

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

IN RE: AQUEOUS FILM-FORMING
FOAMS PRODUCTS LIABILITY LITIGATION MDL NO. 2:18 MN 2873

Status Conference in the above-captioned matter held
Monday, February 25, 2019, commencing at 10:04 a.m., before
the Hon. Richard M. Gergel, in Courtroom I, United States
Courthouse, 81 Meeting St., Charleston, South Carolina,
29401.

REPORTED BY DEBRA LEE POTOCKI, RMR, RDR, CRR
Official Reporter for the U.S. District Court
Charleston Division
P.O. Box 835
Charleston, SC 29402

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

APPEARED FOR PLAINTIFFS:

- JOSEPH F. RICE, ESQUIRE
- FRED THOMPSON, III, ESQUIRE
- ANNE MCGINNESS KEARSE, ESQUIRE
- TEMITOPE O. LEYIMU, ESQUIRE
- T. DAVID HOYLE, ESQUIRE
- EDWARD J. WESTBROOK, ESQUIRE
- CHRISTIAAN MARCUM, ESQUIRE
- TERRY E. RICHARDSON, JR., ESQUIRE
- MICHAEL A. LONDON, ESQUIRE
- REBECCA G. NEWMAN, ESQUIRE
- PAUL NAPOLI, ESQUIRE
- LOUISE R. CARO, ESQUIRE
- PATRICK J. LANCIOTTI, ESQUIRE
- AARON R. MODIANO, ESQUIRE
- SCOTT SUMMY, ESQUIRE
- T. ROE FRAZER II, ESQUIRE
- CHARLES E. SCHAFFER, ESQUIRE
- VICTOR SHER, ESQUIRE
- MATTHEW EDLING, ESQUIRE
- RICHARD S. LEWIS, ESQUIRE
- MICHAEL OVCA, ESQUIRE
- LARRY R. COHAN, ESQUIRE
- JOSHUA C. COHAN, ESQUIRE
- FRANK L. GALLUCCI, ESQUIRE
- KEVIN S. HANNON, ESQUIRE
- JOSEPH L. FELICIANI, ESQUIRE
- ROBERT A. BILOTT, ESQUIRE
- DANIEL A. OSBORN, ESQUIRE
- MATTHEW J. SINKMAN, ESQUIRE
- NANCY CHRISTENSEN, ESQUIRE
- WILLIAM J. JACKSON, ESQUIRE
- JOHN D.S. GILMOUR, ESQUIRE
- J. NIXON DANIEL, III, ESQUIRE
- KEVIN MADONNA, ESQUIRE
- RICHARD HEAD, ESQUIRE
- TATE J. KUNKLE, ESQUIRE
- CARLA BURKE PICKREL, ESQUIRE
- ERIN DICKINSON, ESQUIRE
- DAVID MCDIVITT, ESQUIRE
- WESLEY BOWDON, ESQUIRE
- JANPAUL PORTAL, ESQUIRE
- JAMES L. FERRARO, ESQUIRE
- JAMES L. FERRARO, JR., ESQUIRE

1 APPEARED FOR 3M:
MICHAEL A. OLSEN, ESQUIRE
2 DANIEL L. RING, ESQUIRE
BRIAN DUFFY, ESQUIRE
3
4 APPEARED FOR TYCO AND CHEMGUARD:
JOSEPH G. PETROSINELLI, ESQUIRE
LIAM J. MONTGOMERY, ESQUIRE
5 DAVID E. DUKES, ESQUIRE
AMANDA S. KITTS, ESQUIRE
6
7 APPEARED FOR FEDERAL DEFENDANTS:
ARASTU K. CHAUDHURY, ESQUIRE
LEE BERLINSKY, ESQUIRE
8 SAMUEL DOLINGER, ESQUIRE
SARAH WILIAMS, ESQUIRE
9
10 APPEARED FOR NATIONAL FOAM:
KEITH SMITH, ESQUIRE
11
12 APPEARED FOR THE PORT AUTHORITY OF NY AND NJ:
NICHOLAS MINO, ESQUIRE
MARK A. CHERTOK, ESQUIRE
13
14 APPEARED FOR STATE OF NEW YORK:
MIHIR DESAI, ESQUIRE
15
16 APPEARED FOR SUFFOLK COUNTY, NY:
THOMAS STAGG, ESQUIRE
17
18 APPEARED FOR SWF/NEG, INC.:
DEAN S. SOMMER, ESQUIRE
KRISTIN C. ROWE, ESQUIRE
19
20 APPEARED FOR UTC/KIDDE:
JONATHAN HANDLER, ESQUIRE
JOHN W. CERRETA, ESQUIRE
21
22 APPEARED FOR TOWN OF EAST HAMPTON:
NICHOLAS C. RIGANO, ESQUIRE
23
24 APPEARED FOR BUCKEY FIRE EQUIPMENT CO.:
MICHAEL CARPENTER, ESQUIRE
25
APPEARED FOR CITY OF NEWBURGH:
ALAN J. KNAUF, ESQUIRE
AMY K. KENDALL, ESQUIRE

1 THE COURT: I feel like we have the full employment
2 plan here for all lawyers. Congratulations.

3 You know, in my last MDL I would run into young attorneys
4 who had told me they could not get a job, and they said, we
5 have been hired, we have gotten a job. They're all doing the
6 discovery for both sides' document production. So we are glad
7 to contribute to the greater prosperity of the Bar.

8 Okay. Folks, this is our organizational meeting in the
9 AFFF MDL. And part of it is I want to hear -- I know that
10 many times, prior to organizational meetings like this,
11 counsel will get together, both sides, and talk to each other
12 about how it might be organized. And though I don't rubber
13 stamp lawyers, I am open to hearing what you have to say and
14 what ideas you might have.

15 So let's just start first of all on the plaintiffs' side.
16 Have there been meetings and discussions about lead counsel,
17 liaison counsel?

18 MR. RICE: Yes. Joe Rice from Motley Rice.

19 THE COURT: Yes, Mr. Rice, good morning, sir.

20 MR. RICE: There have been multiple meetings.

21 THE COURT: Surprise.

22 MR. RICE: Yes, sir. Some in Charleston and some up
23 in New York. And I believe that the request is to have Motley
24 Rice be appointed as liaison counsel, and we are prepared to
25 give the Court a proposal. We are prepared to do it at the

1 Court's schedule. The lawyers that are proposed to be co-lead
2 are here today, if the Court would like to talk with them. I
3 think we have a consensus of a structure.

4 This MDL is going to be a little different in structure,
5 maybe, than some of the others that you've had. Because, as
6 you can see from our chart, and Mr. Thompson is going to talk
7 about, we have plaintiffs that are situated in different
8 places, and that's going to present some unique issues in the
9 management. So we're going to probably have a couple three
10 leads, and then we're going to have really sub-leads in a
11 couple areas that are going --

12 THE COURT: We have distinct issues like the water
13 systems and so forth that have their own discrete issues.

14 MR. RICE: They'll have their issues they can deal
15 with and be in charge of.

16 So I think with that structure, everybody is on board and
17 we're prepared to move forward at whatever schedule you give
18 us; or, again, everyone is here today if you'd like to have me
19 introduce --

20 THE COURT: So who is, Mr. Rice, who is proposed as
21 the co-lead counsel?

22 MR. RICE: These two gentlemen right here, Scott
23 Summy --

24 THE COURT: Where are you from?

25 MR. SUMMY: Dallas, Texas.

1 THE COURT: Now, what I'm going to do is I'm going to
2 want anyone who wishes to be either lead counsel, liaison
3 counsel or on the steering committee, to provide me a resume
4 and references. And I want references to judges who you have
5 dealt with in other MDLs. And for those who know, what I do
6 is I call the judges. This is like one of the critical
7 decisions you make early in an MDL as a judge is getting the
8 right leadership doing this. And it's not just experience,
9 it's also compatibility, reasonableness, time to devote to
10 this effort.

11 I think this case, I'm going to hear from y'all a little
12 bit about this, I think it's one of those onion cases; as you
13 peel off one layer, there's just so much to it, and we're
14 going to have to sort all this out, and I think a lot of us
15 are going to be on a journey together filling out the full
16 implications of it.

17 So, okay, Mr. Summy. Who else?

18 MR. NAPOLI: Good morning, Your Honor.

19 THE COURT: Your name?

20 MR. NAPOLI: Paul Napoli, N-A-P-O-L-I.

21 THE COURT: And you're from New York?

22 MR. NAPOLI: Yes, New York.

23 THE COURT: And you have a large percentage of the
24 cases?

25 MR. NAPOLI: I have a few cases filed, yes.

1 THE COURT: I think I counted 58 maybe?

2 MR. NAPOLI: And a few more coming, yes, Your Honor.

3 THE COURT: We're going to talk about that. I
4 suspect we are just beginning. I had that in the Lipitor
5 case, we had an initial run, and then we had just massive
6 numbers of cases coming in. I'm going to want to hear what
7 y'all are anticipating about that.

8 And the third person?

9 MR. LONDON: Good morning, Your Honor, Michael
10 London.

11 THE COURT: And where are you from?

12 MR. LONDON: Douglas and London Law Firm in New York
13 City.

14 THE COURT: Okay. So do we have a proposed steering
15 committee? Executive committee?

16 MR. LONDON: Your Honor, there's a proposed steering
17 committee executive committee. I believe all members are
18 here. It's on consensus. They can speak, or we can submit to
19 Your Honor --

20 THE COURT: What I want to do is obviously I don't
21 need to hear from everybody on your steering committee, but
22 here's what I do want to say. This is going to take a lot of
23 time. And anybody who has like lots of obligations and many
24 other pressures and deadlines, you're probably not -- you
25 should not be thinking about being in leadership in this

1 particular case. For those who work with me know, I am going
2 to push you, I'm going to push you at every phase of this.
3 And I know I have -- sometimes the lawyers grouse at how hard
4 I work them to get through discovery. But in the end, they
5 thank me, because it's just part of the process you've got to
6 do to get your arms around this issue. And I think we're
7 reasonably looking at, you know, perhaps millions of
8 documents, and the question is, how do you manage them, how do
9 you get -- and we've got to get to all that. We've got -- on
10 both sides. And I know that sometimes I'll have these cases,
11 kickback from parties who are saying discovery is just so
12 burdensome. Well, the normal calculation we would have, the
13 cost-benefit analysis we're mandated to give in every case,
14 changes fundamentally when you're dealing with thousands of
15 claims of individuals. I mean, it's just a completely
16 different calculation.

17 So I'm just going to say, everybody, put on your seat
18 belt, we're going to do real discovery here. I mean, you
19 know, if an appellate court reverses what we do here, it's not
20 going to be because you didn't have access to the information.
21 We're going to get to that. And where that truth is, I don't
22 know, perhaps none of you fully appreciate where all this
23 goes. But I assure you that if you don't get the information,
24 we'll never do this as thoughtfully and intelligently as
25 possible.

1 Here's what I want to do. I want, in the next five days
2 or so, Mr. Rice, I don't -- you know, you and I have known
3 each other for 40 years, I don't have any problem with you
4 being liaison counsel, and I think that's just fine.

5 MR. RICE: And Mr. Thompson is probably going to be
6 the primary person you're going to be dealing with. Because
7 taking what you said to heart, I'm in the middle of the opioid
8 case, and we've got over a hundred million pages already, so I
9 appreciate the task. And we've learned a lot at Motley Rice
10 in the opioid and managing the documents that's going to be
11 translated here.

12 THE COURT: Of course, you have a lot of other
13 experience.

14 Mr. Thompson, good morning.

15 MR. THOMPSON: Good morning, Judge.

16 THE COURT: For full disclosure, we were classmates
17 at Duke together. He always threw elbows when we played
18 basketball.

19 MR. THOMPSON: I was hoping you would remember that
20 more fondly. But you're right.

21 Judge, I am coming off of the transvaginal mesh
22 litigation, and have actually sort of glided for a couple
23 months, so I actually can fill my day with this case, and
24 intend to.

25 THE COURT: Yeah. And I think it's going to be, I

1 think, challenging for all the parties. So what I want in the
2 next five days, if you will get me the resumes and references,
3 what I want to do is I'm going to get on the phone and talk to
4 my colleagues around the country. I've found that very
5 valuable. Generally, talking to my colleagues is something we
6 do in the MDL world, particularly our New Orleans judges, who
7 are legendary, and who I frequently consult with, Judge Fallon
8 in particular.

9 How about for the defense side? Tell me -- Yes, sir.

10 MR. PETROSINELLI: Your Honor, good morning, my name
11 is Joe Petrosinelli, I'm from the Williams and Connolly firm
12 in Washington, D.C., and I represent two --

13 THE COURT: Give me the last name again.

14 MR. PETROSINELLI: P-E-T-R-O-S-I-N-E-L-L-I.

15 THE COURT: Yes, sir.

16 MR. PETROSINELLI: And I represent two of the foam
17 manufacturer defendants.

18 THE COURT: Which are those?

19 MR. PETROSINELLI: Tyco Fire Products -- we call it
20 Tyco -- and Chemguard.

21 Judge, we've had some discussions amongst the foam
22 manufacturers here. Let me back up. I think there are
23 probably, for today's purposes, there are sort of three
24 categories of defendants. There are foam manufacturers, there
25 are other private company defendants, and there are

1 governmental entities that are defendants in some cases.

2 On behalf of the foam manufacturers, we have gotten
3 together, and I think I speak on behalf of all of them, you
4 know, these cases, when the case -- before the cases got to an
5 MDL, we had been informally coordinating and sort of figured
6 out how to divide the labor. And what we talked about is
7 having, on behalf of the foam manufacturers, two co-lead
8 counsel.

9 THE COURT: Who is that?

10 MR. PETROSINELLI: Would be me and Michael Olsen of
11 Mayer Brown, who represents 3M.

12 THE COURT: I was --

13 MR. OLSEN: Mike Olsen from Mayer Brown in Chicago.

14 MR. PETROSINELLI: And when I say foam manufacturers,
15 Your Honor, I mean the following six companies; Tyco,
16 Chemguard, 3M, National Foam, Buckeye, and Kidde, K-I-D-D-E.

17 And on behalf of those six companies who are the
18 manufacturers of the AFFF foam that's at issue in the
19 litigation, that's what we had in mind in terms of a lead
20 counsel.

21 And then in terms of liaison counsel, Mr. Dukes from
22 Nelson Mullins --

23 MR. DUKES: Morning, Your Honor.

24 THE COURT: Morning, Mr. Dukes.

25 MR. PETROSINELLI: -- Mr. Duffy from Duffy and

1 Young --

2 MR. DUFFY: Morning, Your Honor.

3 MR. PETROSINELLI: -- would be our, on behalf of the
4 foam manufacturers, our proposed liaison counsel.

5 THE COURT: I want y'all to know that for years
6 Mr. Duffy has had himself bumped out of cases because his dad
7 was the judge. So I have very frankly talked to my dear
8 friend, Judge Duffy, who is now fully retired, about serving
9 in a mediation role in this case, which he gladly was willing
10 to do. But then Brian appears in the case, bumping out his
11 father. And his only response to me was, "It was about time,
12 right?"

13 MR. DUFFY: We'd still be willing to have him serve.

14 THE COURT: I'm sure you all would.

15 MR. PETROSINELLI: Your Honor, so with respect to the
16 other categories of defendants, the other --

17 THE COURT: Tell me about the private company.

18 MR. PETROSINELLI: So there are other private
19 companies that are defendants in only a small handful of
20 cases, just because of the site specific nature of some of the
21 cases. For example, I'll just give you one example, in one of
22 the cases, Federal Express is a defendant in only one case.

23 THE COURT: I saw that.

24 MR. PETROSINELLI: So I think there are a number of
25 private companies that are defendants in one or two cases, and

1 they'll have to speak for themselves, I suppose, but our
2 thought is they're probably not going to be very active in the
3 common discovery or the overall --

4 THE COURT: We have to fold them under something.
5 And let me just say this. We need a lead counsel over
6 everything, just because you've got have the ability for one
7 person from the plaintiff and one from the defendant
8 communicating with each other. It's just -- and it might be
9 that that person would be the liaison counsel, I mean, that
10 might work. But we've got to have some overarching person.
11 Because even on issues like, say, the foam manufacturers and
12 the governmental entities, there may be common discovery that
13 needs to be coordinated. You don't want them doing the same
14 discovery. So I think it's important that we have a structure
15 so that we can communicate. And if y'all want to do that
16 as -- I want y'all to think about that but, you know, there
17 will be times where I'm going to want to talk to one plaintiff
18 and one defense counsel about something, and I don't want to
19 create this thing every time we have a communication, to try
20 to solve a problem.

21 MR. PETROSINELLI: One good thing is just Mr. Rice
22 and Mr. Thompson and Mr. Napoli, we know each other --

23 THE COURT: I'm sure you do.

24 MR. PETROSINELLI: -- and have dealt in MDLs,
25 Mr. Thompson mentioned the transvaginal mesh MDL, and I was in

1 that and we had a lot of dealings. So I think I hope that
2 will make things easier. But yes, we take your point, Your
3 Honor.

4 THE COURT: So what I want you to do in the next five
5 days, just recommend to me -- I need resumes as well from you,
6 and with references. And I want you to just think about some
7 overarching organization so that we'll have that one contact
8 point. And it may well be Mr. Thompson for the plaintiffs,
9 and that might fit the profile of, you know, the role
10 between -- you know, some MDLs, the liaison and the leader are
11 the same person, they perform that same role.

12 So but I think we need to designate something so that we
13 can quickly address issues that come up, and mostly logistical
14 issues. And somebody has to control central discovery on each
15 side so we don't have, you know, 20 people trying to depose
16 the same person.

17 MR. PETROSINELLI: Absolutely, Your Honor. One other
18 thing I should mention, just so you have this complication in
19 mind, or just fact in mind, on the governmental entities, some
20 of them are plaintiffs and defendants. So --

21 THE COURT: Yeah, well, help me. I know that some of
22 them are these water systems, and they have claims, but I
23 would imagine some of those water systems could be defendants
24 in individual claims.

25 MR. PETROSINELLI: Yes, that's exactly right.

1 THE COURT: And the United States is a party?

2 MR. PETROSINELLI: In one of the cases.

3 THE COURT: In one of the cases.

4 MR. PETROSINELLI: Then, for example, the State of
5 New York, they brought a case as a plaintiff, and they're a
6 defendant.

7 THE COURT: Is anyone here speaking on behalf of the
8 governmental entities?

9 MR. CHAUDHURY: Yes, Your Honor, Arastu Chaudhury
10 from the U.S. Attorney's office in the Southern District of
11 New York.

12 THE COURT: Give me your name again.

13 MR. CHAUDHURY: Arastu Chaudhury. Last name is
14 C-H-A-U-D-H-U-R-Y.

15 THE COURT: Thank you.

16 MR. CHAUDHURY: Good morning, Your Honor. I'm
17 speaking on behalf the United States and federal defendants in
18 the City of Newburgh case. We have filed a motion to sever,
19 but that is before Your Honor.

20 THE COURT: I wouldn't hold my breath on that one.

21 MR. CHAUDHURY: Understood, Your Honor. Hope springs
22 internal. But we have spoken with the other defendants in the
23 Newburgh action, both the nonmanufacturer private defendants
24 as well as the state entities and the city entities. And we
25 have certain peculiar problems, both arising from the fact

1 that some of our -- some of the parties are on both sides of
2 the V, as well as for the government in particular, the fact
3 that we are in this case, but then much of the discovery we
4 expect to be actually directed to different entities than are
5 defendants in the City of Newburgh action.

6 So speaking on behalf of them, I guess at this earliest
7 stage, the only thought we really want to put in Your Honor's
8 head is that given the discrete and very specific issues that
9 arise for the governmental entities, and our particular case
10 up in Newburgh, New York, we'd like to keep in mind the idea
11 of maintaining some degree of carve out for those entities.

12 THE COURT: Listen, I will work with you, and I
13 recognize -- It may well be that we'll discover some of the
14 water system issues have great commonality with others, some
15 who have not even arrived yet. And we'll want to coordinate
16 that. But I'm fully prepared to be hands on here. And if
17 we've got to do specific issues which need attention for the
18 City of Newburgh case alone, I'll give you that attention,
19 we'll address that. Obviously that's the kind of stuff I do
20 every day, manage civil litigation. So that's not a
21 particularly complicated thing.

22 Just so you'll know, I'm going to have monthly status
23 conferences, and we'll do that as long as it's useful. But I
24 find it very useful, it keeps everything moving, keeps me on
25 top of things, it affords folks, where there are discovery

1 disputes, to have a ready mechanism to address them. And so
2 say the City of Newburgh has specific issues it would like my
3 attention, we'll arrange that after one of those status
4 conferences. We'll keep you moving. We're going to, you
5 know, we're going to keep the process moving. The design of
6 this is that if the parties seek to try their case and return
7 home to do it, they get to do that, right? I mean, I'm not
8 the trial judge for that. But there may be, God forbid, some
9 group settlement here. And to the extent we can facilitate
10 that, we're probably, you know, making sense. If there's some
11 common solution, it may be -- you're talking about carving
12 out, there may be discrete issues we can carve out and
13 resolve, and leave the more complicated issues for further
14 discovery. I mean, I think those are all things that I want
15 to get into once we have our lead counsel on both sides
16 designated, our leadership designated and everyone is sort of
17 thinking about those kinds of issues, I want to address those.

18 So yes, I've got a feeling there's going to be a lot of
19 issues where they will be discrete to you, we'll help you
20 facilitate that.

21 I don't think this MDL is going to be any nightmare for
22 you, I think you'll actually get resources and information,
23 and it will be labor saving in some ways to get the benefit of
24 all this talent being thrown at these issues.

25 Has anyone sued the United States for its role in using

1 the AFFF product?

2 MR. KNAUF: In the City of Newburgh case. Your
3 Honor, I'm Alan Knauf from Knauf Shaw in Rochester. We
4 represent City of Newburgh, and we have sued the United States
5 for their use, the Air Force and other agencies, for use of
6 AFFF on the Stewart Air Force base as well as the Stewart
7 Airport.

8 THE COURT: And are there other cases in which the
9 United States has yet been named as a defendant?

10 MR. KNAUF: We have the only one, I believe.

11 MR. CHAUDHURY: Not yet, Your Honor.

12 THE COURT: Not yet may be the operative term.

13 MR. STAGG: Your Honor, Tom Stagg representing the
14 County of Suffolk, New York. We recently filed a lawsuit
15 against the United States government in connection --

16 THE COURT: And, Mr. Thompson, are y'all anticipating
17 there will be more cases where the United States may end up
18 being a party?

19 MR. THOMPSON: Your Honor, the EPA issued an action
20 plan a week ago.

21 THE COURT: I read it.

22 MR. THOMPSON: February 14th. My experience with
23 publicity is that we need to form the bones of a good
24 structure, because we will have other cases filed into the --

25 THE COURT: You don't think that New York Times

1 article had anything to do with it.

2 MR. THOMPSON: I think we all need to have the
3 helmets on and a good structure, because there will be new
4 cases, and I believe that there will be a variety of
5 defendants, which will include the federal government.

6 Now, certainly discovery, and it's no surprise that the
7 government contractor defense will be one of the issues in
8 this case. And so certainly there's going to be discovery
9 conducted into the federal government, and it wouldn't be the
10 worst thing in the world for me for them to be a party, as
11 opposed a FOIA type request.

12 THE COURT: You have a right even under certain
13 circumstances, just because -- even nonparties do discovery
14 that's relevant to the case.

15 MR. THOMPSON: Judge, I understand the right as
16 opposed -- but the practicality of it is a little bit --

17 THE COURT: I gotcha. We're going to -- as I tell
18 you, we're going to have robust discovery here, we're not
19 going to have privileged characters. And obviously there are
20 literally privileges, but to the extent that those aren't
21 applicable, there are a lot of facts we need to know. So I
22 anticipate this, and I am glad that counsel for the plaintiffs
23 have already anticipated what may be a, you know, a sudden
24 rise in the number of cases.

25 Let me just say this, folks. And I'm going to -- I'm

1 talking here to the folks on the plaintiffs' side.

2 I was disappointed with the large number of plaintiffs,
3 named plaintiffs, identified plaintiffs in the Lipitor
4 litigation who ended up could not fill out a fact sheet,
5 mainly because they had no claim. So the basic information --
6 it wasn't onerous -- they couldn't do it. Please filter your
7 cases. Okay? Just exercise -- don't make it a race to the
8 courthouse where everybody whose name is slapped down. Use
9 some, you know, real judgment and screening, so that --
10 because I'm going to warn you right now, we're going to have
11 plaintiff and defense fact sheets early, and we're going to
12 sort out -- we need to figure out the nature of these claims
13 and the basic factual basis of it. And I just don't want a
14 bunch of people's names on a list who we then -- because I was
15 like every week dismissing parties simply because they had not
16 filled out the plaintiff fact sheet. And I kept giving them
17 extra opportunities. And I finally issued orders that said
18 I'm dismissing without prejudice with leave to restore if you
19 submit a fact sheet. I don't think one person did. Not one.
20 It was really -- and, you know, and I didn't find my
21 plaintiffs, the leadership, really objecting, because they
22 felt as burdened as the defendants did to it, that they were
23 having these people without real claims.

24 So, you know, I say to all of you, screen your cases.
25 Because early on, you're going to have a plaintiff fact sheet

1 that is going to have to put out basic information. And
2 that's going to be important. And I'm going to require the
3 defendants' basic information. I'm going to -- what products
4 they use and so forth, so we can all, from the start, kind of
5 have a foundational information about, you know, what are the
6 facts literally on the ground, right? What are those facts.
7 And I think that's an important part of managing.

8 Thank you, sir.

9 MR. CHAUDHURY: One thing, Your Honor. I just wanted
10 to -- with respect to what defense counsel has said about the
11 three different groups, the -- because the United States is in
12 a particularly unique position -- or not necessarily unique,
13 but is a sovereign along with some other sovereigns that have
14 been named as defendants, and are, as we've heard, going to be
15 subject to requests at the very least. The government
16 can't -- it's difficult for us to accede to being part of
17 having someone represent us in the form of liaison counsel
18 or --

19 THE COURT: That is absolutely fine. And it may well
20 be that the United States will just be -- I mean, you need to
21 be on the steering committee, because we need to coordinate,
22 and you need to be subject to a lead counsel's control
23 regarding discovery. We've just got to do that. And there's
24 a problem with that; that is, you want to do discovery someone
25 else won't let you do, I'll deal with that. Okay? But I've

1 got to have -- I can't have the United States scheduling a
2 deposition of somebody, and it's already scheduled for others,
3 and you want to do it at a different time. We've got to have
4 some central control of this, or we have chaos.

5 MR. CHAUDHURY: Understood, Your Honor.

6 THE COURT: But I assure you that any decision -- I'm
7 not having you accede your sovereignty, but I'm going to have
8 you coordinate, and if there's a problem, you need to come to
9 me and not act unilaterally. Because there's got to be
10 someone in charge. Ultimately that's me, but frankly, it
11 needs to be as much as we can down with the folks litigating
12 the case and not the Court, if we can do that. Just
13 otherwise -- and, you know, it doesn't take rocket science to
14 figure this out. You know, there might be 60 people that
15 everybody needs their information, and we're not going to have
16 that person deposed ten times.

17 MR. CHAUDHURY: Understood, Your Honor. And seeing
18 where things are, we suspect we may be that entity that's
19 getting --

20 THE COURT: You might be. You might be the recipient
21 of this, but that's okay.

22 MR. CHAUDHURY: We're all for coordination.

23 THE COURT: I haven't heard anybody object to having
24 to come to Charleston. Does anybody object to that?

25 MR. RICE: I think the status conferences should be

1 Friday afternoon and Monday morning.

2 THE COURT: Well, you notice it is -- we're doing it
3 here on a Monday. Is that a good day to do it? I mean, I
4 thought it would be kind of good because you get -- sometimes
5 we do it on a Friday and people come in because they like to
6 come for the weekend. That's another thing I got from my
7 counsel, they like coming in. But is there any particular day
8 of the week that's preferable?

9 MR. RICE: My co-leads are suggesting Friday may be
10 better. I think their wives want to come to Charleston for
11 the weekend.

12 THE COURT: I would look out at my MDLs, I've done a
13 variety of collective actions, and I notice after awhile,
14 particularly when the weather was nice, I'd see spouses
15 sitting there. And they come to find out exactly what their
16 spouses were doing in Charleston.

17 But let me talk a little something about practices that I
18 think are helpful.

19 MR. RICE: Your Honor?

20 THE COURT: Yes.

21 MR. RICE: Before we leave the U.S., can we make a
22 request? I'm assuming that DOJ is going to be involved in
23 Touhy requests and things of that nature. It would be very
24 helpful if DOJ designated one person to deal with this
25 litigation, instead of us having to deal with a different DOJ

1 person for each agency that may come up?

2 THE COURT: Is there a DOJ rep? I know you're from
3 the Southern District of New York and you have the City of
4 Newburgh; do we have somebody from DOJ?

5 MS. WILLIAMS: Yes, Your Honor, Sarah Williams, good
6 morning. I'm hear from DOJ's civil division.

7 THE COURT: Well, I do think that it looks like,
8 Miss Williams, we're going to have a number of cases in which
9 the Government may end up being a party, and -- Surprise. And
10 I do think we're going to need coordination with that, for the
11 same reasons I was just discussing. And also, that to the
12 extent there are issues about discovery, to have some central
13 coordination of that so we don't have everybody in individual
14 cases popping up. And DOJ is obviously the logical sort of
15 central point of that.

16 MS. WILLIAMS: Yes, Your Honor. I certainly hope
17 your prediction is incorrect, but I am happy to work as the
18 coordinator.

19 THE COURT: I look out here and I think I'm
20 absolutely right.

21 Let me talk to you also about what I found to be a very
22 helpful structure. Let's say we're doing Fridays -- and I
23 think Fridays are, you know, often a good day to do it.
24 Mondays also have their benefit. And we may have to change a
25 little bit based upon, frankly, my schedule as well, or when I

1 can do it.

2 But I think as a practice, you should plan that your
3 leadership on both sides should plan to meet together and try
4 to work out issues. So again, my Lipitor MDL, we would do it
5 on Fridays, but on Thursdays the lead plaintiffs and defense
6 counsel would meet and try to work out issues. When we have
7 issues in dispute, rather than brief it and all this back and
8 forth, we had both sides write a relatively short letter to me
9 on each side, just letter objections laying out the basic
10 issues. I don't need more than that usually; if I do, I'll
11 let you know. But it was adequate, and it gave me an
12 opportunity -- I didn't want to burden counsel to writing full
13 bore briefs on every issue. A one- or two-page letter was
14 usually sufficient. Sometimes it went three pages on a
15 particularly complicated issue. And then if we needed more, I
16 would get lawyers on the phone sometimes when I had questions.
17 Usually we were able to resolve -- if it wasn't -- many of
18 those, we had letters submitted, and it was resolved by the
19 day before, they came in and said we've worked that out. I
20 think that's great.

21 Sometimes -- I've told them that sometimes things can't
22 wait. We're literally -- it's stopping the litigation, some
23 discovery issue's just stopping everybody in their tracks.
24 And if we get in that situation where we don't want to wait to
25 the next status conference, you can provide letters, and we'll

1 have a telephone conference to address it. The key is we want
2 to keep things moving. And I don't want to learn everything
3 stopped because everybody was waiting for the next status
4 conference. I don't want that to happen.

5 Let me tell you another thing we did, and it's a little
6 unorthodox, I will confess, but it seemed to have a salutary
7 effect. I was having a lot of fussing back and forth between
8 counsel. And I was explaining to them that in Charleston we
9 don't tend to do a lot of that, you know, particularly in
10 front of the judge. And I said that what I would recommend
11 that they, when they're all in town working, like before the
12 status conferences, that they would alternate having a
13 cocktail party, and invite the other side. And the only rule
14 was you can't talk about the case. And my clerks and I came,
15 when I could, we came to them. And we heard a lot about
16 summer camps and baseball teams and all kinds of things. And,
17 you know, I noticed a lot less fussing in front of me. People
18 knowing each other, being civil to each other, enjoying each
19 other's company helped resolve issues. There's going to be
20 issues of disagreement, let's face it, that's just the nature
21 of the beast. But so I'm not ordering y'all to do that, but
22 if you do it, I will -- and I'm available, I will come, okay?
23 And I want to urge y'all to think about doing that, because I
24 think it's also a way of getting -- of building personal
25 relationships that will help solve the difficult issues that

1 we will undoubtedly address.

2 How many water system cases do we have now? How many do
3 we -- of those 80 some odd cases? Do we have any idea?

4 MR. PETROSINELLI: Your Honor, I think about a dozen.

5 THE COURT: About a dozen right now? Are there more
6 likely coming?

7 MR. RICE: Yeah. This is Roe Frazer.

8 MR. FRAZER: More likely coming, Your Honor. My
9 client is American Water Company, which has one filed so far
10 on --

11 THE COURT: And you're in multiple locations?

12 MR. FRAZER: Forty-seven states, Your Honor.

13 THE COURT: Okay. And how was -- just very briefly,
14 how does the water system identify that it has contamination?
15 Is there a test that it runs?

16 MR. FRAZER: Yes, Your Honor.

17 THE COURT: And is the test reliable?

18 MR. FRAZER: It is. And it varies from state to
19 state, because some states don't regulate these chemicals.
20 And our client's in New Jersey, where these chemicals are
21 regulated, so there's regulatory requirements, so there's
22 historical testing.

23 THE COURT: Yes. And how difficult, if you had to do
24 your own testing, how onerous is that?

25 MR. FRAZER: It's expensive but not onerous.

1 THE COURT: Okay. And how about -- I notice in the
2 recent EPA filing it talked about certain remedial steps, two
3 of which they identified as being 100 percent effective. How
4 costly are those methods?

5 MR. FRAZER: They're very costly. And my client in
6 particular has done remediation at some of its water treatment
7 facilities for various reasons, state regulatory. You'll like
8 this one; in Kentucky they wanted to make sure the bourbon is
9 pure.

10 THE COURT: Yeah, you can't imagine that. The heck
11 with the water, right?

12 MR. FRAZER: Everybody benefits from that filtration.
13 But yes, Your Honor, it's very expensive. And it varies
14 depending on a lot of issues, because remediation often
15 requires additional real property, and if it's not within the
16 confines of the plant, now you have that issue popping up.
17 And it also -- some of the remediation may require just
18 shutting down a particular well that you're drawing from, and
19 having to --

20 THE COURT: I saw one or more places they actually
21 had to change the municipality's water supply, right?

22 MR. FRAZER: Yes, Your Honor. So it's a very
23 interesting issue for water providers. I expect there are
24 going to be a lot more water provider cases filed.

25 THE COURT: And what is the science? I know EPA is

1 now designating levels where it should be safe and there's
2 some controversy whether that's low enough or whatever. Are
3 there studies out there on the human effects of these
4 chemicals?

5 MR. FRAZER: Yes, Your Honor, there are.

6 THE COURT: Peer reviewed?

7 MR. FRAZER: We haven't been real concerned as a
8 water provider.

9 THE COURT: Yes. How about someone else. Are there
10 out there, peer reviewed --

11 MR. FRAZER: Personal injury lawyers --

12 THE COURT: Yeah. It's also going to be relevant to
13 the issue of medical monitoring as well, you know, what is the
14 potential exposure to health.

15 MR. NAPOLI: There's been a number of studies and
16 ongoing studies. So the first big study was out of the Ohio-
17 West Virginia case in front of Judge Sargus, it's known as the
18 C8 study.

19 THE COURT: What is it called?

20 MR. NAPOLI: The C8 study. The letter C eight study.
21 You could actually find it, there's a web site where the C8
22 study is located, and that was jointly picked between the
23 plaintiff and the defendant duPont, picking experts --

24 THE COURT: That was a manufacturing facility?

25 MR. NAPOLI: That was a manufacturing facility, yes,

1 but it's the same product.

2 THE COURT: I got it. I understand that.

3 MR. NAPOLI: There were also subsequent earlier
4 studies by 3M and some of the other defendants, animal
5 studies, there were some worker studies over time, there's
6 been some studies out of Europe, it's been banned in Europe.
7 There's been additional studies here in the United States.
8 But on a limited basis. Because obviously, unlike a drug,
9 you're not going to have a controlled study where you're
10 feeding chemicals to individuals.

11 So right now the U.S. government is in the process of, at
12 11 -- I think 11 sites, ten or 11 sites where there are Air
13 Force bases, doing studies of individuals, testing their blood
14 and trying to see if they can replicate what they saw in the
15 C8 study out of West Virginia. One of the -- that's on the
16 federal level.

17 On the state level there's also some studies. In New York
18 State, the governor has required blood testing at Stewart Air
19 Force base, which is Newburgh; in Westhampton, which is
20 Gabreski Airport, and several other sites. And also Hoosick
21 Falls, which is a manufacturing site that did not make it to
22 Your Honor, that's in front of Judge Kahn, Federal District
23 Court Judge in the Northern District of New York.

24 THE COURT: What's the nature of that case?

25 MR. NAPOLI: So that is a plant, that was a Honeywell

1 plant that was purchased by St. Gobain, and there was aeration
2 at this plant, and also water contamination. Some believe,
3 some scientists believe it was not only from the aeration
4 landing on the ground, but also from releases from the plant
5 itself. And it's a PFOS case. It was not transferred here,
6 since this strictly is an AFFF case. But I think you're going
7 to see a lot of the same issues, Your Honor. Because, for
8 example, in our case, the City of Dayton case, which has 180
9 wells, 15 which were taken out of service; in Ohio you have
10 the Wright Patterson Air Force base that has contributed AFFF
11 to the aquifer, but you also have a large area of industry
12 that was using PFOA and PFOS as part of the industrial
13 processes. So you're going to have overlap in the Colorado
14 case, Your Honor, where you've seen a large number of
15 individuals file a case, you had the Peterson Air Force base
16 with the AFFF foam, the Colorado airport, which was a private
17 facility that also used the firefighting foam.

18 THE COURT: Then you have industry.

19 MR. NAPOLI: And you had industry. And the
20 defendants in that case actually pointed to industry as the
21 cause, as opposed to them, or at least a contributing factor.

22 THE COURT: That was what a good defendant's supposed
23 to do, right?

24 MR. NAPOLI: I don't blame them, but I just want to
25 tell you that's where the overlap lies.

1 And just -- I know Your Honor is concerned -- as
2 individuals, we went pretty far in Colorado, Your Honor, we
3 had a class certification hearing the day before the JPML
4 panel heard argument, and the judge withheld decision. He
5 wanted to have some additional expert testimony. But withheld
6 decision at the class certification trial, pending the JPML's
7 decision. So now the case is here, but class discovery was
8 complete at that time.

9 THE COURT: And what's the nature of the class
10 proposed?

11 MR. NAPOLI: So that is those people in the three
12 water districts. And there's a definition that's been refined
13 through discovery. There were three water districts,
14 Fountain, Security and Widefield, where people were exposed.
15 And there was -- the expert --

16 THE COURT: Is it a medical monitoring --

17 MR. NAPOLI: It was a medical monitoring, and there
18 were some, I would say advisory opinions from the judge that
19 he was about to certify a class, waiting for the JPML to make
20 a decision. And the individuals were filed in that case
21 because the statute of limitations required, under Colorado
22 law, that there be a filing. Those individual plaintiff cases
23 were stipulated between the plaintiffs and defendants to stay
24 those cases pending Judge Jackson's determination on medical
25 monitoring.

1 There are other personal injury cases in Westhampton and
2 Newburgh and in other areas, in Spokane, Washington, that are
3 pending now and are not stayed by consent of either party. We
4 haven't discussed it. We were just doing the medical
5 monitoring cases first; it seemed the logical progression.

6 THE COURT: And the medical monitoring cases, you
7 have the evidence as you've articulated here about general
8 causation, and I take it on the basis of that, you seek
9 medical monitoring. Is that basically the reasoning?

10 MR. NAPOLI: That is correct, Your Honor. Based upon
11 the studies we've seen, the fact that most of these people who
12 have been tested have had PFOA and PFOS in their blood at
13 greater levels than have been found --

14 THE COURT: You demonstrated that in -- You had
15 samples that showed that?

16 MR. NAPOLI: We took 300 -- about 300 individual
17 blood tests, and we had experts review the blood testing in
18 Colorado Springs. That was one of the things our experts
19 relied on. Subsequently, the Colorado School of Mines did a
20 study funded by the U.S. government -- I believe the U.S.
21 government funded it -- and they tested about 200 individuals,
22 and they found exactly what we found, elevated levels of PFOA
23 and PFOS in these people's blood to a level of concern.

24 THE COURT: And then if you have that information,
25 and let's say you have the medical monitoring conducted, what

1 then, if there are elevated levels? Where does it go from
2 there, as you view it?

3 MR. NAPOLI: So we had a medical monitoring expert in
4 Colorado, and a plan that we laid out. And that was one of
5 the things that the judge wanted to hear some additional
6 testimony on, it's -- the question was to what extent, of
7 those six injuries that the C8 study found to be connected to
8 the ingestion of these chemicals, to what extent is monitoring
9 required; is it a yearly blood test, an x-ray, a physical.
10 And that was where we were with Judge Jackson before the JPML
11 sent us here. So we were trying to figure out what is that
12 logical -- that logical conclusion, how far do we take it out?
13 Is it a year, is it a single physical test, what if the
14 findings --

15 THE COURT: Let's assume for just a moment that it's
16 elevated in a level considered medically significant. What
17 then? What is the consequence of that? Are there personal
18 injury claims arising from that or what? Where do you view
19 that going?

20 MR. NAPOLI: So we view that as going to additional
21 surveillance and treatment.

22 THE COURT: Okay.

23 MR. PETROSINELLI: Did you want to hear our
24 perspective?

25 THE COURT: I would very much like to hear your

1 perspective. That was my next question.

2 MR. PETROSINELLI: Just a couple comments, and
3 Mr. Olsen could add what he likes. I think you hit on, of
4 course, one issue that's going to be key in litigation, and
5 that is general causation. It might not surprise you to know
6 that we -- and again, I speak on behalf of the foam
7 manufacturers -- we think there's no reliable evidence of
8 adverse effects of these chemicals in humans, at least at the
9 level that humans are reasonably exposed to. And so that
10 whole science piece is going to be one big part of the case.

11 Just to give you one example, Mr. Napoli referred to the
12 C8 panel that was put together in connection with the other
13 litigation. That panel looked at a whole panoply of alleged
14 health effects, and found most all of them had absolutely no
15 link to these chemicals. They found six out of dozens that
16 there was a, quote unquote, "probable link." And without
17 getting into the details of that, just to show you that that
18 is going to be a huge issue in the case.

19 I think that the other issue is with respect to the water
20 districts, and some of the plaintiff claims, as Mr. Napoli
21 noted, these chemicals, that is, PFOA and PFOS, they aren't
22 just produced by AFFF, they're used -- have been used
23 historically in all sorts of products. And so, you know,
24 nonstick cookware and -- because of their fire-retardant
25 properties -- food packaging and the like. So to the extent

1 that a water district finds levels of --

2 THE COURT: Then you have to figure out who's
3 responsible.

4 MR. PETROSINELLI: Exactly. And then you have, on
5 the issue of the Bell case in Colorado, we did have class
6 certification proceedings, discovery and so on. We did have a
7 hearing that I was at, and at that hearing the judge said he
8 was not inclined to certify a property damage class, and he
9 wanted to hear more about a proposed medical monitoring class.
10 And obviously we have reasons why we think these claims are
11 not susceptible to class treatment. So there's all of that.

12 And then you have the overlay of the government contractor
13 defense that Mr. Rice had mentioned. I would say, Your Honor,
14 about -- of the cases currently in the MDL, somewhere around
15 80 to 90 percent of them involve alleged contamination coming
16 from military facilities or FAA-approved airports. And with
17 respect to those cases, which again, the vast majority of what
18 you currently have before you, the foam manufacturers have a
19 government contractor defense, which is an absolute immunity
20 to claims.

21 We're looking at some of the Fourth Circuit law on this.
22 The Fourth Circuit has actually a lot of case law on this
23 because there are a lot of government contractors within the
24 Fourth Circuit. And so that turns on the issue of not only
25 did the government specify how these foams were supposed to be

1 produced, and we say they did, there's a so-called mill spec
2 for AFFF foam where the government says here's what you need
3 to produce for us.

4 But also, the sort of key element is did the contractor
5 warn the government of hazards that it knew about and that the
6 government didn't know about. And you can see from that, that
7 the discovery into -- the plaintiffs surely are going to want
8 discovery into what the foam manufacturers knew along the
9 timeline. Remember, you're talking about a 50-year timeline,
10 these foams have been in use for 50 years.

11 THE COURT: Right.

12 MR. PETROSINELLI: What the contractors and the
13 manufacturers knew about certain alleged hazards. And then,
14 what we just talked about, with the government, the discovery
15 of the U.S. will, in part, focus on what did the government
16 know about these alleged hazards, because the government was
17 involved in actually designing the foam in the 1960s.

18 And so those issues are what I would call common issues,
19 meaning they would cut across the water district cases, the
20 personal injury cases, the putative class cases, every case
21 that Your Honor has before you, in some shape or form.

22 THE COURT: Does it make sense -- and I want
23 everybody to get organized -- is that perhaps one of those
24 issues we want to address early, is to get discovery on those
25 issues so that we sort of sort out the scope of

1 responsibility, who is potentially responsible.

2 MR. PETROSINELLI: That was exactly our thought in
3 terms of the foam manufacturers, that there would be -- I
4 mean, after all, we have an MDL, and I think the JPML sent it
5 here because there are common discovery issues. And our
6 thought is that there would be a period, and obviously we
7 could talk about what time that would span, but there would be
8 a period of what I would call common discovery into issues
9 about the company discovery, the defendants, and what they
10 knew with the foams and their shipment records and so on; the
11 federal government, in terms of what the government knew; and
12 the science issues. While at the same time, to Your Honor's
13 point, on the plaintiffs' side we'd have fact sheets where we
14 could find out -- because remember, Judge, many of these cases
15 were at basically their earliest stages when they got
16 transferred.

17 THE COURT: I get that. And what I'm trying to do on
18 both sides here is to give everybody enough sort of basic
19 information.

20 Mr. Thompson, what's your thought about getting into this
21 government contractor issue early?

22 MR. THOMPSON: Judge, as I stand before you, I don't
23 have any authority to speak on behalf of anybody, so I have a
24 personal opinion.

25 THE COURT: Okay.

1 MR. THOMPSON: My personal opinion is that every time
2 I've ever been in a case where there has been an effort to
3 truncate and limit discovery because there's some overwhelming
4 issue, it has not worked out well. It seems to me --

5 THE COURT: Because everybody fusses about what is
6 relevant to that issue?

7 MR. THOMPSON: If we let the rules and let the
8 discovery progress, and certainly we're going to recognize
9 this is an very important issue --

10 THE COURT: No matter how we organize discovery, one
11 of the things, once y'all get organized, you're going to talk
12 among yourselves about this, is that no matter how we do it,
13 fairly early on we're going to need to address this issue. I
14 mean, we're not going to have it years down the road,
15 because -- but you need basic information, it seems to me.
16 And what I don't want to get into, and I've had this
17 experience not in MDLs, but in other cases where someone
18 persuades me to limit, and then everybody is arguing what the
19 limit is, because it's not clear. One side views a much
20 broader view of what is discoverable than the other, and they
21 spend all their time in depositions fighting over what they
22 can ask. And I find that pretty nonproductive, you know, to
23 get that.

24 But on the other hand, we're going to have to -- one of
25 the things I want y'all to organize so you can talk among

1 yourselves, and you may reach a consensus about how all this
2 works out. But if it isn't, I'm more than happy to set a
3 discovery plan that addresses how we do this.

4 So I've not had a government contractor immunity defense
5 before; that's not an issue I've ever addressed. Are there
6 exceptions to it?

7 MR. THOMPSON: Your Honor, the short answer is yes.
8 The long answer is yes. It's an issue that I hesitate to
9 paint a picture on the wall today. It's an issue that I
10 believe that we should organize, that to the extent that we
11 all need to be educated on it, that we have a sort of a more
12 formal setting than me speaking off the cuff.

13 THE COURT: And I agree with that. And we, early on,
14 if we have a dispute, we'll brief it, we'll just sort of sort
15 all that out. But what I don't want to do is -- I want to
16 avoid two things. One thing is that we go off doing massive
17 discovery, and if we had just answered a question early, a lot
18 of it would have been unnecessary, at least as to certain
19 parties. I don't want to do that. On the other hand, I don't
20 want interminable objections that somehow there's a line, and
21 one side can't get what they believe relevant information,
22 because the other side is objecting because of my ruling that
23 we're addressing this. So we've got to find a middle ground
24 somehow where we get robust discovery on all issues
25 potentially relevant to it, but that we don't kick this thing

1 down the -- the can down the road for a protracted period of
2 time, when it may have a very significant impact on the shape
3 of the litigation.

4 MR. THOMPSON: Judge, one of the things that I wanted
5 to make as a chart today was a diagram of the organic
6 chemical, the symbol for the fluorinated chemical that deals
7 with this. And I was going to tell you that this is the
8 reason that I'm a lawyer today, was that when we turned the
9 page in the chemistry book from physical chemistry, which I
10 understood, and I loved it, to organic chemistry, all of a
11 sudden I didn't --

12 THE COURT: That's a line between a law student and a
13 medical student, right?

14 MR. THOMPSON: So this is an area that probably at an
15 early point I would suggest that perhaps some scientific
16 background would be helpful.

17 THE COURT: Yeah, let me say this. Number one, I
18 will read what you give me in terms of I'm interested in any
19 peer-reviewed studies, academic studies on this, this C8
20 study, if somebody wants to provide me that, I'm glad to look
21 at material. Don't give me 12,000 articles. But, you know,
22 if each side wanted to give me, say ten each, I will read
23 them.

24 I have done science days before, and I'll tell you how I
25 structured science days. I have each side -- it happened in

1 those cases to be a sort of discrete issue. I said you're
2 going to have one person speak, one expert, not a lawyer. In
3 all those instances were academics. They're going to come in
4 and they're going to explain to me the science. No
5 cross-examination, no record from the lawyers. I do keep a
6 record, because I go back and read it because it helps me
7 understand it. And I ask questions, but the lawyers don't ask
8 questions, don't cross-examine the witness. I mean, I found
9 that to be helpful. And generally the lawyers have been
10 astute enough to bring in people who actually speak English in
11 a way that -- rather than scientific technology and don't
12 speak in abbreviations that I can't understand, and explained
13 to me the basic science here.

14 But I'm already aware, as I'm hearing this, and I've read
15 enough myself, that there's -- that's why I was asking the
16 question, what is the consequences of having elevated
17 chemicals in the blood serum, I mean, what is that
18 consequence? And do these medical monitoring cases go beyond
19 to personal injury cases, at what point does -- because I
20 understand we have personal injury cases. Am I right about
21 that?

22 MR. PETROSINELLI: Yes, Your Honor.

23 THE COURT: Yeah, we have personal injury, we have
24 property damage case, we have -- and all those are like
25 different kinds of evidence. But it seems to me that general

1 causation is going to be contested. That is an area where we
2 might want to get to initially. Again, I'm not trying to cut
3 things off, but we need to kind of get -- if there's no
4 general causation, specific causation as to individual
5 parties, get -- it's obviously not particularly relevant, if
6 you can't prove it causes general injury. If you can prove
7 it, then we're now to the next level is what's the consequence
8 of that, right? That's what we need to do.

9 MR. FRAZER: I just add one thing that I'm always
10 mindful of, when I hear a defense lawyer speak about certain
11 things, we need to make sure we're on the record in response.
12 But I don't mean to burden it, but I think Your Honor
13 recognizes that for water systems, the government contractor
14 defense may be in a different light than in a personal
15 injury --

16 THE COURT: And also the degree of -- and how -- what
17 is an injury to a water system is different than an injury to
18 a human.

19 MR. FRAZER: Yes, Your Honor, if we're under a
20 regulatory pressure that says --

21 THE COURT: You can't have it.

22 MR. FRAZER: -- you can't have sugar in your water,
23 then the sugar has to come out, and whoever put the sugar in
24 there is responsible for it.

25 THE COURT: I get all that, and we'll need to sort

1 through that. And I do think when you structure your
2 leadership committee, you're probably going to end up having
3 people on some of these discrete issues sort of running the
4 show as to those issues, because they are different. They're
5 just different. And there will be some general overlap on
6 general causation and consequences, I mean, that informs
7 your -- and how it got there is going to be pretty darn
8 relevant to what y'all are doing. And I mean, we're fully
9 aware there are multiple ways in which this chemical can get
10 into the ground and into the groundwater.

11 MR. FRAZER: And, Your Honor, we have, in New Jersey,
12 the case that we filed so far, there's the New Jersey spill
13 out, which is a strict liability cause of action, contribution
14 statute in its essence really. And I don't know if those
15 exist from state to state to state, because New Jersey is all
16 we've looked at. So those kind of issues are --

17 THE COURT: Let me tell you something, choice of law
18 issues are really going to be important in sorting this out.
19 And, you know, we're going to eventually, both sides are going
20 to be going state by state on some of these issues as they're
21 not -- you know, they're not uniform. And there will be
22 different statutes of limitations and legal standards, having
23 to prove negligence versus -- or other claims versus strict
24 liability statutes, we've just got to have to take our time
25 and sort through all this.

1 Yes, sir.

2 MR. NAPOLI: And, Your Honor, the regulations are
3 changing. The Federal Government is anticipating having some
4 regulations, and currently there's only a health advisory
5 limit. But there will be an MCL.

6 Just one thing I want to point out about the government
7 contractor defense. Your Honor, it changes over time. There
8 is a time component to what the manufacturers told the
9 government, what they've told end users. But also, I don't
10 want it to get away, AFFF foam was not sold or used at an Air
11 Force base, it was also used in civil aviation. It was also
12 used by local fire departments to put out car fires and truck
13 fires. It was used at fire training facilities that many
14 counties and states have. For example, the case that Motley
15 Rice and we are on together, is the case of the Town of
16 Farmingdale in New York, and the Nassau County Fire Training
17 Center used the firefighting foam. They were not -- it was --
18 the government contractor defense wouldn't apply there, and
19 that is what contaminated the wells in the Town of
20 Farmingdale.

21 THE COURT: See, here's my thinking about that. Do
22 not take anything I say about the government contractor
23 defense, because I'm the first to say I've never had that
24 issue, we've got to look at it, we've got to sort it out,
25 we've got to apply it to the facts of this case, all that.

1 But to the extent you have a defense like that that has merit,
2 we need to know that, because we don't want to waste our time
3 on parties that may be immune, and we want to focus on parties
4 that are not immune.

5 So, you know, I just think -- and when we're trying to
6 order discovery and disposition of issues, it's important that
7 we don't just sort of go with the flow, do all of discovery,
8 and then we'll sort of see where the chips fall. If there are
9 issues we have enough information on early, and it helps carve
10 and shape the litigation as it will ultimately become, then I
11 think we're contributing important things in terms of the
12 management of the litigation. And I'm always looking at how
13 do you trim off the dead branches so that what you have left
14 are the claims that are actually in dispute that are
15 potentially viable. And I think it helps everybody, I mean,
16 in terms of where we are.

17 So how about pending state cases? And I'm talking about
18 any AFFF cases, are there any pending state?

19 MR. OLSEN: Good morning, Your Honor. There are some
20 precipices that were filed in Pennsylvania in Philly that
21 indicated an intent to sue. We don't know if those are AFFF
22 cases, that the cases in Philly that have been filed have
23 ended up being AFFF cases and we removed them here.

24 THE COURT: Okay.

25 MR. OLSEN: We've had some very preliminary

1 discussion with the plaintiffs' counsel in Philly to see if we
2 can just work out bringing all those cases here.

3 Other than those precipices in Philly, there are no other
4 state AFFF cases. There are state-based cases involving the
5 same family of chemicals that don't involve AFFF.

6 THE COURT: Yes.

7 MR. OLSEN: Many of the lawyers in this room on both
8 sides are involved in some of those cases, and of course we're
9 going to coordinate where appropriate with respect to
10 depositions or discovery. At least our view is at this point
11 we don't need to set up a separate structure to coordinate
12 with those cases, but there are a handful of state-based cases
13 involving the same family of chemicals.

14 THE COURT: Yes, sir?

15 MR. COHAN: Morning, Your Honor, Larry Cohan from
16 Pennsylvania. We have a group of us here today from
17 Pennsylvania. There are probably well in excess of 500
18 individual state cases filed under our procedures there, which
19 is a summons, that have not yet been brought to the MDL.
20 There are also three water authority cases. They are just
21 about all AFFF cases.

22 THE COURT: And are they going to be thus removed to
23 this court?

24 MR. COHAN: We've had some brief discussions with
25 defense counsel about working it out, but I believe ultimately

1 they will be removed.

2 THE COURT: I've got to tell you, my impression of
3 this is that, you know, the initial instinct is I want to have
4 my own case, I don't want to be caught in there with all these
5 others. And I know there's been some bad experiences in some
6 MDLs where it's like a black hole and nothing happens. That
7 will not be the case here, I assure you of that. We're going
8 to move this. And I think having a collective discovery on
9 some of these issues is going to be very efficient, it's going
10 to be cost effective on your clients. And it will help us,
11 again, carve out where, you know, where this litigation goes.
12 I don't think any of us fully appreciate, I mean, we've got
13 EPA standards evolving as we speak. We've got studies in the
14 field, I'm sure, going on right now on some of these issues
15 I've been asking about. And I've been in litigation where a
16 major study comes out in the middle of the litigation and
17 completely reshapes the litigation. And I think that could
18 well happen here, because this has become an area of real
19 study. And, you know, you've got what, this study from the
20 prior litigation like 2006, am I right, something like that?

21 MR. PETROSINELLI: You mean the C8 panel? The
22 reports came out 2011 and '12.

23 THE COURT: A little more current than I appreciated.
24 But I just think we ought to anticipate that the science is
25 going to continue to develop and evolve, that's not going to

1 stand still while we're litigating this issue. And that can,
2 again, affect how we deal with issues like medical monitoring,
3 personal injury, et cetera.

4 MR. COHAN: I'm all for being here, and we're talking
5 amongst ourselves about getting here.

6 THE COURT: I think your family will enjoy
7 Charleston.

8 Yes, sir.

9 MR. JACKSON: Your Honor, Bill Jackson with Kelley,
10 Prye and Warren. We represent the state --

11 THE COURT: Where are you from?

12 MR. JACKSON: I'm from Houston, Texas. We represent
13 the State of Ohio in this litigation against DuPont DeNemours
14 related to the facility in Parkersburg, West Virginia. That's
15 the only PFOA site.

16 I want to let Your Honor know we also are going to be
17 representing a couple of other sovereign plaintiffs, state and
18 U.S. territories that have kind of waited to see how the
19 rulings on the severance issues went before they filed their
20 cases. But based on what I'm hearing today, I expect there
21 will be more sovereign plaintiffs and U.S. territories.

22 THE COURT: I think there's real wisdom in cases as
23 complicated as this, is not to spread them across all the
24 districts, federal district courts, at least in the discovery.
25 And I know my friends on the MDL panel talk to me about that,

1 that they desired to centralize it because they thought it was
2 going to be much larger than it was at this point, that they
3 thought the potential -- and felt like everybody would benefit
4 by centralization, and I think that's right.

5 MR. JACKSON: Thank you.

6 THE COURT: Thank you.

7 Yes, sir.

8 MR. DESAI: Your Honor, my name is Mihir Desai, I'm
9 here on behalf of the State of New York. We have a pending
10 state case in New York State that involves 39 or 40 sites
11 within the state, they are AFFF cases. And, you know, to the
12 extent that other states, sovereigns would be joined in the
13 MDL, it strikes us that one of our cases, which is a separate
14 case, it's a Northern District of New York, it involves four
15 sites, is subject of conditional transfer order that's going
16 to be heard at the end of March by the judicial panel. There
17 may be some interest in having some coordination among the
18 states as some kind of committee.

19 THE COURT: And by the way, yeah, to the extent that
20 you have a number of states who have discrete interests, they
21 may, within their -- where they end up on the plaintiff or
22 defendants' side, because I can imagine you could end up on
23 both, as we talked about these water systems.

24 MR. DESAI: In fact, the State of New York is on both
25 sides. We are also defending the case brought by the City of

1 Newburgh.

2 THE COURT: Yeah, I can understand how that would
3 happen. We'll need to sort of sort out about how we manage
4 that. But again, I want both sides to get themselves
5 organized, and if you can work out among yourselves how to do
6 those kind of issues, I'm likely to defer to your judgment.
7 I'm not going to delegate authority, but I think y'all will
8 know your case better than I will in terms of how to manage
9 it.

10 Thank you.

11 MR. RICE: Your Honor, on the government contractor,
12 we've got a lot of Fourth Circuit law, as counsel said. I
13 remember early in the asbestos days, that was going to end the
14 asbestos litigation, and that hasn't turned out that way. So
15 there is a lot of case law out there on this, on just basic
16 failure to warn and knowledge conveyed. In an over-50-year
17 period, you might imagine this is going to change drastically
18 as time goes forward.

19 THE COURT: It will be an issue we all will become
20 the world's experts on before it's over.

21 Okay. So what I'm looking for in the next five days,
22 we're going to get resumes from the -- a suggested list for
23 the leadership and steering committee, with resumes and
24 references for everybody. I am not being casual about that,
25 because there are some experiences where you have people who

1 have been disruptive in this process, and I don't want that to
2 happen. So I will -- I intend to check out references and
3 find out what people have to say.

4 I've invited both sides, if you want to send me, say ten
5 articles each supporting your science, I will read them. And
6 I will use those. I sometimes will get into reading footnotes
7 and chasing issues. I'm unclear about the consequences to
8 humans; I may be putting my finger on the pulse of what all
9 the science questions are right now as being implicated, what
10 are those consequences. And I think that's something that I
11 have a particular interest in trying to figure out.

12 Once we organize, I want both sides to begin thinking
13 about an agreement on fact sheets. Let's talk about fact
14 sheets for a second.

15 Usually the one side wants a fact sheet with name and
16 address, and the other side wants the DNA composition of the
17 party. And the truth is, we need to be a fair balance here.
18 But, you know, if you're asserting a property claim, what is
19 the property, right? I mean, if you're claiming a personal
20 injury claim, what is the injury and what is the basis of that
21 injury, do you have a medical diagnosis and so forth.

22 On the defense side, I think we need to sort of know, you
23 know, what these defendants know about the AFFF, how much was
24 there and where it was put and how it was used, all those
25 things are things that we need to know. And that ought to be

1 in the defense fact sheet. We just need to get to that
2 information. And we need the underlying supporting
3 documentation, without being excessively -- there will be
4 independent discovery on all these issues. But I just think
5 from the start, if we could work out among ourselves, and if
6 not, I'll enter orders, but I think that this will help us
7 focus about just where responsibility might lie. And so I
8 want -- I think that's one of the early tasks we need to
9 undertake.

10 I know I have a couple pending motions, I have a motion to
11 dismiss, I have a motion to remand. All those motions I will
12 address after I appoint a leadership committee and there's a
13 briefing schedule. And some of these issues you may have
14 filed something in an individual court, but they may have far
15 broader implications, and you need to have the leadership
16 opportunity to address those issues.

17 I had gotten some word that the City of Newburgh had
18 dismissed somebody, was intending to dismiss somebody, a party
19 Fire Services Plus. All I'm saying is on that you have a
20 stipulation, Rule 41 provides your method for doing that, you
21 just file a stipulation of dismissal.

22 What about early mediation; is there any value in that?
23 Do we need discovery? Is there some value of the Court
24 considering appointing a mediator at this stage? What are the
25 thoughts? I'm not thinking about global, but are there issues

1 in which some discussion is worthwhile?

2 MR. RICE: Your Honor, as you're probably aware,
3 there's been a previous settlement that was reached, 600
4 something million dollars. I think until we get organized and
5 we get a little deeper in, I personally believe a mediation is
6 probably a little premature, appointing a mediator is a little
7 premature.

8 THE COURT: That's fine. I just think in the early
9 part -- and we're not trying to do that today. What I'm
10 trying to do is stimulate a discussion, once you get
11 organized, if there's a desire to explore that, that, number
12 one, can we get some consensus on who that might be. The
13 parties might feel comfortable with a particular mediator or
14 mediators, and are there issues which early on might be more
15 amenable to mediation than others.

16 MR. RICE: I think as we get started and start
17 focusing on the different groups, this may be one of those
18 MDLs that has multiple resolution points, multiple --

19 THE COURT: I really see there are multiple issues
20 with different legal standards. And I mean, number one, we've
21 got to see who's coming to the table, first of all. We don't
22 even know who the parties are yet. And I'm sure that will
23 help shape how we're going to deal with this. But what I
24 don't want to do is, you know, sometimes -- I was, you know, a
25 litigator myself, and sometimes people don't want to talk

1 about it among themselves because they think it's a sign of
2 weakness or a sign of giving up something. So I'm always the
3 one that asks the question, and then everybody else has the
4 face saving, well, the judge thought of that, isn't that a
5 good idea.

6 But I do want us to be thinking strategically about this.
7 Because there are some really smart ways to manage complex
8 litigation like this, and there are some really bad ways to do
9 it. And I would prefer the former rather than the latter, you
10 know, if we have the choice.

11 MR. RICE: In that vein, Your Honor, because in some
12 of the class action -- some of the personal injury side, we're
13 actually dealing with class actions, I'd like the Court to
14 consider maybe some type of sampling plaintiffs' fact sheets,
15 because we really have no way of saying who all the plaintiffs
16 are.

17 THE COURT: That's why you're going to talk among
18 yourselves about it and come up with a proposal for me and how
19 that works. And I'm open to those kinds of discussions. But
20 what we need to do is that each side needs to feel like they
21 have some foundational information from the other.

22 Okay. Are there other matters that anyone wishes to bring
23 to my attention?

24 MR. OLSEN: One issue, Your Honor. You mentioned
25 motion to dismiss. There were a lot of motions to dismiss

1 filed. One of the issues that was part of those motions to
2 dismiss was personal jurisdiction. We don't have any strong
3 desire to push that issue, but we would ask if Your Honor
4 could include in the next CMO that we aren't waiving any
5 personal jurisdiction arguments by participating in the MDL.

6 THE COURT: Right. I will say that right now, nobody
7 is waiving anything by being here. We'll address all those
8 issues. Again, what I'm going to try to do is once you're
9 organized, I'm going to try to talk to your leadership about
10 now that you're organized, which of these do you want to
11 pursue. A lot of times people just file things in an
12 individual action, but it's mostly just sort of stay holding
13 kind of motions that don't really intend the Court to address
14 it, and there needs to be some central control of that and you
15 have leadership on those kind of issues.

16 Yes, sir?

17 MR. CHAUDHURY: Your Honor, just in that same vein,
18 we understand with the organizational theme trying to do with
19 the briefing process, but in some of our cases, our case in
20 particular, City of Newburgh, we're not in a place where we
21 even have finalized pleadings. There's an open statement from
22 City of Newburgh that they are planning to amend their
23 complaint. And we would just ask, so we can be in a position
24 to move in an expeditious manner once all the organizational
25 stuff is taken care of, that the Court set some time frame

1 relatively soon to file any amended pleadings, if they're
2 going to be filed.

3 THE COURT: Okay. I mean, we will get to all that.
4 Let's get organized first. And we're going to meet in
5 another -- next meeting, for everyone's information, is
6 April 5th. That's our next meeting. And I'll have leadership
7 appointed by then. And then among yourselves you can talk
8 about what kind of priorities and issues, but everything has
9 been stayed, so how do we get this process going. And often,
10 you know, we have like -- we'll need to have different ones,
11 but sort of a standard complaint and a standard answer, and
12 don't have literally thousands of answers coming in.

13 MR. HANNON: Your Honor?

14 THE COURT: Yes.

15 MR. HANNON: If I may, sorry, Kevin Hannon from
16 Denver, Colorado, Hannon Law Firm. I just want to note that I
17 think April 5th the national championship. And --

18 MR. RICE: In South Carolina we don't worry too much
19 about that.

20 MR. HANNON: A couple years ago. But at any rate --

21 THE COURT: They beat Duke; I've never forgiven them.

22 MR. HANNON: Your Honor, in full disclosure, I just
23 shared that interest. And so I don't know if we could do it
24 the week after.

25 THE COURT: Let me say this. If somebody needs to go

1 to the national championship game, they're going to need to
2 send someone from their firm here. We just can not organize a
3 complex litigation like this on such matters. And y'all might
4 believe it or not, but this is not the only case on my docket.
5 And this is a purely, you know -- foolishly, I keep taking
6 these MDLs which everybody else shakes their head at, why I do
7 this. But so we're going to have to have some order, and
8 there always will be conflicts. I fully expect people will
9 have conflicts every time I schedule any day. And if
10 April 5th is a -- Friday night is a national championship
11 game? That doesn't sound right to me. Isn't April 5th a
12 Friday? Yeah, I don't think that's a national championship
13 game. Usually a Monday night. You can get out of Charleston
14 from Friday to Monday. And I don't know who Duke's playing, I
15 haven't figured that out yet.

16 MR. THOMPSON: Judge, let me just, because I'm slow,
17 let me ask, do you intend to make the appointment prior to the
18 status hearing?

19 THE COURT: Yes.

20 MR. THOMPSON: It would be very helpful if there
21 would be enough time after the appointment to allow us to
22 self-organize and to actually --

23 THE COURT: I intend to do that. That's why I only
24 gave you five days to get the information in. There was a
25 method to my madness.

1 MR. THOMPSON: Beyond that, to the extent that your
2 schedule that you can predict it, would actually be very
3 helpful to maybe go out three, four, five, six months, so that
4 we can calendar --

5 THE COURT: I'll take -- Let me look at that.

6 MR. THOMPSON: Obviously at your pleasure, Your
7 Honor.

8 THE COURT: Just to give you what I'm going to try to
9 do, and I can't guarantee it, is I have a -- particularly on
10 odd months, I have -- I have jury selection, I have a running
11 jury roster every two months, and I usually do it like the
12 7th or 8th or 10th of the month, of that month, and we'll try
13 to do it before that jury call, just happens to fit well in
14 our schedule to do it that way.

15 But I will take a look and see what I can do to give
16 some -- carve out these dates long term. I think that's a
17 reasonable request.

18 MR. THOMPSON: And finally, with regard to the ten
19 articles, you don't want any articles on government contractor
20 defense, do you?

21 THE COURT: No, no, no, I want science. I want the
22 science is what I'm looking for. I'm interested in the
23 science that shows injury to humans. And maybe there are
24 animal studies and that's what you want to project out of that
25 or whatever, but I'm a sufficient nerd that I actually read

1 this stuff. So I want to see where the science is. And I've
2 been in other cases, both as a litigator and as a judge, where
3 the science is evolving. And I think we're going to see -- I
4 don't think this is a static thing right now. I think we're
5 in the middle of some very important issues. And where it all
6 goes and what the consequences are, are something we will
7 learn as we journey on this. I really believe that to be
8 true.

9 MR. RICE: Your Honor, do you allow phone
10 participation at your status conferences, listen only?

11 THE COURT: Phone participation is fine to listen.
12 If you're going to make an argument, you need to be here. And
13 we'll set up a website. And we will also allow phone in and
14 people to participate. What is impossible is people start
15 trying to argue over the telephone, so I don't allow that. So
16 you need to be here to make argument.

17 Anything further?

18 MR. DESAI: Your Honor, one more thing from the State
19 of New York. Again, you know, our state wants to sort of
20 coordinate with other members of the steering committee. I
21 would like to contribute articles that you suggested, but
22 certainly we're -- we have limited financial resources. And
23 also for the reasons that were previously mentioned regarding
24 sovereignty, you know, we can only refer representation to
25 private counsel in limited circumstances. So certainly we'd

1 like to have a role in the steering committee, but to the
2 extent --

3 THE COURT: You try to sort it out. Obviously this
4 whole -- you've got to have some central organization, because
5 I can't have the State of New York noticing people for
6 depositions, and have no -- and without regard, they've
7 already been noticed or they're already part of the discovery
8 plan, we can't act unilaterally. If you're an MDL, they have
9 to be coordinated.

10 But what I do say is if the leadership of the defense,
11 let's say you're trying to do it as the defense, if your
12 leadership, you think unreasonably, will not allow you to
13 pursue a certain discovery approach, you could file a motion
14 with the Court and I will take it up with the leadership,
15 we'll address that issue. I have found that's generally not a
16 problem, that people manage to work things out. But I can not
17 have -- it's impossible to have parties unilaterally
18 scheduling depositions. That will not work when they're, you
19 know, as we say here, a courtroom full of lawyers, you can't
20 just have someone go back to their office and start noticing
21 depositions.

22 MR. DESAI: Understood. Thank you.

23 THE COURT: Anything further?

24 Yes, sir.

25 MR. CHERTOK: Your Honor, Mark Chertok representing

1 the Port Authority of New York and New Jersey, which is the
2 other sovereign in the City of Newburgh case; this is actually
3 a bi-state agency, neither a fish nor a fowl.

4 Two matters. One, I want to join in the request by the
5 government to have an amended complaint served quickly.
6 Because we, like, I think, some of the other defendants, plan
7 to move to dismiss, and that may simplify some of the issues
8 from that particular matter.

9 THE COURT: This is the City of Newburgh case?

10 MR. CHERTOK: The City of Newburgh case, which will
11 probably be a thorn in your side.

12 THE COURT: Not a thorn, but I will say this, that
13 I'm hearing enough issues that you might want to collectively
14 address some issues with me about, you know, the City of
15 Newburgh. And I'm glad to meet with you separately after the
16 next status conference to sort some of these issues out, if
17 there's a particular need to do that, I'm glad to do that.

18 MR. CHERTOK: Thank you, Your Honor.

19 Yes, sir?

20 MR. KNAUF: Your Honor, Alan Knauf with the City of
21 Newburgh. We'd be happy to meet with Your Honor separately.
22 We don't view the issue on the amended complaint the same way.
23 We've not gotten responses to our pleading, to our -- to claim
24 from any of the defendants, so we think we have an opportunity
25 to amend later on, but we'll be happy to sit down with Your

1 Honor.

2 THE COURT: What we'll do is there's always like, you
3 know, one case that says we're like different from everybody
4 else. This black hat here, you know, and -- but I'm glad to
5 sort it out and help you organize it. It is frankly far
6 easier to handle an individual case than an MDL, so that
7 sounded like easy for me.

8 So if y'all can't work it -- first time I ask you, don't
9 come in here and ask me to work out a problem you haven't
10 tried to solve yourselves. So I want y'all to sit down in
11 good faith and talk to these folks, but if you can work it
12 out, you'll let me know what it is, we'll have a status
13 conference and I'll rule. I know how to rule. So I'm glad to
14 do that.

15 Anything further?

16 Okay, folks, this hearing is adjourned.

17

18 (Court adjourned at 11:31 a.m.)

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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