

IN RE: LIPITOR : 2:14 MN 2502

Status Conference in the above-captioned matter held on Wednesday, March 27, 2014, commencing at 2:08 p.m., before the Honorable Richard M. Gergel, in Courtroom I, United States Courthouse, 83 Meeting Street, Charleston, South Carolina, 29401.

REPORTED BY DEBRA LEE POTOCKI, RMR, RDR, CRR
Official Reporter for the U.S. District Court
P.O. Box 835
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843/723-2208

A P P E A R A N C E S

APPEARED FOR PLAINTIFFS:

Margaret Branch, Esquire
Turner W. Branch, Esquire
Martin D. Crump, Esquire
Robert D. Cain, Jr., Esquire
Jayne Conroy, Esquire
Laura Singletary, Esquire
Mitchell M. Breit, Esquire
Taylor C. Bartlett, Esquire
Kenneth M. Suggs, Esquire
Ramon R. Lopez, Esquire
James J. McHugh, Jr., Esquire
Joshua M. Mankoff, Esquire
Mia L. Maness, Esquire
Mark C. Tanenbaum, Esquire
Frank M. Petosa, Esquire
Ann Estelle Rice Ervin, Esquire
Joseph F. Rice, Esquire
Dianne M. Nast, Esquire
Brad E. Seidel, Esquire
Nelson J. Roach, Esquire
Christopher L. Coffin, Esquire
Jessica Perez, Esquire
Nicholas Rockforte, Esquire
Blair H. Hahn, Esquire
Christiaan Marcum, Esquire
Thomas D. Rogers, Esquire
Elizabeth M. Burke, Esquire
D. Charles Dukes, Esquire
Eric S. Johnson, Esquire
David F. Miceli, Esquire
Catherine Heacox, Esquire
Michael Heaviside, Esquire
John M. Restaino, Esquire
Justin R. Kaufman, Esquire
Jesse Mitchell, Esquire
Casey Lott, Esquire
Vic Feazell, Esquire
Eleeza Johnson, Esquire

1 APPEARED FOR DEFENDANTS:

2

Michael T. Cole, Esquire

3 David E. Dukes, Esquire

Amanda S. Kitts, Esquire

4 Mark S. Cheffo, Esquire

Mara C. Cusker Gonzalez, Esquire

5 Sheila Birnbaum, Esquire

Rachel B. Passaretti-Wu, Esquire

6 Kevin Clines, Esquire

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1 THE COURT: Well, I've been hearing there wasn't
2 enough legal work out there. Well, folks we're all about to
3 embark on an adventure together here called the Lipitor
4 litigation.

5 And I normally start my proceedings off by asking the
6 lawyers in the room to identify themselves. I will not do
7 that today, for understandable reasons.

8 I received, just a short while ago, a petition. I don't
9 believe actually, Mr. Hahn, it's been filed yet, but it is a
10 petition for appointment of a plaintiffs' leadership structure
11 and a proposed order management order. That includes -- most
12 it looks like to me of the ones who had large numbers of
13 cases, significant numbers of cases, not completely, and then
14 some who at least at this point are recommended for the
15 steering committee, but I don't show them having a lot of
16 cases right now but I understand we'll talk about this maybe
17 sort of a pipeline going on; hasn't gotten here yet.

18 But I thought it might be useful, I'd like to first go
19 through that list so I can see who those folks are, and then I
20 want to give the opportunities for other lawyers who perhaps
21 have not been on this particular petition, who have, say, ten
22 or more cases, I'd like to hear from them, if such are
23 present.

24 Mr. Hahn, let me understand something. I have 390 cases
25 right now that have been transferred to this court, or which

1 were here originally. I got another 95 that I'm told by the
2 MDL are on the way. Every day I open my e-mail and it's like
3 Christmas every day. Okay? More keep coming. And I suspect
4 that's just a tip of the iceberg.

5 MR. HAHN: Yes.

6 THE COURT: Tell me, what are we looking at?

7 MR. HAHN: I can tell you from my perspective what
8 we're looking at, then Mark Cheffo represents Pfizer.

9 THE COURT: Pfizer may have a better idea; they're on
10 the receiving end of this.

11 MR. HAHN: He's also receiving --

12 MR. CHEFFO: Hasn't been Christmas for us, Your
13 Honor.

14 MR. HAHN: We have had four organizational meetings,
15 and each organizational meeting that we've had, starting in
16 July, we have invited any plaintiff lawyer that we could find
17 that was on the record on a federally-filed case. And it's in
18 our petition, and it states that where we had one in Maine, we
19 had one in New Orleans, we had one here in Charleston, and one
20 in Atlanta. And as a result of that, and because it's taken
21 so long for this MDL to get where it is today, I think that
22 the plaintiffs' bar has had an opportunity to get comfortable
23 with a leadership structure. And to my knowledge, we have the
24 support of everybody that has filed a case in Federal Court.

25 THE COURT: That would be great.

1 MR. HAHN: And people are here, obviously you can ask
2 for their comments as well.

3 Based on my discussions with those individuals, there are
4 probably represented in this courtroom today, somewhere in the
5 neighborhood of six or 7000 cases. There was --

6 THE COURT: Starting to look like the Charleston
7 County docket, not Federal District Court docket.

8 MR. HAHN: A lot of the cases have not been filed,
9 most of my cases have not been filed because we were waiting,
10 quite frankly, for an MDL to be set up to see if there would
11 be a direct filing order and other issues that would help to
12 expedite the filing of cases. And so people have been holding
13 cases as a result of that.

14 Mr. Cheffo will tell you, as he told the panel, that he's
15 heard his entire career plaintiff lawyers saying they have
16 thousands of cases and they never materialize. And I
17 understand that, but at the same time I'll represent to the
18 Court that the people that I know that have -- that I know
19 have cases, including my own inventory, that it is in the
20 thousands.

21 THE COURT: Mr. Cheffo, what are you hearing out
22 there? Nothing good, hum?

23 MR. CHEFFO: Yeah, unfortunately I can't say that
24 there won't be a significant number of cases. At least at
25 this point as to the numbers that Mr. Hahn has indicated,

1 certainly I'll take him at his word.

2 Here is kind of where we stand in terms of what's here,
3 what I understand and what potentially may be on the way. So
4 there are approximately 650 or so cases that are in the
5 system, if you will, so that will either -- are here already,
6 have been filed in Federal Court, that will be tagged, of
7 which there's probably no controversy that they will
8 ultimately wind up before Your Honor. Those are the filed
9 cases.

10 Then there's a large collection of cases, approximately
11 3000 cases, and we'll talk about kind of some of the players
12 here, but let me, if I could, just give Your Honor kind of a
13 roadmap. And those were cases that were filed in multi-party
14 complaints in State Court in California. And they essentially
15 named McKesson, which was a distributor. And the long and
16 short of it, again, I can provide the Court with as much
17 detail or as little as would be helpful, but essentially all
18 those cases were removed, they're before -- many of them are
19 before Judge Carney, who is a Federal District Court judge in
20 California. He has stayed those cases. The plaintiffs have
21 filed remand motions, but they're stayed.

22 And there are two issues at play there; one is fraudulent
23 joinder, and the other issue involves removal under the
24 California Joint Procedural Rules, and that issue is before
25 the Ninth Circuit en banc.

1 So one scenario is that those cases, as I said, about 3000
2 of them are in Federal Court. The plaintiffs there are moving
3 to remand, depending on what Judge Carney does. We've tagged
4 them. The plaintiffs have opposed that. So they could
5 ultimately come to Your Honor, depending upon what Judge
6 Carney does and what the panel ultimately does, but they are
7 in Federal Court.

8 Then --

9 THE COURT: They're in Federal Court because they
10 were removed from State Court?

11 MR. CHEFFO: Exactly, Your Honor. They were in
12 California; they're allowed to file these multi-party
13 complaints. So the number of complaints is somewhat
14 deceptive, it's about a hundred complaints, but it ultimately
15 is about 3000 individual plaintiff claims.

16 THE COURT: But they want to -- right now, the
17 posture there generally is that they want to litigate in the
18 California State Court system.

19 MR. CHEFFO: I think that's fair to say, and as
20 you'll hear, some of the same folks that filed those are
21 seeking membership on the PSC, and we can address that at the
22 appropriate time.

23 And then there are a number of other cases, there's a few
24 cases in West Virginia that will be removed, there are some
25 cases in Atlanta, about 20 cases that will be removed and

1 hopefully transferred, I think there's diversity there.

2 And then St. Louis is kind of the next issue. And St.
3 Louis is somewhat of a different animal procedurally, because
4 there, we have about 450 cases that were filed in the State
5 Courts, again, in these multi-party complaints. And I think
6 it's instructive to note that these are not, you know, St.
7 Louis residents, these are basically folks from kind of all
8 over the country, usually with one or two or three St. Louis
9 folks in these multi-party complaints, and they were filed in
10 State Court, they were removed and a stay was sought. We were
11 not successful in opposing the remand motions. And those
12 cases, about 250 of them have been remanded to State Court in
13 these multi-party complaints, again, largely by one or two of
14 the folks who are seeking leadership here.

15 And then I think there are three cases, individual cases
16 in New York which are filed. And I understand those, and
17 three specific because they're New York plaintiffs and there
18 was no diversity and they're filed in New York State Court.

19 So that's what I understand the kind of universe to be
20 right now. To the extent there's other cases, we haven't seen
21 them, but there are a good number of cases in the system, if
22 you will.

23 THE COURT: That's very interesting. You know,
24 obviously I'm not new to this, because I think I had 14 cases
25 we consolidated for discovery, Mr. Hahn and Mr. Cheffo have

1 been in front of me before, we've dealt with some of these
2 issues. And I made it very clear, I wasn't waiting around,
3 and we were going to get on with discovery, and we've done
4 that. And we'll -- obviously I've stayed now, just to get the
5 MDL organized -- but my intention is to stay on that schedule,
6 with some adjustment because of the stay, but we were going to
7 try the first bellwether case in February, and just figure the
8 time between now and the organization will add to that, that's
9 when I intend to try the first bellwether case here. We're
10 going to get the discovery finished, we're going to start
11 trying cases.

12 If people don't want to, you know, if that's too fast,
13 they probably ought to be trying not to bring them in my
14 court, because I'm going to get the discovery finished. I've
15 looked at these issues; I think they're manageable. I've
16 consulted with y'all. Y'all started already doing this. If
17 we run into problems, obviously I'll hear you out on it. But
18 my plan is to get the general liability causation evidence
19 that I think is essentially applicable to every case,
20 completed on a schedule, hear Daubert motions and so forth, be
21 ready for trials.

22 And then on the case-specific evidence that we will have a
23 rolling situation that when new cases come in, within so many
24 days the plaintiffs will be required to respond to certain
25 standard answers to interrogatories, requests for production,

1 and then the defendant will have the opportunity to depose
2 them. At one point there was a discussion about what we were
3 going to have only discovery against the defendant, not the
4 plaintiff. I made clear that wasn't going to happen, we were
5 going to do it parallel.

6 And the goal is, is this is not going to be one of those
7 MDLs that six years from now everybody is still talking to
8 each other. We're going to get this thing done. And when I
9 talked to the MDL panel, I made it very clear that I wasn't a
10 very patient person. I was going to bring a little sign that
11 Miss Ravenel, my courtroom deputy, gave me at Christmas, which
12 was Rocket Docket. Okay? But I figured that was a little
13 pejorative to stick that right up here and send y'all a
14 message. But I don't do it to rush you, but I just think we
15 waste so much time in the courts. I did complex litigation,
16 and I always used to say if I could put 30 days aside from the
17 day after I filed a case, I could be ready for trial. I mean,
18 I could just do it. Now, obviously this is a little more
19 involved than an individual case, but this is manageable.

20 So for those of you who are seeking to serve on the
21 steering committee, if you're not ready to roll up your
22 sleeves and knock it out in 2014, you probably ought not be on
23 the steering committee. I mean, that's -- my Charleston
24 judges -- my Charleston lawyers know me, they know what we're
25 going to do here, we're going to get this thing done.

1 I kid Mr. Tanenbaum, right when I got here -- he's
2 cringing with this story -- he arrived, and he had had eight
3 scheduling orders in a case, and he wanted a ninth. And I
4 told him no, he had to get ready for trial. And he managed to
5 tell a friend of mine, a mutual friend of ours, what kind of
6 guy is this Gergel guy, he won't give me a new scheduling
7 order. And then he got -- we set it for trial, and he got
8 this huge settlement. But he didn't go around and tell my
9 friends I gotten him all that money. He just got, you know,
10 that --

11 MR. TANENBAUM: I'll tell them the rest of the story
12 later over drinks.

13 THE COURT: But I just think that we all waste too
14 much time, it's too expensive. Every time I happen to deal
15 with corporate executives, they complain to me how costly
16 federal litigation is. It is. But frankly, an MDL is a
17 remarkable financial savings, we're consolidating as much as
18 we can right here, we're going to get the discovery done. And
19 I'm going to do my best -- I pledge this to you -- to promptly
20 respond to your motions.

21 Judge Marchant will be here in a minute, he is one of our
22 magistrate judges, and he's going to work with me, we're going
23 to divide this up, and our goal will be to promptly respond to
24 motions. We're going to have status conferences every 30
25 days. For anything that we can't dispose of on the paper,

1 we'll hear argument then. Nothing is going to sit. And I
2 can't ask y'all to put the kind of time you need to do, if I
3 can't respond to your motions. So I'm going to do my part
4 here to get that done.

5 So with that, why don't we -- let me just sort of go down
6 the list, first the list of the proposed steering committee,
7 and just stand up and tell me a little something about
8 yourself, and we'll start with you Mr. Hahn.

9 MR. HAHN: Judge, I've got a hard copy, if you'd
10 like, of what we e-mailed you earlier.

11 THE COURT: I have everything. If you could just --
12 why don't you start with yourself, Mr. Hahn, and tell us a
13 little bit about your background, and we're going to go
14 around, just going to go down through the list, okay?

15 MR. HAHN: Thank you, Judge. My name is Blair Hahn,
16 I'm with the Richardson Patrick law firm. I started
17 practicing law 20 some years ago, with the old Ness Motley,
18 learning from both Ron Motley and from Joe Rice, who is here
19 in the courtroom with us. And all I've ever done is complex
20 litigation.

21 I have served as lead counsel for the plaintiff steering
22 committee in five prior MDLs. I believe that I have the
23 support of the plaintiffs in this litigation. They have all
24 indicated that they support me as lead counsel.

25 We have the resources, both financial and manpower to

1 handle this litigation, to move it quickly, as the Court
2 desires and as we desire. And would ask that the Court
3 approve me as lead counsel.

4 THE COURT: I'm going to tell you, Mr. Hahn, I have
5 been very impressed with both you and defense counsel's
6 cooperation in this matter. One of the, you know, typical
7 thing, I'll get a discovery dispute, and each side will write
8 me 25 pages on some dispute. I mean, it could be done in a
9 paragraph. And, you know, of course I don't read it, right?
10 Who can read all that, right? So I've got -- I used to say I
11 had 350 cases; I can't say that anymore, I have 6000 cases,
12 right? But I can't do that. And one of the things that I
13 appreciated both of you doing, was when you had a dispute, to
14 get it down to sort of the nub of what the issue was, and to
15 articulate each party's position in essentially a paragraph or
16 two. And I tried to, as I have and I hope we'll continue this
17 model of just promptly giving you an answer to it, and so we
18 don't have discovery disputes holding up the progress of
19 discovery. So I have appreciated your efforts in the
20 consolidated cases.

21 MR. HAHN: Thank you, Judge.

22 THE COURT: Mark Tanenbaum.

23 MR. TANENBAUM: Your Honor, I'm no stranger to the
24 Court. I'm still trying cases, in fact, a dog bite case, we
25 still get to do some things what we started out doing. I wish

1 I could say everything I did was some complex, but some of
2 it's is pretty simple; the other side wants to make it
3 complex.

4 I've been doing this for 41 years now, in South Carolina
5 mostly, but some in Georgia, Florida, North Carolina, Ohio,
6 West Virginia --

7 THE COURT: Okay. Mr. Conroy? Miss Conroy.
8 Apologies.

9 MS. CONROY: Today, yes. Good afternoon. I have a
10 law office in New York. One of my lawyers is with me here
11 today, Laura Singletary.

12 MS. SINGLETARY: Morning, judge.

13 THE COURT: It's good to have you.

14 MS. CONROY: And we have been in several litigations.
15 I've been doing multi-district litigation for most of my
16 career, sometimes on the defense side, but in last 15 years or
17 so just on the plaintiffs' side. I've worked with Ms.
18 Birnbaum, Mr. Cheffo and with Pfizer over the years. I would
19 love to be on this case as well. I've worked with Mr. Hahn in
20 some of the consolidated cases. I haven't been down here, but
21 we are on some of the cases that are before you or have been
22 before you.

23 THE COURT: Very good, thank you. Mr. Lopez?

24 MR. LOPEZ: Good afternoon, Your Honor.

25 THE COURT: Good to have you here.

1 MR. LOPEZ: Ramon Lopez, I'm from California. I
2 think my partner, Jim -- there he is -- we have an office in
3 Philadelphia and New Jersey.

4 I have been doing this so long I had to look at my own
5 resume to remind myself how many times I've been involved in a
6 pharmaceutical or medical device case, but this would be
7 number twenty for me in about 25 years. I've been practicing
8 35, and probably 25 of those exclusively doing either
9 pharmaceutical or medical device litigation.

10 I've been on PECs and co-chairs, been consultant to MDL
11 judges in the Baycol litigation, assigned consultant to Judge
12 Michael Davis to coordinate between the Federal and State
13 Courts.

14 And as you can see, I've submitted my name with the
15 approval of my colleagues.

16 THE COURT: I heard, and I'll hear more about this;
17 are you one of those attorneys trying to keep the cases in
18 California and serve on this committee?

19 MR. LOPEZ: I would say that we filed a handful,
20 three or four cases, and I'm not going fight to keep them in
21 State Court, I'm happy with those cases staying here. I just
22 did that, you know, prior to an MDL being established, we
23 have -- your docket --

24 THE COURT: There is much wisdom to coordinating the
25 discovery.

1 MR. LOPEZ: There is.

2 THE COURT: I mean, to the extent there are a large
3 number of cases remaining in California, Missouri or anything
4 else, I'm going to try to coordinate with those judges.
5 Because, you know, we just can't have the same people
6 repeatedly deposed. We have some of the leading attorneys in
7 the country sitting in this courtroom, and we're going to get
8 it done, organized in a coherent way. We'll talk about, you
9 know, digitally posting it and so forth so everyone will have
10 access to it. But there's got to be a better way than having
11 6000 individual lawsuits, right?

12 MR. LOPEZ: Well, Your Honor, in the past, I mean,
13 I've been on federal MDLs and also been on a steering
14 committee and State Court in the same litigation. In fact,
15 I've served as federal-state liaison to do exactly what you're
16 suggesting. In other words, if these cases are going to stay
17 in State Court, there's some wisdom in figuring out a way to
18 coordinate with those folks.

19 THE COURT: I'll tell you one thing we do, if we keep
20 rocketing forward here and doing the discovery, we may solve
21 all the state law problems because all the discovery will be
22 done. That's part of the potential solution here. But I will
23 intend -- I do intend to coordinate closely with my State
24 Court colleagues, to the extent there are cases that remain
25 there.

1 MR. LOPEZ: Let me just say to the extent I can help
2 that process between the state, they have their own MDL-like
3 proceedings, consolidate all the cases like an MDL, and to the
4 extent I can help facilitate that, Your Honor.

5 Also Josh Mankoff of my office is here, too, he came down
6 from Syracuse. Rochester, New York.

7 THE COURT: Nobody from Syracuse or Rochester
8 complains about coming to Charleston, right?

9 Mr. Miceli?

10 MR. MICELI: Yes, Your Honor, David Miceli. I have
11 had the opportunity to be before Your Honor on one other
12 occasion. I'm with the Simmons firm. Our main office is out
13 of Alton, Illinois. I have my office in Carlton, Georgia. We
14 have offices in California and Delaware as well.

15 THE COURT: Remind me the case you were in front of
16 me on.

17 MR. MICELI: This case, Your Honor.

18 THE COURT: Oh, this one, okay, thank you.

19 MR. MICELI: And at a hearing, I believe with Mr.
20 Hahn and Mr. Cheffo present.

21 THE COURT: Thank you for reminding me.

22 MR. MICELI: Eric Johnson from our office in Alton,
23 Illinois is here.

24 I've been practicing law for 23 years now, and more
25 than -- well, more than half of that has been in the mass tort

1 arena. Prior to that I did do some mass tort work on the
2 defense side as well. My firm is one of the firms I'm sure
3 you will hear about later today who does have State Court
4 cases. I've talked to Mr. Cheffo about those, and we stand
5 ready to coordinate as close as possible with this Court on
6 our State Court cases. And we're committed to bringing the
7 rest of our cases, the remainder of them, in Federal Court.

8 THE COURT: Well, you're, at this point, fighting the
9 removal of those State Court cases in California.

10 MR. MICELI: Well, two of them have already been
11 remanded, one was remanded yesterday. All three were filed
12 before an MDL was set up, before an MDL was -- Excuse me, I'm
13 referring to the St. Louis cases. And just for the Court's
14 edification, Alton, Illinois, is a suburb of St. Louis, so we
15 filed them in our backyard. And two of those cases have
16 already been remanded; the other case has been briefed and
17 we're just waiting on an order as to whether it is going to be
18 remanded or not. So that's where we stand.

19 THE COURT: But how about -- I'm told 450 cases. Are
20 there --

21 MR. MICELI: Two hundred forty-eight belong to either
22 my firm or we're local counsel on those. The others --

23 THE COURT: The other thing I want to do is, I mean,
24 to the extent you have the legal authority to bring them in
25 State Court and you want to keep them there, that's your

1 business. I just don't want -- I want to accomplish the goal
2 of the MDL, and to the extent you're going to serve on this
3 committee, it seems to me you need to be sort of loyal to the
4 process here.

5 MR. MICELI: Your Honor, we intend to be loyal to the
6 process. I can only tell you -- we can address it now or when
7 Mr. Cheffo brings it up later -- this is the fifth opportunity
8 I've had to litigate with Pfizer. The Rezulin litigation,
9 there's Bextra and Celebrex litigation, there's the Zolofit
10 litigation, then there was the sort of laying-dormant-
11 near-dead Reglan litigation. And I have State Court -- I have
12 State Court case -- had State Court cases in three of those
13 litigations, and in the fourth -- there are others that served
14 on the PEC and PSC on the Zolofit litigation who are handling
15 cases in State Court. I can tell you my experience in
16 litigating with Pfizer, it has never been an impediment to my
17 firm or to the process, in litigating in both Federal and
18 State Court venues.

19 THE COURT: It does seem to me whether -- where the
20 case is ultimately tried is largely irrelevant to me; I'm
21 concerned with the coordination of discovery, so that we can
22 efficiently do this and get the cases ready. Because I'm
23 sending them back, I'm not keeping any more than what are
24 here. We'll talk about direct filing, what people want to do
25 about that. But as to the ones that are transferred to me, I

1 intend to send them back, I'm not trying to keep them or
2 anything.

3 MR. MICELI: In prior litigations we coordinated
4 closely with the MDL, the MDL led the way in discovery, we did
5 not seek to take second depositions of witnesses, and we don't
6 foresee doing that here. And we will coordinate as tightly as
7 this Court would like us to.

8 THE COURT: Thank you.

9 MR. MICELI: We'll do anything we can to further that
10 with other litigants in State Courts as well.

11 THE COURT: Thank you very much.

12 MR. MICELI: Thank you.

13 THE COURT: Miss Branch?

14 MS. BRANCH: Yes, Your Honor, I'm from New Mexico. I
15 practice law with my husband, Turner Branch. Stand up,
16 Mr. Branch. We have a law firm in New Mexico, and also in
17 Houston, Texas. And I've been involved in MDL litigation for
18 about 35 years now. That's how old I am. And
19 unfortunately --

20 THE COURT: Does that make you 35?

21 MS. BRANCH: Thirty-five, I admit to. My first
22 litigation was L-Tryptophan, an amino acid that caused -- was
23 used for women who had PMS. So my main interest is women's
24 health issues. And I've been involved since that first
25 litigation with Judge Matthew Perry in Columbia, South

1 Carolina, here in this state. So I love being back here.
2 Thank you for allowing us to be here. And I'd love to be
3 involved in this litigation. We have about 200 cases that we
4 want to get filed MDL.

5 And these women, Your Honor, are very injured, they have
6 diabetes. And I love hearing that maybe we have a rocket
7 docket here, because these women have got to get a trial soon.
8 They're on high levels of insulin, and it's very significant
9 litigation, Your Honor.

10 THE COURT: Thank you. Thank you, Miss Branch.

11 MR. BRANCH: Your Honor, I'll introduce myself,
12 Turner Branch. I'm married to Margaret, of course. And I've
13 been practicing law 47 years. I know most all of the
14 attorneys here that I've had the fortune of litigating with or
15 against, and I worked with Judge Perry as well. And all of
16 our cases will be in the MDL, and we're prepared to roll up
17 our sleeves and get to work.

18 THE COURT: Thank you.

19 MR. BRANCH: Thank you, Your Honor.

20 THE COURT: Chris Coffin?

21 MR. COFFIN: Good afternoon.

22 THE COURT: You notice I didn't do gender on that
23 one; you never know.

24 MR. COFFIN: You got it right. Either way. My name
25 is Chris Coffin, I'm from New Orleans, Louisiana. Been

1 involved in pharmaceutical MDLs and class action mass tort
2 cases for about 13 years. Been appointed by, I believe, seven
3 federal judges to plaintiffs' steering committees, served as
4 lead counsel in two or three MDLs. I've had the opportunity
5 to litigate against Mr. Cheffo and his team in a few different
6 litigations.

7 THE COURT: They look like they know what they're
8 doing.

9 MR. COFFIN: They generally know what they're doing.
10 Broadly, yes. And we've been relatively cordial in those
11 cases and been able to move the cases along. So been here
12 before, I'm glad to be here with my colleagues, and ask for
13 your appointment to the PSC.

14 THE COURT: Thank you, sir. Mr. Cory? Ernest Cory.

15 MR. MICELI: Mr. Cory was not able to be here, he had
16 a prearranged spring break vacation with his family.

17 THE COURT: I don't interrupt spring break.

18 Martin Crump?

19 MR. CRUMP: Good afternoon Your Honor, Martin Crump,
20 law firm of Davis and Crump from Gulfport, Mississippi. I
21 have Robert Cain from my office here, Judge.

22 Your Honor, I've been practicing for over 18 years, and
23 over half that time in pharmaceutical litigation. I've served
24 on 11 plaintiffs' steering committees, lead counsel for one
25 MDL, and am here for service on this MDL.

1 THE COURT: Great, Mr. Crump. You know, when I was
2 growing up, people would say, from South Carolina, "Thank God
3 for Mississippi." And what I want to know, in Mississippi do
4 they say, "Thank God for South Carolina."

5 MR. CRUMP: We hold onto that, Your Honor.

6 THE COURT: Mr. Garrison?

7 MR. BARTLETT: Judge, my name is Taylor Bartlett, I'm
8 hear on behalf of Mr. Garrison. And we're from Alabama, so
9 I'm sure both of you guys say "Thank God for Alabama."

10 But Mr. Garrison's been practicing law for over 30 years,
11 and about 25 of those in complex and multi-district
12 litigation.

13 THE COURT: Thank you, sir. Miss Gorshe?

14 MR. MICELI: Judge, from the Johnson Becker firm, she
15 is another spring breaker. I'm sorry, Your Honor, there's
16 three of them I'm going to be standing up.

17 The Johnson Becker firm is a firm of, I think, 13 lawyers.
18 Their entire practice is mass tort litigation. They work with
19 MDLs where they're actually working in a few of the MDLs that
20 our firm is also involved in, and I have their full commitment
21 to both resources and manpower for this litigation.

22 THE COURT: Mr. Heaviside?

23 MR. HEAVISIDE: Yes, Your Honor, Mike Heaviside from
24 Washington D.C. I have been a practicing attorney for 33
25 years. And clerked for the Supreme Court of Virginia, and

1 after that I was with a firm, Ashcraft and Gerel in D.C. for
2 30 years. And my firm now is Heaviside, Reed and Zaic.

3 I started off doing plaintiffs' workers' comp, personal
4 injury products cases. In the last 20 years it's been all
5 mass tort drugs and devices. Worked with most people in this
6 room, and I look forward to working on this case.

7 THE COURT: Thank you, sir. Mr. Jenner?

8 MR. SUGGS: Your Honor, Mr. Jenner's my partner; he
9 can't be here.

10 THE COURT: I know you, Mr. Suggs.

11 MR. SUGGS: He finished up a trial this morning in
12 Baltimore; unfortunately it was a defense verdict. But
13 Mr. Jenner has had extensive experience in this kind of
14 litigation, he started way back in the Red Cross AIDS
15 litigation, been doing mass torts ever since.

16 He and I both served on the steering committee on HRT, and
17 we actually tried two cases together, and he -- everybody
18 knows he's a hard worker and well committed to this kind of
19 work.

20 And the other reason I'm here is to keep an eye on Mr.
21 Dukes.

22 THE COURT: Casey Lott?

23 MR. LOTT: I'm from Langston and Lott in Booneville,
24 Mississippi. I got my first MDL experience about eight years
25 ago in this Court in the Bausch and Lomb litigation.

1 Currently serving as a chair in the Blue Cross-Blue Shield
2 antitrust litigation in Birmingham. And I would appreciate
3 the opportunity to serve on this steering committee.

4 THE COURT: Thank you, sir. Dianne Nast?

5 MS. NAST: Morning, Your Honor. Dianne Nast from
6 Philadelphia. Closest I'm going to get to spring break is
7 being right here in Charleston.

8 THE COURT: A lot of people come here for the spring
9 breaks.

10 MS. NAST: I'm sure they do. I have been practicing
11 law for 30 some years, the first ten years exclusively MDL
12 antitrust litigations. And I started in mass tort litigation
13 in 1993 with Margaret Branch and Turner, and several other
14 people that are here, in front of Judge Pointer in Birmingham,
15 Alabama. And I've continued in mass tort litigation ever
16 since.

17 I've served as lead counsel and the member of the PSC or
18 federal-state liaison counsel in scores of cases. And I'm
19 fully committed to this case.

20 THE COURT: Thank you very much, Miss Nast.

21 Frank Petosa?

22 MR. PETOSA: Good afternoon, Your Honor, my name is
23 Frank Petosa, I'm with the Morgan and Morgan complex
24 litigation group. I've been practicing law for approximately
25 21 years. Before I joined Morgan and Morgan in 2009, I did

1 exclusively medical malpractice, first on the defense and then
2 subsequently on plaintiffs' side.

3 We're fully committed to this litigation, Your Honor, both
4 our firm and myself to be involved. Since joining Morgan and
5 Morgan I've been involved in numerous MDLs, both on the
6 pharmaceutical side and the environmental side and in
7 defective products side.

8 THE COURT: Very good, thank you.

9 Lori Siler Restaino?

10 MR. RESTAINO: I'm about to confuse the Court; I am
11 not Lori, but --

12 THE COURT: Fooled me for a minute.

13 MR. RESTAINO: My apologies. My wife has a court
14 appearance in Denver, where we have our office. Lori has been
15 practicing for ten years, and has done pharmaceutical and MDL
16 litigations for that ten years. I will be working alongside
17 my wife, taking orders from her, just as I do at home.

18 I started the practice of law in 1991 with my dear friend
19 up here, Mr. Lopez, who previously introduced himself. Prior
20 to that, I did reconstructive surgery of the lower
21 extremities. And then I went on to get a degree in
22 epidemiology from Johns Hopkins, which all led to my being an
23 adjunct associate professor here at the University, so I am
24 looking forward to spending time in Charleston, both on this
25 litigation working, and getting some more extra class.

1 THE COURT: Good to have you here.

2 Mr. Rice?

3 MR. RICE: Good afternoon, Your Honor, thank you for
4 being here. And before I talk about my participation, on
5 behalf of the City of Charleston, we appreciate you setting
6 meetings as frequently as you can, and inviting as many people
7 as possible to the city.

8 THE COURT: And you'll notice a pattern that I set
9 them on Fridays; that will not be accidental.

10 MR. RICE: Fridays and Mondays or back-to-back
11 hearing days are always good in Charleston; we appreciate it.

12 Judge, I've been practicing 35 years with my home base in
13 South Carolina, but my practice has been a national practice.

14 I have participated in many many MDLs and many complex
15 multi-party litigations. Motley Rice has more attorneys than
16 I want to talk about. But our resources, both financial and
17 manpower, will be behind the case here locally, as well as our
18 offices in Rhode Island and Connecticut. I have Ann E. Rice
19 Ervin, who is going to be working with this case, which also
20 gives me some additional incentive on this case.

21 THE COURT: Yes.

22 MR. RICE: Personally, my involvement in many of the
23 MDLs and the complex matters has been to not only focus on
24 getting the cases ready for trial, but to try to come up with
25 innovative resolution processes. I have --

1 THE COURT: You have a good reputation about that,
2 Mr. Rice.

3 MR. RICE: Thank you, sir. I've known Miss Birnbaum
4 for more years than she and I want to admit, and probably have
5 resolved, I'll say, tens of thousands, and it could be
6 hundreds of thousands of cases with her around the country,
7 and have also set on the other side of her when she served as
8 the mediator in the 9/11 aviation cases, when I managed the
9 resolution for about 60 of those 90 cases.

10 I have not historically been a great big fan of early
11 MDLs, because I do not think an MDL should be used to create a
12 mass tort; I think it should be used to manage and resolve a
13 mass tort, if possible. And that's the motivation I bring.

14 And I'd like to serve in this PSC, know many of these
15 attorneys and worked with them, and we bring the talents I
16 have and the time I have to the process. Thank you.

17 MR. HAHN: Thank you, Mr. Rice.

18 Brad Seidel?

19 MR. SEIDEL: Your Honor, Brad Seidel, Nix, Patterson,
20 Roach from Texas, here with my partner, Nelson Roach. We
21 practice complex commercial litigation and a ton of mass
22 torts. It's hardly fair to follow Mr. Rice, but --

23 THE COURT: Somebody has to, right?

24 MR. SEIDEL: We've done considerable work with
25 Mr. Rice in the past, and also Mr. Suggs, Your Honor, we'd be

1 delighted to serve on this steering committee.

2 THE COURT: Thank you.

3 Frank Woodson?

4 MR. MICELI: Your Honor, this is the last time --

5 THE COURT: You're doing a great job, by the way.

6 MR. MICELI: Frank Woodson is a dear friend of mine.

7 THE COURT: You know what would be a problem, if you
8 don't end up on the committee and they do.

9 MR. MICELI: It will be, Your Honor.

10 THE COURT: You were in, but they say he talks too
11 much, right?

12 MR. MICELI: That's a common complaint. Frank
13 Woodson has been practicing law for about 25 years, and he
14 works with the Beasley Allen firm, which is one of the largest
15 plaintiffs' firms in the country. I know that he has devoted
16 the last 14 years of his practice to strictly pharmaceutical
17 mass torts, as he and I started at that firm together on the
18 same day in late 2000. And Frank is a committed attorney,
19 I've worked side by side with him when we were partners, and I
20 know that he'll bring everything that he can to this
21 litigation. Obviously their firm has the resources and funds
22 and manpower to contribute.

23 THE COURT: Thank you very much. All right, are
24 there --

25 MR. HAHN: Your Honor?

1 THE COURT: Yes, Mr. Hahn.

2 MR. HAHN: I believe you skipped Catherine Heacox of
3 the Lanier firm.

4 THE COURT: I'm sorry.

5 MR. HAHN: She's third from the top on page eight.

6 THE COURT: I'm sorry, absolutely I did, yes. Thank
7 you.

8 MS. HEACOX: Thank you very much. My name is
9 Catherine Heacox, I'm with the Lanier law firm. Our main
10 office is in Houston, but I work out of the New York office.
11 I've been practicing in mass torts for over 20 years.

12 Like Miss Turner, I see this as a women's issue. And many
13 of the cases I've been involved in previously have been
14 women's issue, cases like Ortho Evra, Yasmin. And I've served
15 on the PSC in Mirena in the Southern District of New York.

16 THE COURT: Thank you very much.

17 Now, are there are other attorneys here whose names I have
18 not called, and who apparently are not recommended, at least
19 on this group, to be on the steering committee or executive
20 committee, who have an interest in serving on the steering
21 committee, that is, anyone ten or more cases.

22 Let the record show no one has stood.

23 So would it be fair to say, Mr. Hahn, it's your impression
24 that there is a consensus among plaintiffs' counsel for this
25 structure and for this leadership?

1 MR. HAHN: Yes, sir, we have. And we've had two
2 votes, including one last night, and I -- Yes.

3 THE COURT: Very good.

4 Mr. Cheffo, let me hear about your team for a moment, if I
5 could.

6 MR. CHEFFO: Absolutely, Your Honor. I'm Mark
7 Cheffo, I appeared before Your Honor. I served in a number of
8 mass torts. I, until recently, was a partner at Skadden Arps,
9 and a year ago joined Quinn Emanuel, with Sheila Birnbaum, my
10 partner.

11 And I would -- I served as lead counsel in, I think, three
12 or four other MDLs, and I'd be certainly honored to appear
13 before Your Honor.

14 THE COURT: Good. And Mr. Cole?

15 MR. COLE: Your Honor --

16 MS. BIRNBAUM: Ladies first. Sheila Birnbaum,
17 Quinn Emanuel.

18 THE COURT: Miss Birnbaum, you have a reputation of
19 being the world's greatest settler of cases.

20 MS. BIRNBAUM: I'd like to have a reputation to be
21 the toughest lawyer in town. But I have settled a number of
22 cases with many people in this room. Usually we spend a lot
23 of time trying to get to the real cases, because I think Your
24 Honor will find there's going to be a lot of people who have
25 diabetes, some of them before they've ever taken the product,

1 some have no causation. So our job, before we can get to even
2 thinking about a settlement, is understanding what is really
3 out there, who is suing, what they're suing about, and what
4 the issue's involving --

5 THE COURT: I agree with you on that. That's why I
6 was insistent that the discovery would be done parallel,
7 because I thought it was important for the defendant to know
8 who had, you know, there are obviously people in higher risk
9 groups than others, and whose causation arguments would be
10 more compelling than others, and y'all needed to know that. I
11 mean, you just have to sort it out, and there's no way to know
12 without getting their medical records, taking their
13 depositions and so forth.

14 MS. BIRNBAUM: And I think Your Honor is absolutely
15 right on that. And we have gone through, trying to set up
16 MDLs in many different situations, and I think we'll do the
17 same thing here. I think we have a bunch of lawyers on both
18 sides who are very experienced; that's always a good thing.
19 And I think we'll be able to come to you fairly soon with an
20 order, and trying to set up the discovery that will work in
21 this particular situation. All these MDLs are different, they
22 all have some similarities, but they're all different. And I
23 think the good thing is you have a lot of experienced lawyers
24 in this room who will work together to try to make your job as
25 easy as possible, but there will be times when we will not

1 agree. And so --

2 THE COURT: That's okay. Listen, I tell people no
3 all the time. And I usually leave the room and leave
4 everybody mad at me when I do it, but I'm going to try to make
5 the right decisions, and I appreciate that. And the more you
6 cooperate, we get down to the issues that really matter,
7 right? And there are going to be disagreements, and be
8 shocking if there weren't.

9 MS. BIRNBAUM: We're all very pleased to be here in
10 Charleston.

11 THE COURT: We love having you.

12 Mr. Cole?

13 MR. COLE: Your Honor, Mike Cole, I'm with the firm
14 of Nelson Mullins here in Charleston. I'm with Mark, I'm no
15 stranger to the Court, been practicing 39 years now, I guess.
16 Done a lot of mass tort work, was involved with Judge Norton's
17 Bausch and Lomb MDL in the role of local liaison counsel.

18 Dave, you know David Dukes, who is one of my partners
19 here, and we're excited to be here and glad to have some
20 litigation in South Carolina that we can be a part of.

21 THE COURT: You can actually stay home, right? You
22 know, right after I was appointed to the bench, Judge Duffy, I
23 mean literally I was I think in my office for a day, and Judge
24 Duffy walked over and said, I've got a wrongful death case
25 that I've tried to settle and I can't settle; do you want to

1 try it? And it was a big case, right? It was a huge case.
2 And I took it, I said, sure, let's do it. And the parties had
3 struggled with trying to get it resolved. And we discovered
4 there was one, I think one adjuster and one reinsurance
5 company that was sort of not cooperating on everybody's
6 advice. And I discovered that that fellow had not attended
7 mediation, in violation of our local rule.

8 So I ordered him down the next day, get on a plane, and to
9 attend the trial the following Monday. And I heard a message
10 with my judicial assistant, he wanted to know could he go home
11 for the weekend. He was sounding than like one of my
12 prisoners. We got it resolved, did we not? All right. So
13 there's always a lot of different ways to skin a cat.

14 Well, all of y'all are familiar, I'm sure you've looked at
15 the model in the Smalls litigation of the approach that was
16 taken, and I'm sure there will be some modification just based
17 on the fact of the scope of all this. But that's the model.
18 We're going -- I mean, I like that model, y'all are going --
19 if y'all want to deviate significantly from it, someone is
20 going to need to explain to me, give me a really good reason
21 for that, because I think it's been a good working model.

22 One of the things I'm going to do is I'm going to give ten
23 days for anybody else to apply for the steering committee lead
24 counsel, liaison counsel. And then I'm going to very rapidly
25 make a decision. And I want the parties to confer about a

1 discovery schedule, and I'm going to want that to happen very
2 promptly, and a proposal come to me.

3 If you can't work it out, obviously I'm glad to do it
4 myself. But I want to be candid with you, my model is the
5 Smalls scheduling orders, the two orders, major orders we had
6 in that.

7 And what I want to say is I want to try my first
8 bellwether case, figure out what that deadline is, plus the
9 time we've lost by the stay, and that is approximately when I
10 want to try the first bellwether case. Everything else, y'all
11 back in it, y'all reverse engineer it, or that's what I want
12 to do, okay?

13 Mr. Cheffo, you need to speak?

14 MR. CHEFFO: Yes, Your Honor. I didn't mean to --

15 THE COURT: No.

16 MR. CHEFFO: A few things. One is I would really
17 just echo what Sheila said. I'm actually humbled; this is a
18 great group of lawyers, and it's going to be clearly a tough
19 fight. But I think you've seen, I think, we're committed and
20 I think the leadership here is committed to doing this the
21 right way professionally. We'll have disagreements,
22 obviously, but I think we're going to do this in a way that
23 the Court would expect us to.

24 And my comments, and they'll be brief, are not in any way
25 directed to anyone personally; in fact, just the opposite. In

1 fact, our view is and has been that we think to the extent
2 there is an MDL, it should be here and it should be the
3 center. And frankly, even though Your Honor knew that we had
4 opposed the MDL, but what we never did was oppose this Court
5 leading. We had different issues. We always said to the
6 extent there's going to be an MDL, it should be here, and we
7 still believe that.

8 And we think it's important to lead by example. And I
9 think I would take a page from both their application and from
10 the Manual, and some of the comments that Your Honor said.
11 And I think there's really three points.

12 The first is experience is important. They've talked
13 about it, it sounds like a pretty good experienced group of
14 folks.

15 I think the second point, so I won't spend a lot of time
16 on that, that's important, is people have to have cases. At
17 least from my perspective, I think it's very important that
18 people have skin in the game, if you will. And to the extent
19 that there's any lack of clarity about whether they have cases
20 or have intention to file, I think that's, with all due
21 respect, an important consideration for Your Honor to
22 evaluate.

23 And then the third is this what I'll call commitment to
24 the MDL point. I mean, to be clear, no one is suggesting that
25 if there's a case rightfully filed in State Court, a plaintiff

1 decides they want to file their case, that's fine.

2 THE COURT: That's their legal right.

3 MR. CHEFFO: Absolutely.

4 THE COURT: You can't make them be in Federal Court
5 if they have a legal right to be in State Court.

6 MR. CHEFFO: That's absolutely right. And to be
7 clear, to the extent there's a transcript somewhere that shows
8 to a State Court judge, I share, and I think the leadership
9 here shares, to the extent there's a case that's properly in
10 State Court, we are going to coordinate as best we can. This
11 is not a situation where we're going to ignore the State
12 Courts. We want to kind of coordinate very well.

13 Having said that, I do think there's a distinction here.
14 That if you choose to file cases -- and just to be clear,
15 these cases in St. Louis, for example, there's really no
16 reason why they need to be there. In other words, they're
17 basically 90-person complaints. There's, in our view, kind of
18 a fraudulent misjoinder. The courts disagree with that. But
19 they're very early stages, nothing has happened.

20 The difference -- and let me address the Zoloft issue. So
21 in Zoloft, and this is why, frankly, I've seen this movie
22 before, and unfortunately I think I've played the victim in
23 that movie. Is that there were -- there's one coordinated
24 case. Now, Mr. Miceli was on the steering committee, we've
25 worked very well together, he does not have any cases in the

1 Zoloft cases. In fact, in Zoloft and Effexor, Judge Rufe --
2 many of the folks in the room here today are also on Zoloft
3 and Effexor -- made it quite clear that you have to
4 essentially be kind of committed to the MDL.

5 There is one coordinated case in St. Louis with about 20
6 plaintiffs, and there's about half of those, seven or eight
7 that are PSC members. And I'm not going to get into the gory
8 details, but I'm going to tell you, those seven or eight
9 cases, it has caused, in our view, a great amount of
10 difficulty with coordination.

11 THE COURT: In what way?

12 MR. CHEFFO: Well, a few things. One is, remember,
13 now we have 250 cases. You know, I've kind of asked the
14 plaintiffs' counsel, well, you say you want to coordinate;
15 will you agree to accept all the rulings in this case? Well,
16 not so sure, can't really do that, every case is different.
17 Okay, well, then what is coordination? Also said, well, will
18 you agree, because it's not just a matter about the
19 bellwethers, it's part of what Your Honor, I'm sure, has
20 studied these issues, this is a global type analysis, right?
21 Whether it's at the micro level, you know, a little horse
22 trading, how we deal with things that are appropriate. On the
23 macro level, getting the case ready, looking at the
24 case-specific issues, general, specific causation. And then
25 from there, figuring out how cases, to the extent that they

1 still survive, how they're remanded. All of that is part --
2 and it's very important for Your Honor to control the
3 litigation. If you have a situation where you have 250 cases
4 where not really saying we'll abide by the discovery rules,
5 then you're going to start to have State Court judges who are
6 going to want to have different trial dates, you have
7 overlapping coordinate expert issues, only a limited number of
8 folks who work at these companies to have to kind of travel.

9 So when you kind of look down the road, again, seen this
10 movie before, in a year from now or right around the time that
11 it's important for Your Honor to have an ability to figure out
12 kind of strategically how this should wind up, it's just -- Is
13 it impossible? No. But this is an avoidable problem.

14 I guess my real message here is that the leadership here,
15 if they want to file in State Court, then frankly that's what
16 they should do. But to be kind of on the executive committee,
17 it's a different animal, this is a discretionary type, you
18 know, decision. And there's nothing that is requiring these
19 folks, and I say this with all due respect, to prosecute those
20 claims. In fact, they've said -- I think I heard Ramon say,
21 which is great, that he's going to have those California cases
22 transferred here. So you have a situation with Mr. Hahn, all
23 of his cases are here, you have Miss Conroy, all of her cases
24 are going to be here, you have Ramon's cases, all of them are
25 here. And I think that to then have a leadership structure

1 where somebody has 250 or 300 cases -- And just to be clear,
2 there's only 50 cases in the Federal Court, so 250 of these
3 cases that they have are there.

4 THE COURT: I think you're being polite, but which
5 particular counsel are responsible for 150 cases?

6 MR. CHEFFO: Sure. I think that -- and before we had
7 this conversation I -- the one thing I think I'll pride
8 myself, this will not come as a surprise to Mr. Miceli, I
9 think we had a little conversation before the court, so the
10 Simmons Browder firm and Tim Becker's firm are the folks who
11 have about 250 or so cases collectively. And to us, the
12 answer is very simple. Right now is the time to make this
13 decision. They could easily be -- we'll give them tolling
14 agreements, if there's any, they could be removed and
15 transferred here. Then we avoid all of these issues and we do
16 what Your Honor wants to us do.

17 THE COURT: Let me ask you, are you suggesting that
18 if they -- we were -- if you removed the Missouri cases and
19 transferred them to South Carolina for the MDL, that when I
20 remand it, you would allow them go to back to the State Court
21 system?

22 MR. CHEFFO: Well, that's --

23 (Brief interruption in proceedings.)

24 MR. CHEFFO: No, no, the reason I'm hesitating --

25 THE COURT: I mean, if you're -- they obviously like

1 being in the State Court system. They have a legal right to
2 be in the State Court system. And I share your desire to
3 consolidate discovery, because I think it's very inefficient,
4 unless we have close coordination.

5 I frankly might be less worried if we have somebody in
6 Missouri coordinated I'm working with, I'm less concerned than
7 the random cases running around all over the country and
8 you're chasing them.

9 But I wasn't sure if I was hearing you or not. If you
10 really want -- I don't even know, I never even thought about
11 doing this -- but to allow them to remove it to participate in
12 the MDL, but then consent to their remand after we complete
13 the MDL.

14 MR. CHEFFO: Again, I actually personally would think
15 that that would solve a lot of the problems. But I don't
16 think there would be jurisdiction. I mean, in other words, in
17 order to get the cases, again --

18 THE COURT: If I remand something, it's gone. Let me
19 just tell you. You know, if you consent to it and a District
20 Judge in Missouri, if it's understood what's up -- if I issue
21 an order remanding, it just goes, unless somebody appeals.

22 MR. CHEFFO: This is one option. Let me think out
23 loud and speak out -- think out loud here. I mean, look, to
24 the extent that the cases were removed, and if they were to
25 file a remand motion, and the case was to stay here until the

1 time that the Court decided on the remand motions, that would
2 be something that I think the Court could consider.

3 But remember now --

4 THE COURT: Mr. Miceli, does that address your
5 concerns?

6 MR. MICELI: It does not address our concern, Your
7 Honor. First of all, there's time limits on when you can move
8 for remand, to start with. What we're arguing here is
9 Missouri procedural law as to how we're allowed to file cases
10 there.

11 This argument was made before the judge in the Eastern
12 District of Missouri by separate counsel for Pfizer, and the
13 cases were remanded. I've already committed that we would be
14 filing the remainder of our cases here. We currently have in
15 excess of a thousand cases. We anticipate a large percentage
16 of those, which have already been vetted, will be filed in
17 this court; the rest will never get filed.

18 THE COURT: Well, I'm more concerned with
19 coordination than I am with where you litigate. I think
20 that's your business. Okay? But I do want -- Is there a
21 particular judge in Missouri who is -- state judge who is
22 responsible for these?

23 MR. MICELI: There are three different judges who
24 cases were assigned to. Eric Johnson may have a better answer
25 than I do. Two have been remanded back to the State Court;

1 one is still pending.

2 THE COURT: Does Missouri have a procedure for
3 consolidating the state cases?

4 MR. JOHNSON: Your Honor, it's likely that they'll
5 end up in front of the same judge, so you can --

6 MR. CHEFFO: Just so Your Honor understands what
7 happened, right? Ninety plaintiffs, okay, all of them are not
8 -- they name one or two either from New York or St. Louis, who
9 destroy diversity. The rest have probably never set foot in
10 St. Louis.

11 THE COURT: I get the problem.

12 MR. CHEFFO: You get the problem.

13 THE COURT: I get it.

14 MR. CHEFFO: Here's what happens. Then we move to --
15 we remove the cases. And the last one, within an hour of
16 removal, the plaintiffs moved to remand and moved for
17 sanctions. Now, fortunately --

18 THE COURT: By the way, I don't like sanctions, y'all
19 are wasting your paper on that.

20 MR. CHEFFO: Fortunately, the Court did not grant
21 sanctions, but did remand the case. So the issue here is
22 really it is one of jurisdiction. I mean, they could
23 basically have the one nondiverse plaintiff. This is really
24 an issue of, you know, I can't get here and tell you that they
25 can't do it, because the courts have said that they can do it.

1 THE COURT: It's --

2 MR. CHEFFO: It's a matter of being -- leadership
3 shouldn't be doing this stuff.

4 THE COURT: Mr. Cheffo, here is the little problem
5 is, you know, you are going to pick your team to manage your
6 side. And you've obviously got a strong steam. The plaintiff
7 should be able to pick their team. Okay? I mean -- and I
8 don't think the defendant should be picking the plaintiffs'
9 team. I mean, that's sort of -- and I understand what you're
10 saying, and I can understand that you feel like Mr. Miceli is
11 playing both sides of the fence here. But he's telling you
12 that he's going to help coordinate, and if there's a problem
13 and I can have some influence on it, I'm going to help you do
14 that. But ultimately he has a right to litigate those cases
15 in Missouri. And whether I might find that an unreasonable
16 local rule, or you may, that's the law of Missouri, and they
17 get to -- you know, and that law gets enforced. And that's
18 why the federal judge in Missouri sent it back, I presume.

19 MR. CHEFFO: Your Honor, I'm going to sit down. I
20 mean, obviously this is totally discretionary in your --

21 THE COURT: I understand.

22 MR. CHEFFO: This is nothing, we're friends, I mean,
23 it's not personal, but the last thing I will say really is --

24 THE COURT: The guy you're trying to bump off the
25 committee?

1 MR. CHEFFO: Just the opposite. What I want him to
2 do is basically say I'm going to join the party, okay? That's
3 what I really want.

4 THE COURT: I heard him say for every future case, he
5 is going to join the party. And after awhile, you know, if
6 we're working really effectively here, he may reconsider
7 having a separate operation going on, because it won't be
8 efficient for him. Everybody's about efficiency, right? They
9 want to get this thing done, but everybody has a common
10 interest in getting to the end here, and to know what the
11 facts are.

12 And one thing about this, and I mentioned that when I --
13 in our first encounter, this is so new, that there's truly
14 discovery going on here. People are figuring things out as on
15 the fly here, which I'm sure from your standpoint isn't a
16 great way to be; you'd like to know all the answers ahead of
17 time.

18 So, you know, I share your goal of wanting to get it all
19 here, I think that's a really great idea, but it's just not
20 possible in some ways. But I'm going to do everything
21 possible to at least get it as efficiently -- we'll administer
22 this, because your ultimate goal is a good one, which is
23 holding down costs. Rule 1 of the Federal Rules, right,
24 holding expeditious cost-effective method of disposing of this
25 litigation.

1 MR. CHEFFO: I appreciate that, Your Honor, thank
2 you.

3 THE COURT: So, Mr. Miceli, you're not getting voted
4 off.

5 MR. MICELI: Thank you, Your Honor.

6 THE COURT: For exercising your rights.

7 I presume -- y'all haven't specifically set forth, but I
8 presume in terms of service, liaison counsel would, under your
9 leadership model, would receive everything? Is that the
10 way --

11 MR. HAHN: Yes, sir, Your Honor.

12 THE COURT: Okay. And let's talk about a digital
13 data bank for all the plaintiffs' lawyers, and having access
14 to all the discovery. Because obviously as y'all begin taking
15 depositions, tell me what your plans are regarding that.

16 MR. HAHN: We have already set up a vendor called ILS
17 out of California. There are two major vendors in the country
18 that most plaintiff lawyers use in these situations. And we
19 have contracted with ILS. We have had produced 5 million
20 documents today?

21 MR. CHEFFO: Four point five million pages.

22 MR. HAHN: Could be a million documents.

23 MR. CHEFFO: About 4.5 million pages.

24 MR. HAHN: That have already gone to ILS. And we
25 have -- we're in the process of looking through all of that.

1 THE COURT: But all the counsel will have access to
2 the discovery.

3 MR. HAHN: Yes, Your Honor. Anybody that is
4 participating in the MDL process would have access to it. And
5 we are prepared to talk to the Court about orders, to make
6 sure that all of that happens.

7 THE COURT: I'm open to --

8 MR. HAHN: At the end of the day, Judge, what I'm
9 talking about is assessments on the cases, if and when the
10 case is resolved, so that everybody helps to pay for the
11 process.

12 THE COURT: You know, one thing that your petition
13 did not address is a compensation proposal. And you'll see in
14 an order I'm going issue later today or tomorrow, is going to
15 address that issue, which is, I need to hear what the steering
16 committee's proposal is on compensation. And fair enough, I'm
17 telling you something, everybody has to keep their time, they
18 have to document it. I don't want to fuss later, and people
19 claim I had to post hac document what I did, contemporaneous
20 notes, I used to hate doing it, all y'all got to do it, and we
21 need to keep good records so we don't have a fuss later.

22 MR. HAHN: Yes, sir. What I've done in MDLs in the
23 past is require that all time and expenses be submitted on a
24 monthly basis, so you don't have that issue.

25 THE COURT: I think that's exactly the way you solve

1 the problem. And because one of the most unattractive parts
2 of complex litigation is a fuss about fees at the end. It
3 just makes everybody look terrible. Right? I mean, it just
4 does. So if we can anticipate ahead of time, we understand we
5 have a formula in place and a system in place, obviously if
6 I've got to make decisions, I'm glad to do it, but I'd love to
7 have something that everybody knows the rules going in.

8 MR. HAHN: Yes, sir. You'll see in our submission
9 for CMO II, we actually put language in there as well dealing
10 with members of the PSC that failed to meet their financial
11 obligations.

12 THE COURT: I saw that.

13 MR. HAHN: What we've asked is if they haven't, in 60
14 days, they're automatically removed from the leadership
15 position.

16 THE COURT: I'm going to -- what I'm going to want to
17 do is to have a monthly status conference. The only required
18 people to be present, unless otherwise ordered by the Court,
19 are going to be the lead counsel, the liaison counsel, and
20 anyone who has an argument to make on a matter.

21 We're going to need -- I'm going to ask plaintiffs'
22 steering committee to coordinate about the best method for
23 call-in system. Our court capacity is somewhat limited in
24 getting -- we had large numbers of people trying to listen. I
25 really don't want to have people on the telephone trying to

1 make argument, if we can avoid that; we want the people here
2 to do that.

3 And one of my purposes is I'm going to require, five days
4 ahead of a status report, I want to make sure the depositions
5 are being taken, discovery is being produced, that if we have
6 disputes, I'm resolving them. And to the extent we have
7 nothing to do for a particular month because things are
8 smoothly running, I'll cancel it for that month. But I think
9 everybody knows I'm going to be asking how many depositions
10 did you take in July. I mean, you know, kind of motivate you
11 to take the depositions in July, because I'm not going to be
12 happy if the answer is zero.

13 But I'm going to try to schedule those on a Friday, it's
14 least disruptive for me to do that. And for those who want to
15 come in town, you always have an excuse to be in Charleston
16 for the weekend.

17 MR. HAHN: Yes, and we would ask if you could
18 schedule them for morning hearings, so that if people want to
19 get out of town, they can, by the afternoon.

20 THE COURT: So but Friday suits you, but like
21 10:00 a.m.?

22 MR. HAHN: Ten a.m. would work. There are a number
23 of West Coast people, especially, that can't get home today,
24 so they're spending the day and leaving in the morning.

25 THE COURT: So, Mr. Hahn, I will say that I think

1 y'all need to explore about what technology your law firm or
2 some other system has that people could -- large numbers of
3 people could call in and listen.

4 And I also would recommend that you order a transcript,
5 and put it -- we'll put it on the ECF for every status
6 conference, so people can keep up who don't necessarily need
7 to participate, but can keep up with what's going on.

8 MR. HAHN: Absolutely. And I'll coordinate with your
9 office to get to the IT people that we need to, and with
10 defense counsel, obviously, so that we can have a speaker
11 telephone system available.

12 THE COURT: We have the capacity to do -- and I --
13 it's not unusual for us to do a -- we have the speaker phone
14 and I do it. But I worry if we have 30 or 40 people
15 participating, we're not really set up for that. So we need
16 to do that.

17 I also explored about using teleconferencing facilities.
18 We have the facilities, but we can't handle more than four
19 remote locations.

20 MR. HAHN: We can set up just a call-in number, if
21 the Court would like. That's an easy thing.

22 THE COURT: That may be the way to do it. I'm going
23 to leave it to y'all to sort of figure out. What I don't want
24 to do is we don't need to replicate this meeting very often,
25 what we have right here. And it's so inefficient. But it is

1 important for me to keep my hands on all the parties, and for
2 y'all to know that on any dispute, you're less than 30 days
3 away from having access to me. And quicker than that, I mean,
4 to extent something comes in, I'm going to rapidly look at it.
5 The only time since we've had this, I was in the middle of a
6 three week murder-for-hire trial and I just couldn't stop to
7 help y'all the last time you had a dispute. And I think the
8 MDL came down within days after that. Otherwise, I've been
9 trying to respond very promptly.

10 And by the way, folks, while we're talking, this is Judge
11 Marchant, who is one of our magistrate judges. And he is
12 going to work closely with me. Y'all know the Manual for
13 Complex Litigation recommends the use of magistrate judges to
14 help us promptly respond to motions, and we're certainly --
15 he's going to be a partner with me in doing this.

16 And that raises this issue about do I have pending remand
17 motions now in cases? I mean, it's very hard to get down into
18 the weeds on these cases. Are there any pending?

19 MR. CHEFFO: Nothing before you that I'm aware of,
20 Your Honor.

21 MR. HAHN: Nor plaintiffs, Your Honor. As a matter
22 of fact, there's some cases with pending titles on that have
23 not yet made it to this Court.

24 THE COURT: Okay. Because what I intend to do, I
25 mean, I have -- I have not gotten down into the hundreds of

1 cases that have been filed, opening them up and looking at
2 them individually, I've looked at a few, but not a lot of
3 them. I've certainly looked at all the South Carolina ones.
4 But one of the things I intend to do for all pending motions,
5 is to deny them without prejudice, and to require anyone who
6 seeks to file a motion, to go to lead counsel first. That
7 will avoid unnecessary duplication and that type of thing.
8 Sounds like to me most of the committee's organized and you're
9 going to respect that. I'm not going to stop anybody from
10 filing a motion if lead counsel says not to do it, but they
11 have to certify to me they've consulted with lead counsel, and
12 under our local rule, consulted with opposing counsel on a
13 motion.

14 And because the nightmare, a lot of these cases, I've
15 talked to some of my colleagues, is a mountain of motions that
16 just turn the whole thing into a quagmire. And I'm trying to
17 avoid that. If we do things promptly, we limit it, we have
18 some discipline and control on it, I think that ought not be a
19 problem.

20 I saw in the Manual for Complex Litigation, there's some
21 discussion about having some type of website. What's sort of
22 the practice on that, to have litigants to have access to
23 information? Is that done much? I'm just not familiar with
24 that.

25 MR. HAHN: I've been involved in the past where a

1 website is set up. In fact, my firm hosted the Zyprexa
2 website, and it allowed people to log on to see if there were
3 rulings from the Court, transcripts, any of those types of
4 things.

5 THE COURT: I mean, it's up to y'all, it's your
6 clients, but you're going to have six or 7000 people with
7 family members, some of them I've heard descriptions of people
8 with, you know, who have developed and had bad situations with
9 Type II diabetes, they're anxious about it. I mean, obviously
10 you don't want a phone call every 15 minutes to your office
11 for a status report. So I'll leave that to you, but it does
12 seem like it's probably not a bad idea.

13 MR. HAHN: And in my experience, we have set up these
14 types of websites for the lawyers' access, not for the
15 individual litigants' access, so that their individual lawyers
16 can look at the information.

17 THE COURT: That's fine. You know, it struck me when
18 I read the Manual for Complex Litigation, the world has
19 changed so much just in the years since that manual has been
20 written. That our whole sort of notion of how we communicate,
21 for instance, the ECF makes everything pretty much available,
22 and the task of liaison counsel, Mr. Tanenbaum, is made a lot
23 easier by ECF, is it not?

24 MR. TANENBAUM: I'm hoping Miss Maness will tell us
25 exactly about that stuff and how to do it, Your Honor.

1 MS. MANESS: Miss Maness believes, in fact, it will
2 be much easier.

3 THE COURT: Yes. You know, it makes things -- just
4 things are changing so much. What I do want y'all to think
5 about is if you have a lot of anxious clients out there who
6 are interested, my Clerk's office doesn't want to get calls
7 asking what's going on, right? And y'all need to communicate
8 and have a way to effectively communicate with your clients.
9 Because, you know, there's a long distance between being one
10 of those six or 7000 people, and being on the steering
11 committee, right? And people are going to want to know.

12 I had a request by the defense about allowing one common
13 answer, is that right, Mr. Cheffo?

14 MR. CHEFFO: It is, Your Honor.

15 THE COURT: Does anybody oppose that?

16 MR. HAHN: No, sir, Your Honor, we have not engaged
17 the defendants on any of these issues because we haven't had
18 authority to do so.

19 THE COURT: Sure, I understand.

20 MR. HAHN: But we've --

21 THE COURT: -- eminently reasonable proposal.

22 MR. HAHN: Absolutely. And what we would propose
23 providing to the Court, after we've been appointed, would be a
24 master complaint that litigants can check boxes and file, and
25 there will be a master answer, and that will streamline the

1 whole process for direct filing especially. And we've had
2 preliminary discussions with Pfizer, and they're very open to
3 that.

4 MR. CHEFFO: I think that's right. I think on the
5 details, as we said earlier, you know, there are going to be
6 certain things we don't agree on, but I think on these things,
7 and maybe you can give us some guidance, you said there's
8 going to be a period of time, but we can start working on some
9 of these thing.

10 I mean, what we would hope to do, again, if it's okay with
11 Your Honor, is to have some type of omnibus motion that kind
12 of may not get every trial issue, but a lot of these issues,
13 whether they're direct filings, you know, how we kind of deal
14 with the nuts and bolts, you know, I think it will be
15 important on some of the basics that everyone is actually a
16 member of ECF, that does make it easier. But I think we could
17 probably put our heads together and present something for the
18 Court relatively quickly.

19 THE COURT: My intention is I'm going to give you ten
20 days, give people ten days to make any filings. And you'll
21 see in my order I'm going to request that you give me -- one
22 of the things I'm interested in is names of other judges
23 you've worked with, because that's a very important feature
24 for me, is -- because it's very clear that the management of
25 these cases, the skillful management is very important for its

1 efficient completion. So I will want to talk to -- do some
2 due diligence here in talking to people that those of you who
3 seek to serve, in particularly leadership positions, that you
4 have a record of working cooperatively with courts. But I'm
5 going to rapidly do that. As soon as that information comes
6 in, I'm going to give you ten days. To the extent you give it
7 to me in two days, we're going to start immediately consulting
8 with other courts. I asked for some information that will be
9 duplicative of what you've already given to me in the form of
10 those résumés and that. But I'm going to try to rapidly do
11 that.

12 We have a major event in the Court on April the 11th, I'm
13 pretty involved in, which is the dedication of a statute to a
14 former colleague, Waties Waring, in which we have the Attorney
15 General of the United States and the Fourth Circuit and the
16 District Court, all my colleagues here, and I'm kind of
17 running that. So I will be probably tied up in that week
18 before, but what I can get done beforehand, I will do. And
19 then rapidly after that, we're going to hopefully be moving
20 forward on getting this thing organized. And I'm urging y'all
21 first to meet and confer on any kind of proposed management
22 order. I want y'all to work on that. To the extent you have
23 disagreements, highlight those to me, and we're going to very
24 quickly get that up and get this discovery process moving
25 again.

1 MR. HAHN: Judge, would the candidates for leadership
2 position, would you like all of us to submit an additional
3 letter to the Court, or how do you want --

4 THE COURT: No, I will take what you have here is
5 sufficient. You'll see some things you haven't addressed,
6 like the compensation and the judges, identify judges you've
7 worked with, so you can supplement that. But you do not need
8 to duplicate what you've already done. I obviously prepared
9 that, anticipated that before -- before I saw what came in
10 today.

11 Mr. Hahn, you had some requests about basically adopting
12 the Smalls approach and so forth, and I'm going to leave that.
13 Let me make my decision on the leadership structure, and then
14 I want you to confer with defense, and we'll figure out, you
15 know, the -- we'll see what y'all produce out of that.

16 MR. HAHN: Our motive in those additional points was
17 just to remind the Court that it's there, and that -- we
18 certainly want to meet and confer with defense first; we can
19 probably resolve some of these issues.

20 THE COURT: One of the issues is this parent-child
21 document issue, and I know it's an issue important to
22 everybody, I probably want to hear argument on that issue. So
23 probably our next meeting, to the extent y'all haven't worked
24 it out, I'm going to hear argument on that and make a decision
25 on that, because I know that's been a source of some conflict

1 here, and I want to think through the best solution to that
2 problem. Okay?

3 I am a big advocate of mediation. I require at the
4 beginning of every one of my cases the lawyers to fill out a
5 form, and it says are you ready for mediation now? If not, is
6 there something I can do to help you be ready for mediation?
7 And if not, when will you be ready? And that approach is
8 based on the following observation of practicing law and being
9 a judge for 35 years. Ninety-nine percent of the cases that
10 don't go away by summary judgment, are settled. They should
11 be. Most of them should be settled earlier, not later than
12 they are. And in many cases it's bad habit, it's delay, it's
13 hoping you'll get the -- nobody wants to be the first one to
14 approach the other, all these things delay that process.

15 And I want to encourage you, when it is ripe, that we
16 mediate. That should not be a magic date, it shouldn't be --
17 I remember people used to say to me, I have to do all the
18 discovery before I can mediate. I used to think, well, that's
19 good for the lawyer working by the hour; I'm not sure it's
20 good for the client. But y'all will know when you're ready.
21 And I want to encourage you to do it.

22 I will issue a mediation order that requires mediation by
23 a certain date, but that should not be the date of the
24 mediation, that should be the outside date. And if I can help
25 you in any way in addressing issues that are particularly

1 critical for the parties to make important decisions, bring
2 those to my attention. I will help you get to those issues,
3 if there are critical issues, let's focus on those, if that
4 will help you do that.

5 Let me ask a question about -- and I have not gotten into
6 looking at the gender of all the plaintiffs -- and I've heard
7 several of the counsel refer to this as a women's medicine
8 issue, and I have certainly have read the underlying articles
9 that I know that plaintiffs are relying on here.

10 Are essentially all of our plaintiffs women, or what
11 percentage are not?

12 MR. HAHN: Virtually all of the plaintiffs currently
13 are women. And the reason is that the science, to date,
14 differentiates between the additional risk of developing
15 diabetes for a man versus a woman taking Lipitor.

16 THE COURT: And how about age, I know that some of
17 the studies have talked about age groups, higher risk, 59 to
18 70 and that type of thing; are most of them in that age range?

19 MR. HAHN: I would say the majority of the plaintiffs
20 are in that age range, yes, sir.

21 THE COURT: And what percentage of them have actually
22 developed diabetes?

23 MR. HAHN: The ones -- the conversations that I've
24 had with plaintiffs' counsel is 100 percent.

25 THE COURT: Hundred percent have diabetes.

1 MR. HAHN: They're only looking at women that have
2 developed diabetes after taking Lipitor.

3 THE COURT: Okay. And most of them obviously are
4 women who you established, and are most of them in that upper
5 age group?

6 MR. HAHN: Probably so, Your Honor.

7 THE COURT: Yeah. It's hard to get your arms around
8 when you haven't -- nobody has access.

9 MR. CHEFFO: I would just say two things. My
10 understanding is all of the cases that were transferred are or
11 should be women, because we've actually seen a male case, and
12 the panel actually did not transfer it. So I think it's --

13 THE COURT: The panel talked to me about limit --
14 actually they discussed this limiting it to women, and they
15 decided not to do it, but alerted me to that issue, that I
16 might want to limit it in that way. And I haven't gotten into
17 looking at the cases; it doesn't surprise me that they're
18 mostly women.

19 MR. CHEFFO: And when I say -- I'm talking probably
20 two or three cases that were male, and one, if I recall, it
21 was a muscle injury case, it wasn't even related to diabetes.

22 So obviously I don't think the Court would accept or
23 understand my silence on the merits of the issue to be
24 acquiescing.

25 THE COURT: I do not assume that.

1 MR. CHEFFO: And to the extent we're talking about
2 health issues, obviously Lipitor is, you know, still on the
3 market, and we think that doctors and the FDA have a very
4 different view of the benefits and science than the
5 plaintiffs' bar does. And also that --

6 THE COURT: I don't think any of the plaintiffs' bar
7 has one doctor that has prescribing authority.

8 MR. CHEFFO: I don't think so. And I think you'll
9 find a few things. I think you'll find that the vast majority
10 of the women in the medical records, which is relatively
11 modest at this point, are still taking Lipitor at this point.

12 THE COURT: That doesn't foreclose their claims, now
13 does it?

14 MR. CHEFFO: It doesn't. But I think the issue is,
15 again, there's going -- I think when there's going to be clear
16 difference of agreement of what the records show, or maybe
17 there will be, when these folks developed, what the risk
18 factors are. And also the fact of Lipitor and -- I'm sorry --
19 cardiac issues being the leading cause of death of women. So
20 we have a lot to say.

21 THE COURT: And some percentage among a population
22 fitting the same profile without Lipitor, certain percentage
23 of them are going to develop diabetes anyway.

24 MR. CHEFFO: Exactly.

25 THE COURT: These articles suggest a statistically

1 higher, at least some of these articles, and you may disagree
2 with those, with Lipitor have a significantly higher risk of
3 developing Type II diabetes.

4 MR. CHEFFO: And we would disagree. But I don't know
5 this now is necessarily the time to address that, but that
6 does raise an issue, and to the extent that these are issues
7 that Your Honor would like to discuss with both sides, you
8 know, at some point.

9 THE COURT: We'll get to all that. And, you know,
10 I'm not unfamiliar with these issues, and I have been reading
11 pretty diligently the underlying medical literature, reading
12 the underlying footnotes in the major articles, and getting
13 those articles, so I'm getting myself up to speed on them, and
14 I kind of get where the debate is.

15 And that's why I said, I think a lot of the literature, if
16 we were doing this three years from now, we would have a whole
17 other body of literature out there that may well validate
18 completely the plaintiffs' position or discredit it. So a lot
19 of this is a sort of moving target as we speak.

20 Are there other issues that we should address at this
21 point?

22 Mr. Suggs?

23 MR. SUGGS: Your Honor, I'm sure that everybody here
24 has read the local rules, but since we have everybody here
25 that is probably going to be participating in discovery, I

1 think it might be a good idea for the Court to address our
2 local deposition rules that might be different from what
3 people are used to.

4 THE COURT: We do not allow speaking objections in
5 depositions. And what does that mean. That means,
6 "Objection. He doesn't have enough information to answer that
7 question." And then witness says, "I don't have enough
8 information to answer that question." Right? And we don't
9 allow that. If you have an objection, the word is objection.
10 That's it.

11 And if we have problems in depositions, I'm a phone call
12 away.

13 And let me talk also to you about civility. We're big on
14 that around here. Nobody needs to be yelling at each other in
15 depositions. A deposition involving a party, of course, is
16 like being in open court. And I expect you to have that same
17 behavior. And I said I don't like sanctioning lawyers, and I
18 don't, I've rarely sanctioned a lawyer, it has to be very
19 serious misconduct. But we're not going to tolerate
20 discourtesy. We're not going to do it. That's not necessary
21 to get this done. There's enough work to be done, and if
22 people get upset, step out of the room. Just don't -- and
23 don't challenge someone to step out with you. But to step out
24 of the room. We don't need to have discourtesy here. And I
25 have really respected, up to this point, the work of parties

1 who have strongly-held beliefs that are different from each
2 other, positions that are different. But this is a remarkable
3 system we have of resolving our disputes, and an important
4 part is the promotion of courtesy.

5 So the two local things you kind of get from us is, number
6 one, we don't have speaking objections, and number two, we're
7 courteous to each other, okay?

8 Other matters to come?

9 MR. HAHN: Mr. Lopez wants to address the Court on
10 the stay that's in place, and some pending issues.

11 THE COURT: Very good. Yes, sir.

12 MR. LOPEZ: Being consistent with the Court's desire
13 to have a rocket docket and keep basically the schedule we
14 have, and understanding that, I mean, and I was involved in
15 the Smalls case, too, I didn't come to court, but I was
16 involved in some of the early meet and confers about some of
17 the issues. A week ago I was going to send out a revised
18 30(b)(6) deposition, and then Blair called me and woodshedded
19 me that CMO I doesn't allow me to do that.

20 However, I do have a meet and confer that was kind of
21 pending, and I think we had another 30(b)(6) deposition that
22 was scheduled. But for the stay, that probably would have
23 happened. And I guess my long-winded way of asking you this
24 question is, can we, even though we've not been assigned,
25 we've not been appointed as leadership, if we were involved in

1 a process before this MDL, and we want to continue the process
2 within the next ten days, can we send out meet and confer
3 letters, can we still address those kind of issues?

4 THE COURT: I'm going to ask you to wait. Let me
5 make this decision. Let's have some kind of coherent
6 organization of this thing, and I think it won't be long. I
7 have -- if I could have figured out how to schedule this
8 meeting in less than 30 days notice, I would have done it. I
9 was concerned about people coming from across the country.
10 But I promise you, we'll make up that time quickly, but I want
11 to ask you to stop. Let me make the decision, let's have a
12 rational process for decision making, let's get the leadership
13 team in and then let's proceed.

14 And on any of these, you know, we're going to have a
15 leadership structure here. And I expect that when we're
16 getting ready to do depositions and so forth, we're going to
17 work and consult with lead counsel. So I mean, I think that's
18 very important to have -- we don't have people just sort of
19 going off on their own here, that there is some coordinated
20 effort.

21 MR. LOPEZ: Our intent is to kind of pick up where we
22 left off.

23 THE COURT: I encourage that, okay, and I'm conscious
24 of the fact that we've stayed the process, which is contrary
25 to every goal I have. So we're going to do it as briefly as

1 possible.

2 Any other matters to come before the Court?

3 MR. HAHN: None from plaintiffs, Your Honor.

4 MR. CHEFFO: Nothing, Your Honor.

5 THE COURT: I'm going to step down and speak to
6 everyone. Thank you.

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8 (Court adjourned at 3:35 p.m.)

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REPORTER'S CERTIFICATION

I, Debra L. Potocki, RMR, RDR, CRR, Official Court Reporter for the United States District Court for the District of South Carolina, hereby certify that the foregoing is a true and correct transcript of the stenographically recorded above proceedings.

S/Debra L. Potocki

Debra L. Potocki, RMR, RDR, CRR