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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IN RE ROYAL AHOLD N.V.
SECURITIES & ERISA
LITIGATION

CIVIL NO. 1:03-MD-01539
ALL SECURITIES ACTIONS

October 6, 2005
Baltimore, Maryland

The above-entitled case came on for a telephonic
conference before the Honorable Catherine C. Blake,
United States District Judge

A P P E A R A N C E S

Andrew J. Entwistle, Esquire
Glenn M. Kurtz, Esquire
Michael J. Chepiga, Esquire
Alex Lipman, Esquire
Jason Sabot, Esquire

(NOTE: Only counsel who verbally participated have
been listed.

Gail A. Simpkins, RPR
Official Court Reporter

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P R O C E E D I N G S

THE COURT: Hi. This is Judge Blake.
Page 1

3 MR. ENTWISTLE: Hi, Your Honor. How are you
4 today?

5 MR. KURTZ: Good afternoon, Your Honor.

6 THE COURT: Good afternoon, everybody. We're
7 starting out again on our regular conference call. I
8 have gotten, oh, several letters.

9 Let's see. I've gotten lead plaintiff's October
10 5th. Then I got one from counsel for Mr. Tobin and
11 Mr. Grize, October 5th. Then I got one from Mr. Brown
12 on October 6th and one from, let's see, Mr. Kurtz also
13 today, October 6th, and a very short one from
14 plaintiffs' counsel also today, October 6th. So
15 obviously there are some --

16 There may be some discovery issues to address.
17 There is an issue about the defendants filing an
18 answer and I guess about the government's stay issue.

19 Do we know, is government counsel on the phone
20 this time.

21 MR. ENTWISTLE: They are on the phone, Your
22 Honor. Alex Lipman is on the phone with us today.

23 MR. SABOT: Jason Sabot and Alex Lipman are
24 here.

25 MR. LIPMAN: Good afternoon, Your Honor.

3

1 THE COURT: Thank you. Could you just identify
2 yourselves again for our court reporter, please.

3 MR. SABOT: Sure. It's Jason Sabot, S A B O T.

4 MR. LIPMAN: And Alex Lipman, L I P M A N.

5 THE COURT: All right. Thank you.

6 Let me take up that issue first. When would you

7 be able to narrow down the list of 36 witnesses? What
8 progress is being made there.

9 MR. SABOT: Well, I can tell you, Your Honor --

10 THE COURT: I'm sorry. But every time you talk,
11 since we can't see you, if you could just say who you
12 are.

13 MR. SABOT: Sorry. It's Jason Sabot here.

14 THE COURT: Thank you.

15 MR. SABOT: Sure. We are preparing for trial
16 right now. We are meeting with witnesses. We are
17 reviewing documents. As these interviews and meetings
18 go forward, I think we will be able to narrow down the
19 list, and we are working to do that.

20 As of today, we're not in a position to come off
21 from the 36, but we think within the next couple of
22 weeks we'll be able to work to do that.

23 I mean one thing I would just like to point out,
24 it's my understanding that no notices of depositions
25 have gone out by lead plaintiffs. So from our

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1 perspective it's our understanding that no depositions
2 have been taken. Putting aside the 36 witnesses on
3 the hold list, there is a universe of, you know,
4 hundreds of other witnesses out there.

5 So I'm a little bit puzzled. We read lead
6 plaintiffs' letter, and it seems to us it's really a
7 hurry up and wait because there are still lots of
8 witnesses that they can be talking to.

9 I mean that said, we are still going to work to
10 narrow the list down, and we are working diligently
11 over here as we prep for the February 27th trial.

12 That's the government's view at this point.

13 MR. ENTWISTLE: Your Honor, this is Andrew
14 Entwistle. I mean this is the same, you know, song
15 that we've been hearing now for months and months and
16 months. You asked the government a number of months
17 ago to narrow this list down. They promised to do
18 that. They didn't. They promised again last month to
19 do that. They haven't done it.

20 You know, we all know and understand the issue.
21 The 36 witnesses they blocked, they are the core of
22 the case. You know, obviously we are hoping not to
23 have to do a lot of work on the periphery, but to get
24 to the heart of the matter here as quickly as
25 possible.

5

1 You've seen at least some of the interview
2 materials for those witnesses, Ernie Smith, for
3 example, so you know how critical they are to the
4 proof here, and I think this really is inappropriate,
5 I think, to have the government delay matters any
6 further.

7 We could be taking some of those depositions
8 almost immediately once we have the materials, and we
9 want to be in a position to do that and to start with
10 the core of the case here. I think that it is long
11 past the time when the government, if they can't find
12 a way to narrow this list and give us, you know, the
13 bulk of these witnesses now. We should simply have
14 the materials.

15 They can't conceivably be prejudiced in any

16 meaningful way at this point. Even under the current
17 trial date, their time to turn over Jencks material is
18 only a few months away. These criminal defendants are
19 going to get the materials regardless and we
20 shouldn't, the lead plaintiff shouldn't be prejudiced
21 here. We should be able to move forward.

22 MR. LIPMAN: Your Honor, for what it's worth --
23 this is Alex Lipman -- we had an exchange of e-mails
24 with counsel for the plaintiffs earlier this week, and
25 one of the things we pointed out to them is that they

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1 have at some point given us a list of 20 witnesses who
2 they said were their critical ones. There was a list
3 of ten who were immediately critical and a list of
4 another ten that were sort of also critical, but not
5 as critical as the first ten.

6 Of the second list -- it is true that on the
7 first list we are not in a position to release any of
8 those at this time. But on the second list, of the
9 ten that were on their list, six of those individuals
10 are not on our list of potential witnesses, and they
11 include the former Chief Operating Officer of the
12 company, Jim Sutton, the individual who was in charge
13 of the computer system at the company, William Lowe,
14 David Abramson, who was the Chief Counsel at the
15 company, David Herskovitz, who was one of the partners
16 on the D&T audits who was involved with the whole P.A.
17 analysis and audits of P.A.'s work for a period of
18 time, and then also Roger Dassen who was in charge
19 of -- he's another D&T person who is I think a
20 relationship partner, and one other individual, John

21 Van den Dries, who is an Ahold person.

22 Anyway these people, these are six of the second
23 ten that they identified, and as far as we can tell,
24 they've made no efforts to talk to any of them.

25 THE COURT: Okay.

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1 MR. ENTWISTLE: Since we have been through all
2 this before, Your Honor, you know, the reason for that
3 is, you know, it is the core information that, you
4 know, that affects the depositions of those
5 individuals. It is part and parcel, you know, with
6 the witnesses that are at the very heart of the case,
7 which are the ones that are blocked. It is
8 hamstringing the prosecution in the case.

9 We've argued these same issues in every
10 conference call or hearing that has addressed these
11 issues for the last -- gosh, it has got to be at least
12 nine months now, if not longer. You know, I would
13 respectfully submit that it's time for this nonsense
14 to stop.

15 The government, you know, seems unable to reach
16 an appropriate point in their prosecution, and at this
17 point I think they've gotten all the leeway they
18 should get from this Court and we should be able to
19 get the core interview materials for the core
20 witnesses in our case.

21 THE COURT: Okay. Well, we certainly have been
22 through this again. I believe I haven't really come
23 off my ruling, which is that I was not going to
24 require the government to produce all this information

25 immediately, that I did see some importance and

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1 interest on the part of the government in preserving
2 the integrity of their witness preparation process.

3 I do expect the government in good faith to
4 narrow it down past the 36. I mean it has gone from
5 64, or whatever it was, to 36. I will ask Mr. Sabot
6 or Mr. Lipman to communicate with both me and counsel
7 let's say October 21st regarding any progress they
8 have been able to make on any additional witnesses'
9 material not being blocked.

10 MR. LIPMAN: Would you like to hear from us,
11 Your Honor, in writing or orally?

12 THE COURT: In writing, October 21st.

13 MR. LIPMAN: That's fine with the government.

14 THE COURT: Okay. Let's take up this issue of
15 the answers, and I guess --

16 I mean preliminarily I will say, I think we
17 would all have to admit at the moment there is no
18 final accepted complaint on file. We can predict what
19 it will look like up to a point. There is a motion
20 for reconsideration pending.

21 What is the, what is the critical importance of
22 the date of getting the answers filed? I guess I am
23 asking Mr. Entwistle.

24 MR. ENTWISTLE: Well, from our standpoint, Your
25 Honor, I mean we simply want to be in a position at

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1 the earliest possible point to have answers from those
2 defendants that are not affected by the motion for

3 reconsideration so we know what the affirmative
4 defenses are going to be, we know where we stand with
5 them and, you know, to the extent it is appropriate,
6 to get on with the taking of their depositions. I
7 don't want to go forward with those until we have
8 answers and we know what affirmative defenses are
9 being raised, to the extent we need to probe them
10 during the course of depositions. I mean I think
11 that's a pretty straightforward issue.

12 You know, our view of this was, and leaving
13 aside obviously Mr. Grize because counsel had actually
14 asked us for an extension, which we had granted as to
15 Mr. Grize and as to, of course, Merrill and Goldman
16 because they are clearly the subject of the
17 reconsideration motion.

18 Mr. Grize was a little different, of course,
19 because there is no opposition with regard to the
20 issue of, really the kind of administrative issue of
21 his other claims.

22 THE COURT: Yeah.

23 MR. ENTWISTLE: You know, with regard to the
24 other defendants, the complaint is effectively
25 unchanged as to them. You know, it doesn't -- it is

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1 unaffected by the motion for consideration.

2 The paragraph numbering as to them is unchanged.
3 We did it that way purposely obviously so that the
4 paragraphs that deal with, you know, the revisions for
5 -- actually, ABN, Merrill, and Goldman on the Section
6 12 claims are all subparts of an existing paragraph so

7 as not to change the numbering.

8 They've had the complaint obviously for, you
9 know, the better part of a year, and so they are
10 clearly in a position, all of them, to file answers
11 and to deal with those issues. No pending motion is
12 going to affect it for any defendant in the case other
13 than, as we mentioned, Mr. Grize, Merrill and Goldman.

14 Does it have to be decided today? You know, I
15 guess the answer is no.

16 Would we like to get this going as soon as
17 possible? Yes. We don't see any reason why any
18 defendant should be delaying an answer given where we
19 are at this point in the case.

20 As I say, if Your Honor wants us, you know, to
21 wait until we have the motion for reconsideration
22 finally determined here, then obviously we can, you
23 know, we can set it running from that point, but it
24 ought to be a fairly short period. I mean there is no
25 magic to this. The defendants have had this

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1 information for a long time and I think it really
2 would be inappropriate for there to be any further
3 delay attendant to that issue.

4 THE COURT: So that, for example, if --

5 And I realize, a motion for reconsideration as
6 to Mr. Grize, it was an administrative error on my
7 part basically, but as to Mr. Grize, that's
8 essentially going to be granted without opposition.
9 The other two issues are a bit more complicated. But
10 other than that, nothing is going to change.

11 So I think I'm hearing Mr. Entwistle say that if

12 he has to wait for the final version of the amended
13 complaint to be accepted, that perhaps 45 days would
14 not be necessary for anyone to answer, which it does
15 seem to me people could be getting their answers
16 ready, probably have been getting their answers ready
17 over the course of the past year.

18 So if we cut that back to say 15 days or
19 something after the final complaint, and perhaps not
20 as to the two entities that are the serious subject of
21 the motion for reconsideration. But for everyone else
22 as to whom the amended complaint wouldn't change, is
23 there any reason why the answer shouldn't be 15 days
24 let's say after?

25 MR. KURTZ: Your Honor, Glenn Kurtz for Ahold

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1 and USF. We don't have any issue with responding
2 within 15 days or modifying the CMO to so provide, 15
3 days of the final filed complaint.

4 MR. ENTWISTLE: And that will be fine with us.

5 MR. CHEPIGA: Your Honor, this is Michael
6 Chepiga. At the present moment I only represent one
7 defendant, which is ABN AMRO Rothschild. If that
8 changes, I would appreciate maybe 30 days for the
9 other two entities.

10 MR. ENTWISTLE: We would have no objection to
11 that, Judge, although we note that the other entities
12 are still defendants in the case until the final
13 order. But I guess that's the subject of Mr.
14 Chepiga's current paper, so we will deal with that at
15 the appropriate time.

16 THE COURT: Okay. And that was Mr. Entwistle.
17 If you could, if someone could take responsibility for
18 just putting together a short stipulation just
19 addressing that issue with the 15 days, then I'm happy
20 to do that.

21 MR. ENTWISTLE: We'll take care of that, Your
22 Honor. This is Andrew Entwistle. We'll take care of
23 that.

24 THE COURT: If you want to, again, just to clean
25 up the record, if you want to get a separate order in

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1 there by consent granting the motion for
2 reconsideration as to Mr. Grize --

3 MR. ENTWISTLE: We will do that as well, Your
4 Honor.

5 THE COURT: -- that would be fine.

6 MR. ENTWISTLE: We will work with Mr. Grize's
7 counsel so we get that taken care of for you as well.

8 THE COURT: Okay.

9 MR. ENTWISTLE: That brings us I think through
10 most of the issues, to the issue I guess raised by Mr.
11 Kurtz's letter. We got the request yesterday that
12 they would like to extend time with regard to the
13 class certification motion, and out of the meet and
14 confer that was held yesterday we had two additional
15 issues arise. One of which at least relates back to
16 the original response and one of which is new.

17 But on the kind of overarching issue with regard
18 to the extension of time, we did in fact refuse their
19 request for any additional time. I've read Mr.
20 Kurtz's letter. It does mischaracterize the record,

21 I'm sorry to say, with regard to what has happened
22 here.

23 We served our responses to their request in
24 August, August 3rd of 2005. There was no meet and
25 confer requested with regard to that for almost two

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1 months. It was held -- it was requested I think
2 September 26th. It was held yesterday, and no request
3 was even made during the meet and confer for an
4 extension. It has never been discussed to that point.

5 The meet and confer dealt with all the issues I
6 think, except for two it seems like. One of which is
7 our retainer agreement, which the Court has reviewed
8 in camera. We feel it's privilege. That issue I
9 guess will have to be, you know, left to the
10 appropriate point here.

11 The other was a request for trading beyond the
12 90-day period. They've already received it through
13 the 90-day period for COPERA and at least some of the
14 other defendants. The others are -- not defendants,
15 the class reps. The others are in the process of
16 getting information for the period passed the
17 expiration of the class period.

18 We had told the original letter requested
19 trading information through the end of December of
20 '03. We had advised them that we would agree to that.
21 Then we found out that there was an additional request
22 for trading information to the present, which we
23 declined. We don't think any of that is relevant, and
24 there is no basis for it, but I will leave it to Mr.

25 Kurtz to argue that issue.

15

1 But the issue of the extension is really the one
2 which is the most troubling here. We got deposition
3 notices a few days ago. They've been given dates to
4 meet those notices from COPERA, from IAC, and also
5 from Generic. Those dates are scheduled.

6 They've been given what we believe is a complete
7 document production. We've been asked to go back and
8 just double-check with the client to make sure that
9 there are no other documents and again to confirm the
10 extent of the search, which, of course, we're doing,
11 all on a very short time frame, but this is the time
12 frame that the defendants insisted upon.

13 You'll recall at several points in time during
14 the earlier phase of this case, when we were dealing
15 with Case Management Order Number 3 and Revised Case
16 Management Order Number 3, I had suggested to you that
17 longer periods of time would be appropriate for the
18 discovery process for the process of preparing for
19 making these motions. The defendants vigorously,
20 aggressively argued against that at every turn and in
21 fact to hold us to the current schedule, which Your
22 Honor felt was appropriate, which we have lived with.

23 It was only after receiving our brief and
24 submissions on the motion the defendants have now seen
25 fit to go ahead to request, you know, additional time.

16

1 It is clearly and transparently nothing more or less
2 than tactics on their part. I submit to you it's

3 in appropriate and they should have to live with the
4 schedule, which they've known about and which in fact
5 they insisted upon throughout the case.

6 MR. KURTZ: Your Honor, Glenn Kurtz.

7 It's a pretty simple issue, and I'll go through
8 it. I'm not sure what precipitating written
9 statements and oral statements about mischaracterizing
10 the record when nothing Mr. Entwistle just said
11 demonstrated anything that was incorrect that was said
12 in our letter, or to accuse us of tactics when it is
13 the plaintiffs that have failed, for reasons that are
14 entirely puzzling to us, to comply with what we view
15 to be minimal discovery obligations. They should be
16 juxtapose with our 14-million-page production that we
17 have been undertaking.

18 We served our document request on June 17th, yet
19 we didn't receive any document until September 7th and
20 8th for COPERA, and there was but 200 pages. It
21 clearly doesn't include much of what we have asked
22 for.

23 It does not include relevant trading records
24 which go beyond the 90 days. It doesn't include lots
25 of documents relevant to their formation and their

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1 investment strategies and the like.

2 At the Generic, they produced 18 pages, again,
3 totally incomplete, did not even include the trading
4 records for the 90 days, which is not a relevant
5 cutoff. It went only up to the February 24th date.
6 So that's now some, I guess, four months after we

7 served the request and after the motion to certify the
8 class was filed, we were privileged to 18 pages of
9 production. We are entitled to have documents before
10 we undertake our depositions.

11 We also are requesting information from
12 plaintiffs as to their retention arrangement. We have
13 cited cases. It is clearly not privilege. It is
14 relevant to class cert. The courts consider it in the
15 context of class cert.

16 My understanding in fact, though I'm not sure
17 about it, was that it was shared with Your Honor,
18 though it was never shared with us. I'm not sure what
19 plaintiffs' basis would be for that kind of a
20 communication, and we are entitled to have the
21 information relevant to the subject matter of the
22 depositions before we proceed.

23 Now we are facing class certification. This is
24 the period of time that we need our discovery. The
25 discovery was set up to permit us to have our

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1 documents and to take our depositions so that we could
2 include in the opposition to the class cert. all
3 appropriate evidence to defeat the application.

4 We don't have any information from Union and
5 Deka and, frankly, it's not due yet because plaintiffs
6 waited until September 8th before they designated
7 those individuals as lead plaintiffs, and so it's
8 going through its course in trying to get us
9 discovery.

10 We have asked them to expedite that so that we
11 could get the information quickly and proceed to

12 depositions and they have said they would try to get
13 us documents on a rolling basis, but have refused to
14 commit to complete the production in a period of time
15 which will permit us to review the documents, take our
16 depositions, include the evidence that we generate
17 during the course of the depositions in our opposition
18 papers.

19 So it's all very clean as far as we are
20 concerned. It's all the fault of the plaintiffs for
21 not producing what amounts to, you know, tens or
22 hundreds of pages during a period of time where we are
23 producing millions of pages.

24 MR. ENTWISTLE: You know --

25 MR. KURTZ: We are suggesting a reasonable

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1 schedule which lets them complete their production to
2 us, gives us two or three weeks to review the
3 documents in preparation for the deposition. Then
4 we'll take the deposition and we'll commit to filing
5 our opposition papers some two weeks after we have the
6 deposition so that we can get the transcripts back,
7 get the right information and incorporate them and
8 present it in a cohesive way to Your Honor.

9 MR. ENTWISTLE: Your Honor, the problem I have
10 with all of this -- this is Andrew Entwistle -- is
11 that it really is transparent.

12 First of all, our responses, which were timely
13 made, were made on August 3rd of 2005 for the three
14 class representatives that were designated, you know,
15 according to the CMO back in June. The CMO provided

16 some subsequent designations for two weeks following
17 Your Honor's order, which we complied with. That was
18 all dealt with in the CMO.

19 We had again argued for longer periods of time.
20 The defendants then insisted that there be a shorter
21 period of time for designation and that these time
22 limits and strictures be imposed and be in place.

23 We fully complied. I'm sorry that the
24 defendants would have liked to have had more
25 documents. You can only produce what the clients have

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1 in response.

2 We've given them all of the information that
3 relates to COPERA. As I indicated, you know, to the
4 extent that information is reflected in COPERA's web
5 site or otherwise is publicly available, they have
6 been referred to those sources, as is appropriate.

7 There is no incompleteness. There has been no
8 delay. Everything was filed in accordance with
9 agreement in a timely manner and I will note most
10 significantly, that they have had those productions
11 since at least the beginning of September.

12 They did not serve deposition notices on us
13 until just this past week. We've had them for less
14 than a few days, and yet we have gotten them dates
15 either on the date that they noticed or within a day
16 or two of the date that they noticed the depositions
17 for for COPERA and for Generic and for IAC.

18 Union and Deka, of course, ultimately will
19 depend upon Your Honor's decision, but they are
20 submitting to discovery. They are moving forward.

21 They are producing and they are going to appear for
22 deposition, and we have told them that they need to
23 appear for deposition prior to the time for the filing
24 of a response.

25 THE COURT: Let me ask this. Mr. Kurtz, the

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1 documents that you think you are still entitled to
2 from the plaintiffs, COPERA and Generic, I think the
3 retainer agreement is in somewhat of a separate
4 category.

5 As I recall, I did ask to see it in camera at
6 the time of the lead plaintiffs' motion, lead counsel
7 and lead plaintiff, because I thought it was a
8 relevant document for me to look at as I was making
9 that decision.

10 I think it's a separate issue whether you are
11 entitled to it. I'm not saying whether you are or you
12 aren't, but I think it's something that --

13 Obviously the plaintiffs object. You've cited a
14 couple of cases. I obviously haven't had a chance to
15 look at them yet. To me, that is a separate
16 agreement -- a separate issue.

17 Then I gather you have an argument about whether
18 you are entitled to trading documents after December
19 31, 2003?

20 MR. ENTWISTLE: Well, actually, Your Honor,

21 MR. KURTZ: Your Honor --

22 THE COURT: Mr. Kurtz, go ahead.

23 MR. KURTZ: Your Honor, to date, we haven't
24 received any information even beyond February 24, 2003

25 for Generic, which production we got October 4th, not

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1 in September. I'm not sure how -- and we don't have
2 anything, we don't have document number one from Union
3 or from Deka. So all we have, there are 200 pages
4 from COPERA and 18 pages of incomplete production from
5 Generic and yet, it's our view under Royal Dutch Shell
6 and under economic and other theories that we are most
7 certainly entitled to see the trading records.

8 It's not burdensome. I don't know why we can't
9 get them and why we haven't gotten them in response to
10 a June document request. They are not burdensome in
11 any event, but they certainly wouldn't be burdensome
12 as compared to the 14 million pages that we have been
13 producing.

14 We don't intend to take multiple depositions.
15 We're going to go through our plaintiff depositions
16 and put before Your Honor the evidence that is
17 material to the class cert. I am not sure if Mr.
18 Entwistle is suggesting that we sort of go forward in
19 a piecemeal fashion. We don't think that's productive
20 or efficient.

21 MR. ENTWISTLE: Just so I am clear, Your Honor
22 -- this is Andrew Entwistle -- I'm not suggesting we
23 go on a piecemeal basis.

24 It should be clear, the original request sought
25 production of documents through December of '03. It

23

1 did not request documents for trading information to
2 the present. That request was only made yesterday for

3 the first time. That we object to.

4 We have agreed to produce trading records at
5 this point through December '03. It is our view that
6 only the records through the end of the class period
7 are relevant.

8 We did produce for COPERA as a compromised
9 matter through the end of the 90-day period. We have
10 told them --

11 They have the records for Generic through the
12 end of the class period. We have told them we will
13 get them the trading records through the end of
14 December '03, but it is simply irrelevant under any
15 theory that there be any look at trading records
16 beyond the 90-day period. Even during the 90-day
17 period we feel it's totally irrelevant, but at least
18 that date has some relationship to the statute.

19 You know, if they've got an argument later under
20 Royal Dutch Shell that there should be some limitation
21 on damages at the back end, we don't think that it's
22 appropriate. But in any event, that's a legal
23 argument to be made at the back end and it's totally
24 irrelevant to the issue of the production of
25 documents. This is not an individual case. It's a

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1 class case.

2 You know, we are dealing, of course, with
3 requests that are really focused on substantive
4 discovery. That's fine. There should only be one in
5 a deposition. We don't have a problem with that and
6 haven't objected to that.

7 But they've gotten all the compliance they've
8 asked for. They sat on their hands for some 60 days
9 since they got the initial response before seeking
10 this information and most significantly, they sat on
11 their hands until after they had our briefs to request
12 this extension.

13 We will do everything in our power to get them
14 what, you know, they are entitled to prior to the time
15 they have to file their papers. But it is just not
16 appropriate that they wait until after they have all
17 of our submissions in hand to seek a further extension
18 of a schedule that they insisted upon in the first
19 instance.

20 THE COURT: Right. I understand that's your
21 point there.

22 When are you going to have the rest of the
23 Generic documents?

24 MR. ENTWISTLE: We requested them from the
25 client after we met with them yesterday. Calls went

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1 out to the client, and we should know by tomorrow how
2 long it will take them to get that information.
3 Obviously it is not in the universe of information we
4 had previously requested.

5 MR. CHEPIGA: Your Honor, this is Michael
6 Chepiga. May I add two points of information, please?

7 THE COURT: Sure.

8 MR. CHEPIGA: We served interrogatories and
9 document requests on COPERA after your decision
10 keeping them in the case and dismissing Goldman Sachs
11 and Merrill Lynch. They have not been responded to

12 yet. We've had discussions today with Mr. Entwistle's
13 office. He tells us they will be, but we have not yet
14 seen whether we will have any disputes with him on
15 those document requests and those interrogatories.

16 So that is an issue that is also out there, plus
17 the issue that Goldman Sachs and Merrill Lynch, if
18 they are brought back into the case, which they are
19 not in now, have not served document requests on the
20 two new proposed plaintiffs, who would be relevant to
21 them and not to ABN AMRO.

22 So I just wanted to not save that for the
23 future, but put it out there now.

24 THE COURT: If I can just clarify something?
25 Union Asset Management is a proposed class

26

1 representative as to which defendant specifically?

2 MR. ENTWISTLE: As to Merrill Lynch.

3 THE COURT: Merrill Lynch. Okay. And Deka as
4 to Goldman Sachs.

5 MR. ENTWISTLE: That's correct, Your Honor.

6 THE COURT: Right. I will have to say, I don't
7 really see any, I don't see any realistic way that the
8 class certification briefing and discovery and
9 argument process can take place as to Goldman Sachs
10 and Merrill Lynch on the same schedule that has been
11 proposed here, and it may be somewhat difficult as to
12 ABN AMRO, which is certainly no fault of counsel.

13 But I mean that's where things are, particularly
14 as to Goldman Sachs and Merrill Lynch pending in front
15 of me, and I'm not sure that they are quite fully

16 briefed yet on the reconsideration motion. If I deny
17 reconsideration, it appears to me they would not be in
18 the class certification process at all, unless I am
19 missing something major here.

20 MR. CHEPIGA: No. That's right.

21 MR. ENTWISTLE: As a practical matter, Your
22 Honor -- this is Andrew Entwistle -- just a couple of
23 points with regard to that.

24 First, with regard to the ABN AMRO issue, those
25 interrogatories were served. We received those.

27

1 Document requests were apparently served, but never
2 received by our office. That's irrelevant. We've
3 agreed to produce and respond in a timely fashion.
4 They are not due until I think the 11th for the
5 documents and the 12th for the interrogatories of next
6 week.

7 We've also advised Mr. Chepiga's office that we
8 have made a production on behalf of COPERA -- the
9 service was on COPERA -- you know, full production to
10 Ahold, and under the protocol we've all been
11 following, when a party receives discovery, it is
12 incumbent on them to make it available to the other
13 parties. So we indicated to his office that he should
14 contact Mr. Kurtz to receive a copy of the materials
15 so that he will have them, and we will cross-reference
16 them obviously.

17 I don't believe, having reviewed the request,
18 that there are going to be any additional documents
19 that will be responsive. But regardless, he will have
20 his responses. He will have full responses, you know,

21 by the 11th or 12th of October.

22 As I said, COPERA's deposition has been
23 scheduled. I believe it's for the 19th of October.
24 So certainly for ABN, they will be in a position where
25 they can address issues and take testimony to the

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1 extent relevant and have their materials. There may
2 be some discovery issue, but again, this is the
3 schedule that all defendants, you know, insisted on to
4 begin with.

5 With regard to Deka and Union and the Merrill
6 and Goldman issues, you know, clearly it appears what
7 we had kind of predicted up front has come to pass
8 with regard to those two. We did obviously serve the
9 class motion and, as you know from our submission,
10 addressed them as if they were in the case. We
11 understand that, you know, that they obviously have to
12 have an ability to respond to the issue.

13 But if Your Honor has already either received
14 briefing and argument as to everyone else, at that
15 point in time the matters are before the Court or even
16 before you render a decision, I think it will
17 certainly inform to a great degree and streamline the
18 process as it relates to them.

19 But they should have their opportunity to
20 respond and they will, you know, I think as
21 appropriate. No one is trying to prevent that or to
22 limit that in any way, but just to try and keep things
23 as efficient as possible and on the schedule that all
24 the defendants insisted upon.

25

MR. KURTZ: Glenn Kurtz. Your Honor, I mean it

29

1 sounds to me like we're going to need, and maybe we
2 ought to just have a very expedited schedule on doing
3 this, but I'm going to need to make a motion to compel
4 because for whatever reason, plaintiffs are not going
5 to produce documents that are relevant under Royal
6 Dutch Shell.

7 They don't like the case, but Your Honor is
8 going to make a determination -- it's a legal
9 principle -- in connection with the motion for class
10 cert. and we need to discover. We need to properly
11 present the case.

12 There is no burden in producing us these records
13 and I'm, frankly, still surprised that plaintiffs'
14 position is that they can produce 18 incomplete pages
15 of documents on October 4th in response to a
16 four-month-old document request and then say that we
17 sat on our hands while our hands were fervently moving
18 across 14 million pages of documents for them.

19 It seems to me that we're going to need to get
20 that resolved so that we can have the right
21 deposition. This is a multiparty case. We don't want
22 to be burdening any of the attorneys with multiple
23 depositions.

24 If we can't just get something as simple as --

25 You may not think it's relevant, but what's the

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1 difference? It's your trading records. They are
2 accessible to you and they are not burdensome to you.

3 It's your retention agreement. You haven't been able
4 to cite a case suggesting it's privilege.

5 So we can get this done, then maybe we ought to
6 have a very tight schedule on a motion to compel so we
7 can get the right documents, get the deposition
8 scheduled shortly after receipt of the right
9 documents, and then get you the record that you will
10 need to make your determination on plaintiffs'
11 application to certify a class.

12 MR. ENTWISTLE: Our view of that, Your Honor, is
13 pretty straightforward. You know, they can't simply
14 keep adding to their request.

15 For example, this request for trading records
16 beyond December 31, '03 was made yesterday for the
17 first time. Before that we had agreed to produce
18 everything to December 31, '03. This is a new request
19 that was made yesterday, and it's made for the purpose
20 of this argument.

21 As to this notion that they are entitled to the
22 retainer agreement, the three cases they cite and the
23 proposition they are cited for was specifically
24 rejected by Judge Cote in the context of the WorldCom
25 case. They have nothing whatsoever to do with a

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1 securities class case, nor are they appropriate here.

2 If we have to deal with that, as you said, it's
3 a separate category of information. It is a very
4 limited category of information. If Your Honor wants
5 something on it, we can respond with a letter to that
6 issue and Your Honor can make the decision as to

7 whether or not they are entitled to it.

8 But they should not be able to come here and
9 make a request the evening before or the afternoon
10 before, you know, this conference call, you know, a
11 week after they got our motion in hand and try and
12 premise an extension of time on the notion that they
13 can make a new and further request for documents that
14 we oppose and try and use that to shoehorn the
15 additional time. It's not appropriate. It is purely
16 a transparent tactic.

17 THE COURT: Mr. Kurtz, when did you first make
18 the request for documents after December 31, 2003?

19 MR. KURTZ: We made that verbally and it's
20 disputed in-house, because there have been others that
21 have had the conversations, whether it was this week
22 or last week.

23 In any event, though, Your Honor, just to make
24 sure the record is clear, we don't have the documents
25 that we requested back in June going to December 31,

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1 2003, much less the ones that go beyond.

2 And the idea that we just recently requested the
3 fee documents, that's not true. That was in the
4 original document request.

5 I'm not sure what Mr. Entwistle meant when he
6 was talking about not appropriate for a class cert.
7 case. I mean Royal Dutch Shell is most certainly a
8 10(b)(5) case.

9 So the fact is if we really want to stand on
10 pretense here, then the plaintiffs have failed to
11 serve us with any interrogatories or notices to admit.

12 They were all due. They are now time barred and can't
13 serve any more discovery. If Mr. Entwistle wants to
14 proceed down that road, then he gets no notices to
15 admit.

16 I would think that it would be more productive
17 in a case this large and complicated to simply produce
18 another set of documents that is probably a key stroke
19 away from him without having to go through the
20 formality of another document production, but we are
21 happy to make it or live with whatever Your Honor's
22 ruling is with respect to the matter.

23 MR. ENTWISTLE: You know, Judge, this is really,
24 you know, surprising stuff to me. The issue of
25 request for admitted interrogatories has been

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1 discussed with the Ahold folks, and we had all
2 previously agreed that the way we would proceed with
3 that is at the appropriate time we would serve that
4 first set of requests. It didn't make sense, given
5 all of the motions to compel, etcetera, to do that at
6 an earlier point in time in the case, and we had an
7 agreement with regard to that. So that's not even an
8 issue at this point.

9 What is an issue --

10 And no one is suggesting that an additional
11 request needs to be made. The point is that they made
12 the request for additional trading records beyond the
13 31st for the first time yesterday during the meet and
14 confer. Actually, I think it was after the meet and
15 confer that it was made. You know, it was rejected.

16 It shouldn't be used at this point to shoehorn
17 anything.

18 There doesn't need to be a lot of, you know,
19 briefing about it. It's irrelevant under any
20 circumstances. But if Your Honor thinks they should
21 have that irrelevant information, you know, we'll
22 endeavor to get it for them. But they can't simply
23 keep making requests for, additional requests for
24 documents and use that as a device to delay a schedule
25 which they insisted upon, and now they don't like.

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1 THE COURT: Right, right, right. I mean I
2 certainly, I agree that the proposed extension in Mr.
3 Kurtz's letter of October 6th frankly, it seems to me,
4 pushes things back a month and a half, quite possibly,
5 quite possibly more, and it should not be based on
6 documents that were just recently requested.

7 Having said that, if there is no major dispute
8 or difficulty with producing the documents, and that
9 can be done to avoid a motion to compel, obviously I
10 think that's in everybody's interest. If it can't be,
11 then I will deal with a motion to compel as quickly as
12 I can.

13 I do think that Royal Ahold is entitled to a
14 complete document production from the plaintiffs as
15 far as what has been agreed to. I'm a little
16 surprised that the Generic records were first produced
17 October 4th.

18 I am, at this point I am going to grant the at
19 least a week's extension, as requested by Royal Ahold.
20 What I would like is a status report in a week on

21 exactly what else has been produced, what you have
22 been able to work out on the motion to compel relating
23 to these other documents, if anything.

24 But I would like to know if at least there has
25 been complete production of what has been outstanding,

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1 and I don't think a week's delay is certainly a
2 substantial prejudice. So let's try that.

3 My understanding as to the Goldman Sachs and
4 Merrill Lynch, if you can, to the extent you can
5 proceed with getting some discovery accomplished by
6 agreement, that's absolutely fine, as long as we do
7 all understand that Goldman Sachs and Merrill Lynch
8 are not fully briefing and participating in the class
9 certification motions because they can't and they
10 shouldn't have to till after the motion for
11 reconsideration is determined.

12 Counsel certainly is correct. I would assume
13 that a ruling on the class certification motions that
14 are pending and are to be decided will inform the
15 other parties. But I just want to be clear, that's
16 not something that can be determined before the motion
17 for reconsideration has been determined.

18 MR. ENTWISTLE: Your Honor, Andrew Entwistle. I
19 think that the record is clear as to that point. The
20 one thing I would request is that if we are going to
21 be granting additional time for Ahold to be
22 responding, I think, you know, it's only appropriate
23 that -- right now we have two weeks to brief -- that
24 we ought to be given, you know, equal extensions,

25 whatever those are.

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1 THE COURT: Certainly.

2 MR. KURTZ: Your Honor, Glenn Kurtz. Just so
3 that I don't later face some argument that I heard a
4 statement from Mr. Entwistle and I didn't respond, so
5 I accepted it, we have a stipulation that requires the
6 service of notices to admit and interrogatories by a
7 date certain. That date was missed by plaintiffs.
8 They never contacted us in advance of that date. They
9 never received an agreement to extend that date, and
10 the only conversations we have had to my knowledge are
11 conversations about we will be cooperative with you to
12 do what's efficient in discovery, subject to the
13 reciprocation, which I'm not seeing all of a sudden,
14 especially if we're going to stand on pretenses to
15 getting the additional documents that are a key stroke
16 away.

17 So I don't want that -- this is not the time to
18 resolve it, but I don't want my silence to be deemed
19 acquiescing in that statement.

20 THE COURT: I understand. All I am ruling on at
21 the moment is that there is a one-week, one-week
22 extension on the previously set dates, and I want to
23 know in a week where the document production stands
24 from the plaintiffs and what if anything has been
25 resolved on these two remaining issues, and if not,

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1 what needs to be quickly, quickly briefed.

2 MR. CHEPIGA: Your Honor, this is Michael
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3 Chepiga. We will also report in a week if we have any
4 disputes with Mr. Entwistle about the ABN AMRO
5 Rothschild request.

6 THE COURT: That's great. He did indicate that
7 he would be responding to you next week. So
8 presumably by the end of next --

9 Let's just say by the end of next week, which is
10 the 14th --

11 MR. CHEPIGA: Right.

12 THE COURT: -- I'll get status reports from
13 everyone and then we can go from there with either a
14 ruling or getting another conference call together if
15 we need to.

16 MR. CHEPIGA: Okay. Thank you, Your Honor.

17 MR. ENTWISTLE: Thank you very much, Your Honor,
18 for your time today.

19 THE COURT: Okay. Thank you all. Anything
20 else?

21 MR. CHEPIGA: Nothing from me, Your Honor. This
22 is Michael Chepiga.

23 MR. ENTWISTLE: I think that covers everything,
24 Your Honor. Thank you very much.

25 THE COURT: All right. I'll hear from you then

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1 on the 14th and I will hear from the government
2 counsel on the 21st of October. Thank you.

3 MR. ENTWISTLE: Thank you, Judge.

4 (The telephone conference call concluded.)

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REPORTER'S CERTIFICATE

I hereby certify that the foregoing transcript of the telephone conference in the matter of In Re Royal Ahold N.V. Securities and ERISA Litigation, Civil No. 103-MD-01539, before the Honorable Catherine C. Blake, United States District Judge, on October 6, 2005 is true and accurate.

Gail A. Simpkins
Official Court Reporter
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