 permissible. I dismissed him. And he told
 22 me that he was going away. And he
 23 essentially told me, as I heard it, that he
 24 wanted no part of this.
 25 Now, I have all kinds of

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1 disadvantages and prejudice by that. I have
 2 a witness who's being thrown under the bus --
 3 **THE COURT:** All right. You're saying
 4 he's not available.
 5 **MR. KLINE:** -- and run over.
 6 **THE COURT:** Because he for some
 7 reason is --
 8 **MR. KLINE:** He's been thrown under
 9 the bus and run over.
 10 **THE COURT:** -- he's been chilled or
 11 something like that.
 12 **MR. KLINE:** He has been. And --
 13 **THE COURT:** All right. Let me ask
 14 you this: See, the way I see the --
 15 **MR. KLINE:** And I can't get him back
 16 here. He's told me he's not available.
 17 **THE COURT:** The way I see the expert
 18 report of Dr. Goldstein, there were two parts
 19 to that. One is the overall relationship
 20 between prolactin and gynecomastia; and the
 21 other is as related to the specific child or
 22 young man.
 23 **MR. KLINE:** Yes.
 24 **THE COURT:** You don't have any other
 25 experts that are known to the plaintiff -- to

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1 the defense?
 2 **MR. KLINE:** Yes.
 3 **THE COURT:** As to the first part?
 4 **MR. KLINE:** Yes. I can tell you what
 5 I have. And this is another reason why
 6 they're not prejudiced, but since the Court
 7 asked, I will play the card, okay. I know
 8 who my --
 9 **THE COURT:** See, there are two
 10 aspects of this. Because what we don't have
 11 in this case, as far as I can tell, a true
 12 surprise one way or the other, is the actual
 13 diagnosis of this boy, unless you have some
 14 testimony about that. And that apparently is
 15 what you were relying on Dr. Goldstein for.
 16 **MR. KLINE:** Yes. And I --
 17 **THE COURT:** And that is the part that
 18 cannot be duplicated short of another
 19 examination by another doctor.
 20 **MR. KLINE:** Right. And I plan to
 21 have him examined.
 22 **THE COURT:** All right. Well, if
 23 that's going to be admissible, I would
 24 recommend that you do that. We're not quite
 25 there yet. But let me hear now from the

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1 defense.
 2 By the way, so that we can frame the
 3 defense argument, you are mentioning in
 4 particular 4003.5, I think it's 3(b).
 5 **MR. KLINE:** I was on 4003.5. But,
 6 Your Honor, I didn't come prepared today --
 7 **THE COURT:** Well, I'm going to
 8 suggest to you that the Court is also looking
 9 at another one of that particular rule.
 10 **MR. KLINE:** Which is what?
 11 **THE COURT:** It is 4003.5(2). "Upon
 12 cause shown --
 13 **MR. KLINE:** Yes.
 14 **THE COURT:** -- "the court may order
 15 further discovery by other means, subject to
 16 such restrictions as to scope and such
 17 provisions concerning fees and expenses as
 18 the court may deem appropriate."
 19 **MR. KLINE:** My question --
 20 **THE COURT:** You like that one better?
 21 **MR. KLINE:** I like them both. But I
 22 like that better. And it goes to show you,
 23 the Court knows more.
 24 **THE COURT:** I didn't know more. I
 25 just had more time.

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1 MR. KLINE: Yeah. But the -- yes.
 2 That's applicable.
 3 I would add one more thing. There
 4 will be no prejudice as well because I'm
 5 having the plaintiff seen by --
 6 THE COURT: Well, let's hear the
 7 argument. I haven't granted anything. I
 8 want to hear from the defense point of view.
 9 The concern I have from the defense
 10 point of view was what I related earlier in
 11 the discussion when I said -- and I'd like an
 12 answer to this. Yesterday on February 2,
 13 2015, Page 141 of the transcript, this Court
 14 specifically said [reading]: "And I see this
 15 as really a tactical measure by the defense
 16 in order to cause some kind of unfair
 17 surprise. And for that reason I will in fact
 18 permit a new report or a new IME."
 19 All right. I said that because at
 20 the time that we did the argument and we had
 21 the discussion, that's how I saw it.
 22 So I'm prepared now, Ms. Sullivan,
 23 for your response to Mr. Kline and then we'll
 24 have a ruling on this and then we'll go from
 25 there.

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1 MR. KLINE: I have one other point
 2 and I promise to sit down. I think it's an
 3 important piece of information.
 4 THE COURT: Yes, sir.
 5 MR. KLINE: He's being seen at 5
 6 o'clock today by a physician who has rendered
 7 multiple reports in this litigation, who is
 8 well-known to the defense --
 9 THE COURT: No. Well, let's --
 10 MR. KLINE: -- and who's been deposed
 11 twice.
 12 THE COURT: All right. I don't want
 13 anything specific.
 14 MR. KLINE: Including by Mr. Campion,
 15 one of the most famous lawyers in town.
 16 THE COURT: I don't want to get
 17 specific yet.
 18 The rules do not require an IME under
 19 4003.5(b).
 20 But let me hear from Ms. Sullivan, a
 21 response to this Court's concern yesterday
 22 about this entire procedure that was used in
 23 order to, essentially, scare off a witness,
 24 from what Mr. Kline is saying.
 25 MS. SULLIVAN: Your Honor, thank you.

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1 First, Judge, I'm not going to
 2 respond to the personal attacks, but they've
 3 been ongoing throughout this trial.
 4 Second, the problem was caused by the
 5 plaintiffs, not by us. They have an army of
 6 lawyers as well. We all do IMEs all the
 7 time. Different states have different rules.
 8 They didn't check Alabama's statute. We did.
 9 We got a local guy. They did not. We had
 10 given them the benefit of the doubt that they
 11 had at least satisfied the second prong of
 12 Alabama's law, which is if Dr. Goldstein had
 13 consulted with a local lawyer, he could come
 14 in and testify. And we were prepared to get
 15 that information from him.
 16 Then we saw the de bene esse notice
 17 and we said, well, maybe they didn't do it.
 18 I raised it with Mr. Kline in the morning,
 19 and I said you've got a big problem if we
 20 don't have this. And they didn't have it.
 21 They didn't do it. The first time we got
 22 confirmation that they did not comply with
 23 the law. They're officers of the court.
 24 We're officers of the court. Everybody was
 25 on notice of this statute. They caused this

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1 problem, not us.
 2 And the Court and Mr. Kline are
 3 suggesting that Janssen should be punished by
 4 their failure to secure an expert who
 5 conducted an exam in compliance with
 6 applicable law. They didn't do it.
 7 And one thing you didn't hear, Judge,
 8 is that Dr. Goldstein did not violate the
 9 law, because he clearly did. And the
 10 plaintiffs asked him to do it. He did it at
 11 their request. They caused this problem.
 12 And so now what Mr. Kline is suggesting is
 13 that the Court cure his problem at great
 14 prejudice to us.
 15 And the problem, Your Honor, with
 16 permitting a new expert in the middle of a
 17 trial -- I mean, we've had three -- two
 18 cross-examinations already, much of which was
 19 focused on the specifics of Dr. Goldstein's.
 20 He's not just a specific causation expert in
 21 this case, Your Honor. He is their major
 22 general causation expert. He's got two
 23 reports. Major general causation expert and
 24 major specific causation experts.
 25 We cross-examined Dr. Kessler and the

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1 prescriber with specific knowledge of what
 2 Dr. Goldstein had found and said in terms of
 3 timing, severity, dosing. We framed our
 4 entire defense on this general and specific
 5 causation report. We opened to the jury. I
 6 spent at least ten minutes of my opening on
 7 Dr. Goldstein's exam and the Holiday Inn in
 8 Alabama, unlicensed, et cetera. We framed
 9 our entire defense. We were on notice of
 10 Dr. Goldstein's report more than a year ago.
 11 We got experts lined up who specifically
 12 respond, in their expert reports, to
 13 Dr. Goldstein's general and case-specific
 14 opinions.
 15 To now completely throw a wrench,
 16 it's clearly prejudicial. They're going to
 17 say, oh, any guy can come in and say specific
 18 and general causation. But Dr. Goldstein
 19 made very specific findings on severity, on
 20 timing, based on photographs. The
 21 cross-examination of Mrs. Pledger, we can't
 22 do it without knowing what their expert's
 23 going to say on the history and causation
 24 experts.
 25 This trial, Your Honor, cannot

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1 proceed in any fair fashion at this juncture
 2 if you're going to permit them to have a
 3 whole new expert after cross-examination of
 4 their liability expert and the key
 5 prescriber, which was keyed in part to
 6 Dr. Goldstein's opinions. Clearly
 7 prejudicial, and a prejudice that they caused
 8 by not complying with the Alabama law.
 9 And, Your Honor, looking at 4003.5,
 10 it says that an expert -- and, Your Honor, I
 11 think the -- and I submit to the Court that
 12 4003.5(a)2 that the Court cites relates to
 13 discovery, not trial. Section 3(b) that we
 14 cited to the Court relates to expert
 15 witnesses at trial. And it says plainly that
 16 the court shall not -- not discretionary --
 17 they shall not be permitted to testify... an
 18 expert witness who wasn't disclosed if the
 19 failure to disclose the identity of the
 20 witness is the result of extenuating
 21 circumstances beyond the control of the
 22 defaulting party.
 23 It was not beyond their control.
 24 They caused it. They caused the extenuating
 25 circumstances. They are the ones who failed

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1 to comply with the clear statutory dictates
 2 of doing an IME in Alabama.
 3 As the Court made clear, Mr. Kline,
 4 Mr. Sheller, they're not rookies. When you
 5 do an IME, check the -- check the rules.
 6 They didn't. They caused this problem. And,
 7 Your Honor, I understand you may rule that
 8 Dr. Goldstein can testify. We think that he
 9 violated the law, and so I'm not sure we
 10 should all be officers of the court
 11 supporting a felony. But certainly you can't
 12 let them change an expert in the middle of
 13 the game. Clear prejudice.
 14 Our experts are lined up and have
 15 been prepared and have written extensive
 16 reports in direct response to Dr. Goldstein's
 17 medical history, his finding, his opinions on
 18 timing and dosing, on background rates of
 19 gynecomastia. It changes the entire case.
 20 We opened based on their causation opinions.
 21 We cross-examined based on it. It's clear
 22 prejudice, not caused by us, Your Honor, but
 23 caused by their failure to comply with the
 24 law here. And I submit Your Honor should not
 25 permit it.

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1 Thank you.
 2 **THE COURT:** Okay. All right. Well,
 3 let me just see something here. I was -- I
 4 did look at your opening argument yesterday
 5 as related to Dr. Goldstein. I just want to
 6 see where that is.
 7 **MS. BROWN:** Your Honor, I think the
 8 references in the opening are at 95, 6 to 20;
 9 96, 15 to 19; and 98, 9 to 13.
 10 **THE COURT:** Well, I've read it. It
 11 was Page 96. But there's a reference to ten
 12 minutes of argument. It was Page 95, 96 and
 13 97.
 14 **MS. BROWN:** 98 as well.
 15 **THE COURT:** Yeah. A couple minutes
 16 talking about Goldstein.
 17 I'm not convinced that there's a -- I
 18 mean, I have no idea what the new -- what the
 19 new expert testimony is; and until I see it,
 20 I can't rule on it as to whether or not it's
 21 something that could not be responded to
 22 given the amount of time that would be
 23 available to the defense.
 24 I mean, the way I see this case is
 25 we're not even completed with the plaintiff's

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1 case yet, let alone a couple of days that I
 2 might give the defense in order to prepare
 3 for any such report and excuse the jury for a
 4 couple of days. So I don't see that the
 5 prejudice part necessarily will come into
 6 play here.
 7 What I do see is a situation where
 8 what Mr. Kline was suggesting was he was
 9 prepared to put on a witness; and if he put
 10 on that witness first, he wouldn't have had
 11 the motion to exclude. And at that point
 12 circumstances changed. A witness of theirs
 13 took a few days and now all of a sudden, he
 14 has a motion to exclude; and as a result of
 15 that motion to exclude, his witness has been
 16 chilled.
 17 I have no idea whether Alabama law
 18 would or would not prosecute this doctor. I
 19 doubt it, as a matter of fact, based on what
 20 I have read. The question in Alabama law
 21 would probably revolve around whether or not
 22 Dr. Goldstein was practicing medicine when he
 23 took an examination at a hotel room in order
 24 to prepare for this trial and to check to see
 25 whether he was prepared to testify as an

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1 expert in this case. It also has to do with
 2 a wrinkle in Alabama law as to whether or not
 3 a visiting doctor who's licensed in another
 4 state is permitted to practice in Alabama for
 5 less than ten days.
 6 I have no idea under Alabama law
 7 whether that is permissible.
 8 What I do know is that almost
 9 certainly -- though we wouldn't argue this
 10 directly -- that his competency to testify at
 11 this civil trial here would not have been
 12 precluded.
 13 So, therefore, under the
 14 circumstances here, I do see cause, cause,
 15 because this particular motion was held by
 16 the defense in order to provide unfair
 17 surprise and to put the plaintiff in this
 18 position here. Therefore, I find under
 19 4003.5(2), that upon cause shown -- and I
 20 find there has been cause shown here of
 21 unfair surprise -- the Court may order
 22 further discovery, which I do, subject to
 23 such restrictions and to scope -- which I am
 24 prepared to discuss now -- and such
 25 provisions concerning fees and expenses --

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1 which I will discuss now -- as the Court may
 2 deem appropriate. And that is the ruling of
 3 this Court.
 4 **MS. SULLIVAN:** And, Your Honor, if
 5 you're going to permit this, we need
 6 obviously discovery. We need the ability to
 7 get new experts, supplemental expert reports.
 8 We can't --
 9 **THE COURT:** You will have -- first of
 10 all, the first thing's first is the question
 11 of who is this doctor and whether it should
 12 be permitted under this Rule 4003.5 or under
 13 a different rule, 4010.1, the IME statute. I
 14 believe that either one is applicable here.
 15 **MS. SULLIVAN:** And, Your Honor, just
 16 for the record, you are denying our motion
 17 for an injunction to prevent a new witness, a
 18 new expert witness from them?
 19 **THE COURT:** The first thing I'm doing
 20 is, as far as your particular motion is
 21 concerned, the one that is on the record now,
 22 I am ruling that it is moot, under the unfair
 23 surprise. It is just not -- I cannot address
 24 the merits of that particular issue because
 25 it was unfair.

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1 So, therefore, that bench memorandum
 2 is moot. Is denied as moot.
 3 I am ruling that under 4003.5,
 4 because of the filing of the motion and
 5 because of the chilling effect that evidently
 6 occurred with this particular witness, that
 7 fairness requires, cause has been shown, for
 8 a discovery to continue in this matter and
 9 now for this Court to address particular
 10 incidentals regarding this Court order.
 11 **MS. SULLIVAN:** Then, Your Honor, then
 12 we move for a mistrial.
 13 **THE COURT:** And that is denied.
 14 **MS. SULLIVAN:** And then, Your Honor,
 15 we move for a stay so we can take it up to
 16 the Superior Court.
 17 **THE COURT:** That is denied.
 18 **MS. SULLIVAN:** Thank you, Your Honor.
 19 **THE COURT:** Okay. Now, as far as the
 20 question, whether it's 4003.5 to operate
 21 under or 4010, does it make a difference?
 22 **MR. KLINE:** Well, I think we're under
 23 4003.5.
 24 **THE COURT:** Well, there's another one
 25 that provides for IME. Neither one are final

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1 orders. So we have checked that.
 2 **MR. KLINE:** We -- are you asking me?
 3 **THE COURT:** The question is the
 4 mechanism. I want -- what's most important
 5 to this Court is to have a diagnosis that is
 6 essentially an independent diagnosis.
 7 **MR. KLINE:** I plan to provide,
 8 barring some unforeseen circumstance, I plan
 9 to have this young man examined tonight. I
 10 plan to provide a report sometime tomorrow,
 11 barring some unforeseen circumstance, and --
 12 **THE COURT:** Well, what I'm trying to
 13 get at is for the Court's purposes, I would
 14 like a report from a doctor who, as far as
 15 I'm concerned, is also provided by the
 16 defense.
 17 **MR. KLINE:** Well, I can't do that.
 18 **THE COURT:** Well --
 19 **MR. KLINE:** They --
 20 **THE COURT:** Well, then I don't want
 21 to come back and say, you know, that doctor
 22 is wrong, that doctor -- I want --
 23 **MR. KLINE:** Your Honor, at issue,
 24 respectfully, at issue, this isn't a
 25 court-ordered exam.

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1 **MS. SULLIVAN:** They don't want the
 2 truth.
 3 **THE COURT:** Well, that's what I'm
 4 saying, whether we go --
 5 **MR. KLINE:** I don't want a -- when
 6 you say --
 7 **MS. SULLIVAN:** They don't want the
 8 truth, Judge.
 9 **MR. KLINE:** That's right, we don't
 10 want the truth. You want the truth.
 11 You heard the truth here today. You
 12 heard the truth about off-label promotion
 13 where a company was fined 2.8 million --
 14 billion dollars. \$2.2 billion.
 15 **MS. SULLIVAN:** Not to children,
 16 Mr. Kline.
 17 **MR. KLINE:** Oh, yeah.
 18 **MS. SULLIVAN:** Not to children.
 19 **MR. KLINE:** Attorney General Holder
 20 said that Janssen Pharmaceuticals and Johnson
 21 & Johnson's conduct --
 22 **MS. SULLIVAN:** Not to children. Get
 23 it right.
 24 **MR. KLINE:** Johnson & Johnson's
 25 conduct as to children --

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1 **MS. SULLIVAN:** Get it right.
 2 **MR. KLINE:** -- as to children was
 3 shameful.
 4 **MS. SULLIVAN:** Not to children.
 5 **MR. KLINE:** Shameful. That's who you
 6 represent.
 7 **THE COURT:** All right, Mr. Kline --
 8 **MR. KLINE:** Shameful. Attorney
 9 General of the United States.
 10 **THE COURT:** All right. Mr. Kline, I
 11 do understand the passion involved on this
 12 case. However, what I'm interested in from a
 13 Court's perspective is some kind of
 14 resolution from the morass that has been --
 15 **MR. KLINE:** I can give it to you.
 16 **THE COURT:** Well, I don't want to
 17 then have a -- well, are you requesting a
 18 IME?
 19 **MS. SULLIVAN:** Your Honor --
 20 **MR. KLINE:** They already have an IME.
 21 **MS. SULLIVAN:** Well, Your Honor,
 22 here's our issue: We have, in response to
 23 Dr. Goldstein's report, we have experts who
 24 have specifically responded to his opinions.
 25 **THE COURT:** Have they themselves --

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1 **MS. SULLIVAN:** We had a local Alabama
 2 doctor, in compliance with the law, do an
 3 IME. If everybody's going to get new
 4 experts, we'd like that opportunity as well,
 5 Judge, because the whole game is changing.
 6 **THE COURT:** I haven't seen that
 7 report from that other -- was that an IME?
 8 **MR. KLINE:** We're not having an IME,
 9 Your Honor.
 10 **THE COURT:** Well, why is she
 11 referring to an IME?
 12 **MR. KLINE:** Because she's trying to
 13 muddy it up, as usual.
 14 **THE COURT:** Did you agree to an IME
 15 for some doctor in Alabama?
 16 **MS. SULLIVAN:** No; I'm sorry.
 17 **MR. KLINE:** When I get the floor, I
 18 will explain.
 19 **MS. SULLIVAN:** Your Honor --
 20 **MR. KLINE:** Whenever I get the floor.
 21 **MS. SULLIVAN:** And just so the record
 22 is clear, you are denying our request to
 23 enjoin a new expert for them?
 24 **THE COURT:** I haven't made -- this is
 25 the first time I heard such a motion.

1 MS. SULLIVAN: Okay. Your Honor,
 2 we're moving to enjoin a new expert in this
 3 case from the plaintiff.
 4 THE COURT: To enjoin?
 5 MS. SULLIVAN: Yes, Your Honor.
 6 THE COURT: What do you mean by that?
 7 MS. SULLIVAN: We're moving for an
 8 injunction to prevent a new expert in this
 9 case, because it's enormously prejudicial,
 10 irreparable harm to Janssen and our defense.
 11 We're moving for an injunction to prevent a
 12 new expert.
 13 THE COURT: There is no such motion
 14 in Pennsylvania civil procedure. If you can
 15 show it to me, I will look at it.
 16 MS. SULLIVAN: Very good, Your Honor.
 17 MR. KLINE: Whenever I have a chance
 18 to explain, I will.
 19 THE COURT: I am specifically --
 20 MS. SULLIVAN: Your Honor --
 21 THE COURT: I am specifically
 22 following Rule 4003.5 in which the remedy
 23 falls to the Court, absent abuse of
 24 discretion, upon cause shown, the Court may
 25 order further discovery by other means,

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 2
 3 I hereby certify that the proceedings
 4 and evidence are contained fully and
 5 accurately in the notes taken by me on the
 6 trial of the above cause, and that this copy
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1 subject to such restrictions as to scope and
 2 such provisions concerning fees and expenses
 3 as the Court may deem appropriate.
 4 There is no enjoinder rule or
 5 statute that applies to that particular Rule
 6 of Civil Procedure.
 7 Therefore, I will permit at this
 8 point for the examination of this patient to
 9 take place at 5 o'clock today, and we'll go
 10 from there.
 11 MR. KLINE: Yes.
 12 THE COURT: This Court is adjourned.
 13 MR. KLINE: Thank you, Your Honor.
 14 - - -
 15 (Court adjourned at 4:15 p.m.)
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