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UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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In re: ) Civil 05-MD-1708 (DWF/AJB)  
)  
GUIDANT CORPORATION ) STATUS CONFERENCE  
IMPLANTABLE DEFIBRILLATOR )  
PRODUCTS LIABILITY )  
LITIGATION, )  
)

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This Document Relates )  
To All Actions ) 9:00 o'clock, a.m.  
) January 24, 2006  
) Minneapolis, Minnesota

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BEFORE THE HONORABLE JUDGE DONOVAN W. FRANK AND  
THE HONORABLE MAGISTRATE JUDGE ARTHUR J. BOYLAN  
UNITED STATES DISTRICT COURT JUDGE AND MAGISTRATE JUDGE  
CIVIL STATUS CONFERENCE PROCEEDINGS

\* \* \*

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1 (In open court.)

2 THE HONORABLE JUDGE FRANK: I welcome you to  
3 the 15th floor. For those of you -- and these  
4 microphones are marginal most of the time, but -- we  
5 move around a bit because both Judge Boylan and myself  
6 are in temporary quarters in St Paul. The Federal  
7 Courthouse is closed, as some of you may be aware. And  
8 we are in temporary quarters that aren't so bad, but  
9 there really are no courtrooms that will accommodate any  
10 group of lawyers or trials where there are multiple  
11 plaintiffs or defendants.

12 I apologize for the late start, although the  
13 representative lawyers from Plaintiffs and Defendants  
14 have been with us since 8:00 this morning in the  
15 conference room here. We did say 9:00, and for that I  
16 am responsible.

17 We have an agenda that was both on our  
18 website -- and that has not changed, unless something  
19 was added. It is our intent to go through that. Some  
20 of these issues will be with argument, some will not be.

21 It is our intent before the week is out,  
22 unless there is a contemporaneous ruling on an issue, an  
23 Order will be generated by the end of the week that will  
24 also be posted on our website, in addition to  
25 appropriate service that needs to be made of it

1 addressing any issues, whether they are in dispute or  
2 not.

3 I can just generally give an overview, and  
4 then I will see if Judge Boylan has anything to add.  
5 And then counsel can take exception, as they wish, as  
6 they go through the agenda.

7 We generally discussed the agenda items  
8 during our meeting this morning. We have set these up  
9 to precede every status conference. And we discussed  
10 everything that is here, ranging from the merits of an  
11 expedited trial schedule, setting trial dates on  
12 representative or relevant cases, to an inventory of  
13 state cases.

14 Our note that we will be reaching out to the  
15 State Courts, including those in Texas, I have talked  
16 with Judge Hunter not in the last two weeks, but in  
17 December, reaching out so that hopefully whatever we do  
18 with the trial dates, discovery issues, document  
19 production, protective orders and the taking of  
20 depositions; that somewhere in all of this there is  
21 sufficient coordination so the best interests of your  
22 clients are served and we can move the case along in  
23 some responsible manner.

24 So, what I did say, and I will repeat it  
25 again before we are done here this morning, we will be

1 reaching out in the form of a letter to all of the  
2 State Judges and State actions, in addition to the other  
3 work that we are doing. And to the extent that I have  
4 some concerns that lack of coordination almost  
5 presupposes disruption to a client or to a lawyer,  
6 whether it is here in Minnesota, Texas or Arkansas or  
7 elsewhere, we will do our part. Because a coordinated  
8 approach, with no exception in my 21 years on the Bench,  
9 generally serves everyone's interest, without  
10 compromising anyone's interest.

11 So, that is the, probably unnecessary, brief  
12 summary of the agenda, of what we discussed, since we  
13 are going to go right through it.

14 Judge Boylan, did you want to add anything  
15 to that?

16 THE HONORABLE MAGISTRATE JUDGE BOYLAN: No.

17 THE HONORABLE JUDGE FRANK: Our intent is to  
18 go right down through the agenda items. I will assume  
19 if someone has something to say, other than the counsel  
20 on each of the Plaintiff and Defendants' Lead Counsel  
21 Committees, that you will make the request, and we will  
22 either say no, or we will say yes to any request.

23 And this meeting was changed, the status  
24 conference. The next one, consistent with the Order  
25 that is filed will be the third Tuesday, and thereafter,

1 unless we move them, every month. And as the last Order  
2 said, we will post these on the website. It is not a  
3 guarantee it will always be in this courtroom.

4 It probably will always be in Minneapolis,  
5 because we don't have the facilities to accommodate even  
6 a smaller number than this group on the hearing, or the  
7 conference.

8 With that, the Plaintiffs -- Mr. Zimmerman or  
9 whoever is going to address the Plaintiffs today in  
10 various agenda items. Do you want to be heard on any  
11 issue before we begin going down the agenda?

12 MR. ZIMMERMAN: No, Your Honor. I think if  
13 we just go through the agenda, perhaps we can do it  
14 seated? Or --

15 THE HONORABLE JUDGE FRANK: It is easier for  
16 hearing if -- the acoustics in here, as grand as the  
17 courtroom is in many people's mind, the sound system is  
18 not as grand. And so, in fact, it is easier if you  
19 would just stand.

20 MR. ZIMMERMAN: Your Honor, I think --

21 THE HONORABLE JUDGE FRANK: Before we begin,  
22 is that procedure agreeable to the Defense?

23 MR. PRATT: Yes, Your Honor, although I am  
24 probably better able to address categories one and two.  
25 Do you want me to do that?

1 MR. ZIMMERMAN: Yes, I think that is fine.

2 MR. PRATT: All right. Agenda item number  
3 one is the number and status of cases transferred to the  
4 MDL. This is a little bit of a moving target, Your  
5 Honor. I think we got served as recently as yesterday  
6 in some cases.

7 According to the last cut-off point I had,  
8 there are 125 Federal Court cases pending against  
9 Guidant. I believe 114 have been captured by  
10 conditional transfer orders and are either in this Court  
11 or are in the process of being transferred to this Court  
12 by the MDL Panel.

13 There are a few oppositions to some CTO's  
14 that are going to have to be dealt with by the MDL  
15 panel, but there are 125, total, with 114 before this  
16 Court. In terms of the State Court actions, some of  
17 them are unserved. But, at my last count, there were 16  
18 State Court matters that had been filed against Guidant.  
19 Several of those are subject to removal. We will remove  
20 them. I believe five of them are in Texas and one of  
21 them is in Arkansas. Those six cases have been remanded  
22 back, so they are not ones that would come up to Federal  
23 Court.

24 THE HONORABLE JUDGE FRANK: And the status of  
25 those State Court actions? I know there is a trial date

1 of February that was moved up from the end of the year  
2 to February. Anyway, I will leave that there, having  
3 been a State Judge for 14 years, I know the issues and I  
4 will be talking with the folks down there. But, other  
5 than that case where we have a trial date, whether it  
6 holds or not, do you know the status of the others? Are  
7 they in the infancy stage? Do we have any other cases,  
8 if you know?

9 MR. PRATT: Very much in the infancy stage.  
10 The case in Arkansas had a trial date which I think now  
11 has been continued, so I believe there is no trial date  
12 set in the Arkansas case. There may be some trial dates  
13 set in a couple of these Texas cases on into the fall.

14 The only cases that have any level of  
15 activity in State Court anywhere in this country are the  
16 two cases that have been consolidated for trial for  
17 February 20 down in Nueces County, Texas. They are both  
18 before Judge Hunter, now. One was set in October. He  
19 moved his case up to February 20. He then at the  
20 request of the Plaintiff's counsel, consolidated another  
21 Judge's later filed case into that same trial setting.  
22 So, there are two cases Hinojosa and Motal set for trial  
23 February 20th. And that is 99.9 percent of the State  
24 Court activity that has gone on.

25 THE HONORABLE JUDGE FRANK: And then in that

1 case, as I understand it, the discovery cutoff is the  
2 eve of the trial, basically the 17th of February?

3 MR. PRATT: Yes. Yes. And it will probably  
4 continue by agreement into the following week. We will  
5 just have to deal with it, Your Honor.

6 THE HONORABLE JUDGE FRANK: Do you have any  
7 questions?

8 MAGISTRATE JUDGE BOYLAN: No. Number three.

9 THE HONORABLE JUDGE FRANK: Number three.  
10 Timing and sequencing of discovery, including but not  
11 limited to document production deadlines. And then  
12 obviously, we have the Plaintiffs' proposal and  
13 Defendants' proposal, and I will just note for the  
14 record that there have been written submissions made on  
15 the issue.

16 This is one of those issues that obviously  
17 will have to be addressed formally. We are at that time  
18 now, where, with or without any ruling today, this will  
19 be addressed. There is no assertion by either party,  
20 but there is a stipulation you are about to put on the  
21 record, which is fine.

22 MR. ZIMMERMAN: That is correct, Your Honor,  
23 and I guess the question is: Do you want us to put  
24 anything additional into the record? I think you have  
25 seen the submissions. I was going to ask Seth Lesser

1 from the Lead Counsel Committee to present it factually  
2 to Your Honor, if you needed anything in addition to  
3 what has been submitted.

4 THE HONORABLE JUDGE FRANK: Well, short of a  
5 brief overview, although I will say to those in the  
6 room, and I guess many will know if they are not here,  
7 is we have placed the most recent position of the  
8 parties with objections on the web. They are there. I  
9 had those loaded on there last week. So, all of the  
10 briefing isn't on there, but I will leave it to your  
11 discretion. You can say as much or as little as you  
12 want.

13 MR. ZIMMERMAN: I think something should be  
14 said briefly, Your Honor, and I would like Seth to say  
15 it. We have been bogged down a little bit in this and  
16 we really do want to clear it out. And we've set some  
17 proposals forward for doing that.

18 THE HONORABLE JUDGE FRANK: All right.

19 MR. LESSER: Thank you, Your Honor. Without  
20 repeating at length what was put in the proposals, and  
21 moreover the letters, there were three letters in the  
22 past two weeks to the Court regarding discovery -- let's  
23 take it both where we are today, and then the second  
24 question, of course, is where we are going, which is  
25 probably the more important issue.

1           Thus far, the discovery to date,  
2 notwithstanding the orders from both this Court and the  
3 Southern District of the State of Indiana to commence  
4 discovery in the summer has at least in the Plaintiffs'  
5 perspective, as we say in our papers, not been  
6 satisfactory.

7           In August, Guidant was ordered to respond to  
8 discovery demands which Guidant was actually provided  
9 with in June. Today, many months later, the full extent  
10 of the discovery that has been produced is set forth as  
11 the Exhibit B to Plaintiffs' Statement of Disputed  
12 Issues.

13           And I believe it would be fair to say if one  
14 reviews that, one sees, you know, barely, it has begun,  
15 the discovery document production side has begun. To  
16 date, however, there is literally no internal file on  
17 any given person that has been produced. To date,  
18 however, no e-mails of any substance regarding  
19 development of liability-type issues have been produced.  
20 Numerous discovery requests were propounded. And  
21 despite Guidant continually saying that they produced  
22 1.6 million pages, the vast majority of the pages fall  
23 into really limited categories, which one almost could  
24 call one file, for example, the project file for  
25 devices. And it has taken weeks and numerous telephone

1 calls to even get project files. And when they were  
2 produced to us, it turns out we can't even read them  
3 because they are dead links, and the like.

4           And I really do think the last production,  
5 such as it is, which now is almost two weeks ago,  
6 captures what at least from the Plaintiffs' perspective,  
7 the PSC's perspective, the Counsels' perspective -- and  
8 the Plaintiffs throughout the country are calling us and  
9 saying, what is going on? Is the tenth production,  
10 which was 153 pages long. And that was the tenth  
11 production. That was two weeks ago. We have not  
12 received one document since.

13           Every single document that has been produced  
14 to us has been given to one or more Plaintiffs' Counsel  
15 in this litigation, and there are many Plaintiffs'  
16 Counsel who are waiting for documents to review. At  
17 this rate, it will be years before we get anywhere near  
18 completion of production.

19           THE HONORABLE JUDGE FRANK: No, it won't.  
20 No, it won't. Anyway, go ahead.

21           MR. LESSER: To speed the process along, in  
22 October, admittedly, a long list of priority requests  
23 was submitted to Guidant. In more recent months since  
24 then we have been told that we can't respond to all of  
25 those as priority, there are just too many of them. We

1 have indeed whittled that list further down in the last  
2 two weeks and provided priority, top priority, super  
3 priority, whatever you want to call them, requests.  
4 That is on the document side, and I think we put that in  
5 our papers.

6           On the deposition side, in September, this  
7 Court ordered ten depositions to proceed. Not as an MDL  
8 Court, but nonetheless as Minnesota consolidated cases.  
9 We have had one deposition which lasted, I guess,  
10 basically a day, no more, on two related 30(b)(6)  
11 issues. One deponent was put forward.

12           Since then we have noticed a second  
13 deposition, but most recently informed by Guidant that  
14 Guidant will not even countenance scheduling yet even  
15 one more deposition, given the fact that Guidant happens  
16 to have a case down in Texas going to trial, and  
17 apparently can't even provide a 30(b)(6) witness on  
18 other issues, much less substantive deponents on other  
19 issues.

20           Having said that, Plaintiffs do have specific  
21 deponents who we would be prepared to start moving  
22 forward upon. But, that is where we have gotten. And  
23 at least from the Plaintiffs' side of the room  
24 irrespective of -- certainly, Guidant won't disagree we  
25 are not moving very fast. That is where we are today.

1           Going forward, obviously, there are a number  
2 of agenda items, that address do we move towards what  
3 Plaintiffs would like to see, trials, particularly  
4 bellwether trials, how we do that, whether or not that  
5 means other forms of stage discovery or matters that we  
6 have been discussing, are set forth in the papers. And  
7 once again, we have a large divide.

8           Plaintiffs' view is we could be ready on the  
9 bellwether side within a matter of some number of  
10 months, four, five, six months. It can be done. We  
11 have enough lawyers, certainly, to do it. Guidant has  
12 told the Court it has dozens of lawyers working on the  
13 discovery in this case, therefore we should be able to  
14 be able to do it, at least that is our perspective. And  
15 unless you have any questions, I will sit down.

16           THE HONORABLE JUDGE FRANK: At some point,  
17 you have a request, and I don't know if it is going to  
18 come up later on an agenda item, for a weekly, whatever  
19 you want to call it, discovery conferences or status  
20 conferences. If that is elsewhere to be addressed, we  
21 will sit tight.

22           MR. LESSER: Well, it is all related. I  
23 think part of the frustration on the Plaintiffs' side  
24 has been, we have weekly telephone conferences,  
25 admittedly with Guidant's Counsel, but issues routinely

1 come up, many issues which, at least in many of the  
2 litigations, were the Court involved, could be addressed  
3 and move far more quickly.

4           For example, there have been two motions, and  
5 only two motions I know made in this MDL to date. One  
6 of them was a discovery motion respecting the one  
7 deposition that did go forward. There was no meet and  
8 confer on it. Plaintiffs found it on their desk after  
9 hours the night before the deposition. At the  
10 deposition that morning, it was pulled down on  
11 agreement. But, those are the kinds of issues that if  
12 we had greater court involvement on a weekly basis, and  
13 it is agenda item 10, I think we can move a great deal  
14 more expeditiously.

15           Just to give yet another example, Plaintiffs'  
16 Counsel and Defense' Counsel have been arguing about the  
17 various ten productions. Are Plaintiffs being given  
18 information to understand what these productions consist  
19 of? If I might hand up to the Court -- and I will give  
20 counsel, Defendants, copies of this.

21           This is emblematic of why a weekly call can  
22 make sense. Under the Federal Rules, a defendant is --  
23 the parties are required to produce documents in the  
24 normal course of business so the other side knows what  
25 the documents are.

1           The Plaintiffs have requested such a list.  
2 Here is the Defendants' response. In fact, it says,  
3 identifying information for documents. Needless to say,  
4 this doesn't tell us, whatsoever, what file, if  
5 anything, has come forward. One of the early  
6 productions in December included one PowerPoint, the  
7 only PowerPoint we have gotten this far out of the many,  
8 to this document request.

9           I forget which CPI number that is. We had no  
10 idea what file that PowerPoint came from until actually  
11 Defendants happened to tell us. We think this is  
12 insufficient identification of the source of documents,  
13 because obviously we have no idea what these documents  
14 mean or where they are coming from.

15           If we had weekly calls, these are the kinds  
16 of things, I suspect, that could be addressed very  
17 quickly and wouldn't sit and simmer and become major  
18 issues down the road.

19           THE HONORABLE JUDGE FRANK: One thing, and it  
20 could be said now or it could be said later by the two  
21 of us. I will say it now, and whether that shortens up  
22 any of this, I will leave it to counsel.

23           But, I think what you will likely see come  
24 out of this and into the Order that will be out this  
25 week is, at least I think we are amenable to meeting

1 bi-weekly to begin with.

2 In other words, we will use this as -- if it  
3 is sustainable in terms of time, since many of you were  
4 in town, anyway, to take up some of those issues. But,  
5 then in the off-week, setting up a time, I have a  
6 concern that there is this fine line between being an  
7 enabler where, well, we are going to see the Judge every  
8 week, so we are going to put off our discussions.

9 I somewhere read, or we somewhere read there  
10 was a meet and confer one hour a week. I don't think  
11 that is enough. Three hours set aside if you only need  
12 an hour, ten minutes, between counsel without the Court,  
13 but it seems to me that a case like this, if you set  
14 aside three hours a week, or it is blocked, then if you  
15 use ten minutes or an hour, that is to your credit.

16 Finally, I think what you will see is, I  
17 think what will help move this along is we will begin  
18 requesting on a bi-weekly basis, an updated deposition  
19 calendar so we can see when they are noticed, when they  
20 are set, if they are bumped, or moved, so that we can  
21 keep a handle on, well, here is a depo set.

22 The other thing that I was going to wait  
23 with, we have again chatted about, with the host of  
24 protection orders that are classically in place in these  
25 cases, we are hopeful that the relevancy objection and

1 the redaction exercise is the exception, not the rule,  
2 as opposed to privilege.

3 In other words, if you have a protection  
4 order, and then somebody is spending all of their time  
5 redacting on relevancy grounds versus privileged  
6 grounds, with or without a log, it seems to me that, you  
7 know, in another case I have, the lawyers were paying  
8 thousands -- their clients, rather -- thousands of  
9 dollars until we stopped the relevancy redactions and  
10 went to the privileged logs. So, that didn't have to  
11 have a Special Master come in. After I tried to go  
12 through -- I guess Judge Boylan and I went through  
13 hundreds of documents and found that there were very  
14 little privilege issues with relevancy which attorney's  
15 eyes only protection orders theoretically should resolve  
16 many of those issues and speed some of them up. You  
17 know, I don't want to oversimplify that issue to  
18 Plaintiffs or Defendants, but I thought that was the  
19 purpose of the protection order.

20 MR. LESSER: Plaintiffs would agree on that.  
21 And that was one of the, I think it was the fourth of  
22 the specific issues -- or third of the specific issues  
23 we raised in the letters to the Court. And certainly,  
24 bi-weekly calls, certainly a good place to start.

25 We, on the Plaintiffs' side absolutely

1 appreciate the fact that it may be ordered that the  
2 discovery meet and confers be three hours, because as we  
3 put in our letters, it has been too short and we don't  
4 get to issues and they get passed over week after week.  
5 And it hasn't been sufficient.

6 THE HONORABLE JUDGE FRANK: I will just say  
7 this one other comment, and if Defense Counsel will  
8 respond to the suggested procedure. What will accompany  
9 that, and it is not anything new, I don't think that it  
10 is unique to this case.

11 Generally, then, we get a letter from each  
12 side, you know, two days before the pre-set conference.  
13 Whether some of you in person or by telephone say, here  
14 are the issues, and we will probably be willing to set  
15 aside three hours as often as we get together. It is  
16 not an invitation to say: Well, let's see if we can use  
17 all three hours. All right.

18 MR. LESSER: Thank you.

19 THE HONORABLE JUDGE FRANK: And I jumped  
20 ahead a bit, but --

21 MR. PRATT: When I saw this agenda item, I  
22 wasn't going to say much. And Mr. Lesser sort of got  
23 into some points I want to clarify just a little bit.

24 I have said it before, but it bears  
25 repeating --

1 UNIDENTIFIED VOICE: Could you speak up?

2 MR. PRATT: You can't hear me?

3 THE HONORABLE JUDGE FRANK: It is not like  
4 the entertainment microphone where you can put them down  
5 here and sing into them. This one is different.

6 THE HONORABLE MAGISTRATE JUDGE BOYLAN: And  
7 that will raise up, too.

8 THE HONORABLE JUDGE FRANK: You can raise the  
9 podium up. Can't you? There should be a button, there.

10 MR. PRATT: I am afraid it will push me right  
11 through the floor, here. I thought it was a Judge's  
12 button that they -- all right, can you guys hear okay,  
13 now?

14 UNIDENTIFIED VOICE: Yes.

15 MR. PRATT: All right, thank you. I want --  
16 Your Honor, I have grown a little thick-skinned as a  
17 defense lawyer. I know plaintiffs' lawyers, you know,  
18 always want documents yesterday. You are never doing  
19 enough.

20 The fact is, we really have had decent  
21 discussions and resolved many issues with our colleagues  
22 on the other side of the courtroom. Not all of them,  
23 but we have worked through lots of things. When they  
24 say, what do these codes mean when we attach them to the  
25 documents that we give them this list, we thought that

1 is what they wanted. If they had further questions  
2 about this, we certainly would try to answer them. But,  
3 the point I would like to emphasize in terms of document  
4 production in this litigation is this: I have said  
5 before, this is like five different mass torts wrapped  
6 into one.

7           There are essentially five product lines of  
8 my client that have been wrapped up into this MDL. One  
9 involves pacemakers, the other involves defibrillators.  
10 That is one reality. The other reality is that all of  
11 this has sort of happened here fairly recently in a very  
12 electronic age. It is not, you know, stuff that  
13 happened twelve years ago, you know, ten years ago where  
14 there weren't many electronic documents. A lot of stuff  
15 is e-mail-driven, electronic, so we are dealing with  
16 millions and millions and millions of pages of documents  
17 with over 100 people going through those documents,  
18 trying to identify in response to different requests on  
19 different products what has been asked for, what has  
20 been prioritized, whether there are any privileges.

21           My point is we are spending, the client,  
22 millions of dollars on this process of preserving,  
23 reviewing and producing documents. And it has all  
24 happened fairly recently.

25           Keep in mind the very first written discovery

1 we got was in the fall of last year. We produced 1.6  
2 million pages of documents and more on the way. So, I  
3 understand when they say, we want more, or we want them  
4 quicker; but, the idea that we have somehow impliedly  
5 engaged in sort of bad faith production is simply not  
6 the case.

7           And the other point I would make is that we  
8 have other things going on. We have the State Court  
9 matters that were mentioned by Mr. Lesser. We also have  
10 FDA issues going on. We have, believe it or not,  
11 acquisition issues going on where there are some  
12 document obligations in connection with all of those.

13           So, this has been a tough time. And we have  
14 been trying to accommodate it the best we can and  
15 produce what we can. And other MDL's, I think 1.6  
16 million pages of documents to this point, five, six  
17 months after this litigation got started with the first  
18 written discovery, I don't think that is anything to be  
19 ashamed of. I don't think that is foot dragging at all.

20           I mean, other MDL's, like the Serzone  
21 Litigation, there were 1.5 million documents produced  
22 over 16 months. In the Sulzer Hip Litigation, they got  
23 300,000 documents. The Orthopedic Bone Screw Litigation  
24 the MDL, there were 1.5 million pages of documents  
25 produced. So, this all has to be put into context. We

1 are moving ahead. We are accepting their priorities.

2           When they say, we want this, we try to get  
3 them to them. But, this is not something that can be  
4 sort of latch-keyed, that we can produce this all  
5 instantly in a matter of time. That is why we have  
6 urged that this Court do what other MDL's have done,  
7 which is do a rolling production. I don't mind checking  
8 with the Court. I don't mind the Court being involved  
9 in this. It seems like three hours set aside a week is  
10 a little excessive.

11           THE HONORABLE JUDGE FRANK: I don't think we  
12 have to use it all.

13           MR. PRATT: Yeah, but I think I know how that  
14 works. You have got it set aside -- I would much rather  
15 it be an hour and we expand it to three and cut it back.  
16 But, this is to your discretion.

17           I mean, how often you want to talk to us  
18 about discovery, I think that is unique in the province  
19 of the Judges to say: This is how we want to be  
20 involved, and I will leave it to you. I think we can  
21 accomplish a lot in an hour a week, frankly.

22           THE HONORABLE JUDGE FRANK: We are thinking  
23 every other week, for starters.

24           You are talking about the judge involvement,  
25 now.

1 MR. PRATT: Yes.

2 THE HONORABLE JUDGE FRANK: I think we would  
3 like to start out -- and it may not work to use this day  
4 as one of those twice-a-month get-togethers, but we are  
5 going to try it. And then in the off -- once during the  
6 month every two weeks, then, we will be available.

7 MR. PRATT: And we are talking every two  
8 weeks, anyway. So, if we are not --

9 THE HONORABLE MAGISTRATE JUDGE BOYLAN: I  
10 don't think Judge Frank was suggesting that you would  
11 use three hours of our time every other week.

12 MR. PRATT: We hope it doesn't come to that.

13 THE HONORABLE JUDGE FRANK: We are hoping  
14 that the inability to get access to the Court will never  
15 be an issue here, that is what I am saying. We'll take  
16 the time that is needed. But, there is that fine line  
17 of being an enabler. And the flip side is, the more  
18 common practice, as you all well know is, you know, this  
19 isn't going to make the day for the Judge if we have to  
20 call him again to say -- but he has got to make the call  
21 on this because we can't resolve this.

22 MR. PRATT: I think that building in --  
23 deficiencies would be created if we say, one hour a week  
24 we are going to have conferences. That is what we are  
25 doing, essentially, anyway. We are not going to hang up

1 the phone after an hour. We are not that crazy. And if  
2 you want to be involved on that every other week, that  
3 is fine. We will see how it plays out and we can adapt  
4 it, as necessary.

5           The final point I want to make on the timing  
6 and the sequence of discovery is that we want to get  
7 something them. As they cry about our not producing  
8 more than 1.6 million pages of documents, we have  
9 virtually nothing on any Plaintiff that has filed a  
10 lawsuit against Guidant. The 125 Plaintiffs in Federal  
11 Court that have sued us, we have no Plaintiff fact sheet  
12 that has been filled out and provided to us. We had  
13 sort of lengthy negotiations over that. The Court  
14 resolved those issues. We now hear from them that they  
15 want more time to fill them out. They ought to be able  
16 to fill them out by 5:00 this afternoon, given how long  
17 these cases have been around.

18           So, I urge if you talk about timing and  
19 sequencing of discovery, we build in time deadlines for  
20 them to produce complete, comprehensive responses to the  
21 Plaintiff fact sheet that this Court has adopted. A  
22 deadline that when that is due, they produce the  
23 documents that have been requested.

24           Only then can we move down this path of  
25 moving all parties toward whatever end we reach here of

1 having all of the information we need to make the  
2 judgments we have to make along the way.

3           There is also the issue, I think, about  
4 whether we prioritized -- we talked about this a little  
5 bit, whether the class issues come up ahead of the other  
6 issues, what we are going to do with prioritizing things  
7 in the Court's sort of scheduling order, but we are  
8 operating in good faith. We are trying to get things  
9 done as quickly as we can and put lots of resources and  
10 money into that process, Your Honor.

11           THE HONORABLE JUDGE FRANK: Can we move down  
12 to -- or does that take us to 6? Or 5, 6, and now 7?  
13 Wherever you want to break those down.

14           MR. ZIMMERMAN: I think we were going to do 5  
15 and 6 together and Elizabeth Cabraser will handle that.

16           THE HONORABLE JUDGE FRANK: Lowell, there is  
17 button on there. Does it go up?

18           THE CLERK: I'm not acquainted with the  
19 courtroom, Your Honor. I'm sorry.

20           MS. CABRASER: I think this is fine if people  
21 can hear me and this is just a very short presentation  
22 on items 5 and 6, Your Honor, class certification  
23 discovery.

24           You know Plaintiffs' position on this issue  
25 which, briefly put, is that the best class certification

1 discovery is merits discovery. I think the Manual on  
2 Complex Litigation, Fourth, says it best, quote,  
3 arbitrary insistence on the merits/class discovery  
4 distinction sometimes thwarts the informed judicial  
5 assessment.

6           The current class certification practices  
7 require it. What class certification these days boils  
8 down to is an assessment of which questions are  
9 susceptible to common proof at trial. And the way to  
10 determine that is to do the merits discovery. And in  
11 some MDL's, courts have decided that the way to do that  
12 is also to hold initial individual trials, rather than  
13 have lawyers argue ad infinitum, theoretically, about  
14 common proof versus individual proof and which  
15 predominates and which is sufficiently significant to  
16 justify a class action.

17           We think that there would be fewer discovery  
18 disputes. The discovery will move more quickly, and the  
19 main work of this MDL to prepare cases for adjudication  
20 or resolution will be advanced, if we don't go off into  
21 the distracting and perplexing esoteric issues of class  
22 versus merits discovery. We think they are one in the  
23 same.

24           With respect to a master complaint, you also  
25 have our position. Our concern is that this Court

1 determine whether or not and when it will be useful to  
2 the Court in terms of managing this case to acquire the  
3 filing of one or more master complaints; and that the  
4 Court's convenience and organization drive that decision  
5 and that timing rather than have the parties argue over  
6 master complaints.

7           There is no requirement for a master  
8 complaint in MDL's. It has been a convention in the  
9 past. Quite frankly, in many MDL's, master complaints  
10 have been filed and simply not utilized by the parties  
11 for any purpose. So, we think the function should drive  
12 the forum in this MDL, and that is up to Your Honor's  
13 discretion.

14           THE HONORABLE MAGISTRATE JUDGE BOYLAN: One  
15 of things that has been raised is early dispositive  
16 motion practice. And one of the issues that I believe  
17 has been informally raised by the Defense is the  
18 question of whether or not damages for Plaintiffs who  
19 are claiming mental distress, generically speaking, is  
20 allowed under various state laws.

21           And I am wondering whether or not a master  
22 complaint and a master answer process might make it  
23 easier for everyone to tee that kind of issue up?

24           MS. CABRASER: That is a good question, Your  
25 Honor. I guess I would say this about that. If the

1 Court orders briefing on those issues, the parties'  
2 positions on those issues can be set forth in the  
3 briefs.

4 Every plaintiff that has filed an individual  
5 complaint or even a complaint with class allegations,  
6 has raised that issue as an item of relief. So, the  
7 question as to whether a particular state's law allows  
8 it and in what form, what remedy I think is a matter  
9 that could as comprehensively be decided in the actual  
10 briefing on that point.

11 THE HONORABLE MAGISTRATE JUDGE BOYLAN: We  
12 have -- what, 32 different jurisdictions so far?

13 MS. CABRASER: I don't have an exact count,  
14 but the majority of states are represented in this MDL.

15 THE HONORABLE JUDGE FRANK: If I may,  
16 Counsel? And maybe we are going to get to it with  
17 number 7 and down we go. But, do you have a view, Ms.  
18 Cabraser, on the -- you mentioned class tantamount to  
19 merits. Do you have a view on what we discussed at some  
20 length during our conference, and it will come up again  
21 during this conference on the record, of singling out  
22 cases, whether they are bellwether or truly  
23 representative cases that may focus into class issues.  
24 In other words, they preceded -- or one of your  
25 co-counsel at the hearing will address it later. They

1 spent some time on what direction this case would take  
2 and the value of that selection process. And it may  
3 involve class issues, it may involve individual cases,  
4 but does that play into this discovery process at all,  
5 as you see it for your clients?

6 MS. CABRASER: Yes, Your Honor, we believe it  
7 does. Ten years ago, the Fifth Circuit told us as  
8 Plaintiffs in the Castano case, that rather than moving  
9 for class certification first, we should have had  
10 bellwether trials. We should have had a series of  
11 trials to mature that tort.

12 And the concept of determining what really  
13 are common questions and how significant they are, by  
14 putting those questions to the test in real trials has  
15 become a predominating trend in the MDL's. And we have  
16 come around to the view, through hard experience, that  
17 indeed preparing cases for trial, trying cases that are  
18 representative, not in the strict class certification  
19 sense, but in a pragmatic sense, is the best way not  
20 only to ultimately determine whether class certification  
21 would be necessary or useful to the global adjudication  
22 or resolution of the case, but also informally to give  
23 the parties and the Court good information on the merits  
24 of the cases, on their value if any, on the ranking of  
25 value, on how different fact patterns play out. And I

1 think particularly in this case where we have a series  
2 of devices at issue made by one company during  
3 essentially the same time span involving essentially the  
4 same corporate actors and decision makers, the most  
5 efficient way of proceeding would be to focus merits  
6 discovery on trial preparation, select cases for trial  
7 through a process of discussion between the parties and  
8 with the Court, and have that go forward.

9           At one point in that process, either before  
10 those trials, but more likely after some of those  
11 trials, the matter of class certification, whether there  
12 are a sufficient number of significant issues to justify  
13 issue certification or overall certification of the  
14 litigation will become far clearer than it would be if  
15 briefing were teed up after a limited discovery on the  
16 point, the matter were decided by this Court, and of  
17 course consigned to some indeterminate process of  
18 appellate review with regards to the outcome by the  
19 Eighth Circuit. We are concerned with slowing down the  
20 process toward discovering the merits and preparing  
21 cases for trial.

22           THE HONORABLE JUDGE FRANK: If I may, I think  
23 I said that was my last question, and again, if one of  
24 you are going to address this down the road in this  
25 hearing, then I will just -- we will sit tight.

1            Obviously, and of course the committees of  
2 lawyers know exactly the relationship and the role of  
3 each of us in the case and we explained it at the last  
4 hearing, but does the ability for us to deliver whatever  
5 you want to call it, ADR or remediation, because we are  
6 somewhat unique in the United States because our judges  
7 and magistrate judges, in this case Magistrate Judge  
8 Boylan, I am not bashful in saying he has probably got  
9 as much or more experience than most in mediating all  
10 sorts of issues.

11            Does that play in here at all or should we  
12 just leave that for another issue? In other words, we  
13 had discussed during our hour plus time back there that,  
14 well, during this process, do we assert mediation or ADR  
15 before some dispositive motion practice, after, what  
16 would be most useful to you and your clients?

17            Should we just leave that for another day or  
18 another issue? Or is that something -- I know that both  
19 sides just kind of put it on their radar screen this  
20 morning and it was discussed.

21            MS. CABRASER: Your Honor, in our view these  
22 issues are interrelated. And the prospect of an ADR  
23 process should be commenced early. I don't think  
24 intelligent ADR discussions need await dispositive  
25 motions.

1                   Sometimes settlement discussion go on for  
2 weeks or months, and sometimes they need to be informed  
3 by orders or rulings of the Court. But, if the process  
4 begins, a number of things happen. For example, Mr.  
5 Pratt lamented the fact that Defendants don't have  
6 Plaintiffs' fact sheets. They don't have information on  
7 the Plaintiffs. There is nothing that incentivizes the  
8 exchange of information on Plaintiffs like the  
9 commencement of an ADR process, because the Plaintiffs  
10 know it is for a purpose, and essential information  
11 about the number of claims, the type of claims, the  
12 devices at issue, the injuries. The allegations will  
13 flow much more quickly if there is an ADR process that  
14 has commenced.

15                   I think the most effective and efficient MDL  
16 proceedings are proceedings that are on these multiple  
17 tracks where there are ADR discussions, mediated or  
18 supervised by a judicial officer, where merits discovery  
19 is going forward, where there is also informal exchange  
20 of information.

21                   For example, there is a multi-page Plaintiff  
22 fact sheet. It takes a while to fill out. People are  
23 doing that. There is also a truncated version of that  
24 information that would be very useful, either for ADR  
25 discussions and or selection of cases for bellwether

1 trials. And once the parties know that there is a set  
2 of orders in place requiring those things to go forward,  
3 we can then use our three hours a week, or whatever it  
4 is, and our time with the Court every other week to work  
5 through that process and to make sure that the  
6 information is flowing.

7 I think, otherwise, if you have a linear, one  
8 track, first this gets filed, then there are dispositive  
9 motions, and only then does anyone talk about ADR or  
10 then do you talk about bellwether trials, the elapsed  
11 time increases. The synergistic effect of having these  
12 things going on simultaneously is lost and the parties  
13 aren't as intimately engaged in the litigation as they  
14 should be, (a), to make their best efforts for their  
15 clients, and (b), to get significant things to happen in  
16 the MDL at the earliest possible time.

17 THE HONORABLE JUDGE FRANK: Thank you.

18 MR. PRATT: Your Honor, there were several  
19 things that Ms. Cabraser talked about, some of which I  
20 will address on the question of class discovery, and the  
21 master complaint I would like Mr. Sherk to address that  
22 briefly.

23 THE HONORABLE JUDGE FRANK: All right.

24 MR. SHERK: Your Honor, John Sherk from Shook  
25 Hardy. I hope you can hear. I am going to take a cue

1 from Ms. Cabraser and try to keep my comments brief.  
2 But, as our briefing suggested, Your Honors, we are  
3 fully in favor and would endorse the concept of  
4 having --

5 MR. ZIMMERMAN: You have to speak up,  
6 Counsel, I can't hear you.

7 MR. SHERK: Sure thing. Your Honor, we would  
8 endorse the idea of having the Court direct Plaintiffs  
9 to file a master complaint. We have got some real  
10 practical reasons for that.

11 If you look through the hundred odd  
12 complaints that are at issue in this MDL, Your Honors,  
13 there are all sorts of different claims that have been  
14 alleged, some involve negligence, fraud, Consumer  
15 Protection Act claims --

16 THE HONORABLE JUDGE FRANK: Are people having  
17 a hard time hearing out there? I am trying to figure  
18 out where the speaker -- something is either not turned  
19 on or working, Lowell.

20 THE CLERK: Try it now.

21 MR. SHERK: Is this a little bit better?

22 THE HONORABLE MAGISTRATE JUDGE BOYLAN: That  
23 is better.

24 MR. SHERK: Okay.

25 THE HONORABLE JUDGE FRANK: Any better for

1 anybody out there? All right, let's try that.

2 MR. PRATT: We hear you. Your speaker is  
3 working because it is coming through here, but --

4 THE HONORABLE JUDGE FRANK: Well, we haven't  
5 deliberately turned them down.

6 MR. SHERK: In any case, Your Honor, I think  
7 it would behoove us to have before us a listing of the  
8 legal claims and equitable claims that Plaintiffs have  
9 made, as well as the items of relief that they are  
10 seeking, I mean, whether it be injunctive relief like  
11 medical monitoring or public education programs,  
12 damages, punitive damages.

13 The complaints have a host of different items  
14 of relief that they claim from complaint to complaint to  
15 complaint. Why is that important? Well, that will  
16 really factor into the kind of discovery we do in this  
17 case, Your Honor. We need to know what kind of claims  
18 are being alleged and what items of relief are being  
19 sought so we can tailor our discovery accordingly,  
20 written discovery and deposition discovery.

21 Also, what claims are being asserted will tie  
22 in directly to dispositive motion practice. For  
23 example, medical monitoring claims or claims for fright  
24 with no injury we think are susceptible to motions to  
25 dismiss or motions for summary judgment at some point.

1 We just want to know for sure that those are in play.

2 We need to know what is in play.

3 Finally, what Plaintiffs are claiming will  
4 effect what kind of class certification experts we will  
5 use. So, we have real practical reasons, Your Honor,  
6 for wanting Plaintiffs to be required to file a master  
7 complaint. We don't think it is merely convention, we  
8 think it is something we are entitled to know.

9 Now, finally, and next, class certification  
10 discovery. We think the case should not proceed in a  
11 bellwether track, but rather on a more traditional  
12 track. For example, like the litigation involving St.  
13 Jude that was occurring in this Court not too long ago.

14 We would like to approach the class  
15 certification issues first, do dispositive motion  
16 practice, take some class certification discovery, not  
17 exclusively class certification discovery, but discovery  
18 focusing on the class certification issues to see if  
19 these class action cases, the proposed class actions are  
20 really amenable to class certification.

21 There may be other fact discovery that we  
22 would tailor in, kind of fold in, feather in along the  
23 way; but, it mainly would be written discovery of the  
24 class representatives, class representative depositions,  
25 maybe some fact witness discovery, and then class

1 certification expert discovery.

2 We think we could probably get that done this  
3 year, Your Honor, if we put our minds to it and have an  
4 aggressive schedule.

5 THE HONORABLE JUDGE FRANK: And I thought you  
6 had a question?

7 THE HONORABLE MAGISTRATE JUDGE BOYLAN: It  
8 just seems to me that when you say that the class, the  
9 master complaint would help you identify those matters  
10 that the Plaintiffs are claiming, but then you give us a  
11 litany of what they are claiming, it sounds like you  
12 know that already without the need for a master  
13 complaint. I mean, it is not a question, it is an  
14 observation.

15 MR. SHERK: The point is, it varies from  
16 lawsuit to lawsuit to lawsuit. So, we are not sure what  
17 is in or out. I mean, for example, I have got a lawsuit  
18 in West Virginia that has got negligence, strict  
19 liability, breach of warranty and fraud. I have got one  
20 in North Carolina that has got negligence, two breach of  
21 warranty claims, fraudulent misrepresentations,  
22 concealment, consumer fraud, emotional distress, loss of  
23 consortium, the whole shooting match, Your Honor. So,  
24 we would just like to know precisely what we are being  
25 confronted with.



1 does.

2 MR. SHERK: Just very briefly, Your Honor, I  
3 think the Court does have to perform a bit of a  
4 balancing act, here. But, this is massive litigation  
5 and it is just getting going. And what Guidant wants,  
6 what Defendants want is a reasonable chance to get our  
7 arms around the issues, around the documents, to learn  
8 about Plaintiffs and get from them the kind of discovery  
9 so the Court can determine whether or not these cases,  
10 the class actions, particularly, can really proceed on a  
11 representative basis; that they have the proofs and that  
12 these cases actually would fit into the class action  
13 paradigm, because we have got great concerns that they  
14 don't, Your Honor.

15 We think if we move quickly within this  
16 year's time, we can have the class certification issues  
17 completely briefed.

18 MR. BECNEL: Your Honors, may I address the  
19 Court?

20 THE HONORABLE JUDGE FRANK: You are, sir?

21 MR. BECNEL: Daniel Becnel from Louisiana.

22 THE HONORABLE MAGISTRATE JUDGE BOYLAN: We  
23 can hear you fine, but if you would speak up?

24 MR. BECNEL: Judge, I think I'm about the  
25 oldest one in this courtroom having been involved in one

1 of the first MDL's in the country. But, I have learned  
2 something, you go to the National Federal Judicial  
3 Center, and they have tapes of methods to get cases  
4 resolved, one of which with summary jury trials.

5 I happened to be on the plaintiffs'  
6 committee, along with Mr. Zimmerman, Ms. Cabraser and  
7 others in the Teletronics Pacemaker case. We took five  
8 days and did a number of plaintiffs in the five days,  
9 had the defendants have their check writers present, had  
10 the plaintiffs there, and resolved the case after the  
11 five days where we debriefed the jury and find out what  
12 the strategies of the plaintiffs' case was, what the  
13 strategies of the defendant's case was, and resolved  
14 them. It didn't take a lot of discovery. It didn't  
15 take months.

16 We just tried, for example, in Louisiana this  
17 past Thursday and Friday, along with Mr. Arsenault,  
18 myself, Mr. Dumas and others, the contaminated oil case  
19 before Judge Fallon who has the Vioxx case. We tried it  
20 in class certification within 90 days of the first-filed  
21 suit. We did 37 depositions by the committee of  
22 lawyers. And this trial, he is getting ready to issue a  
23 decision on it. So, it can be speed -- I hate to see --  
24 I am a trial lawyer. I have been a trial lawyer.

25 Counsel just mentioned three cases, Sulzer

1 Orthopedics. I filed for the MDL and was on the  
2 plaintiffs' committee. Serzone, I filed for the MDL and  
3 was on the plaintiffs' committee. Both of those were  
4 resolved. Pedicle Screw, I filed for that, and was not  
5 on the plaintiffs' committee but had the most cases.  
6 And then the Court asked me and gave me one of the third  
7 highest, because I had so many people working on the  
8 case. This case is a simple case. It is not complex.  
9 Lawyers can make it complex.

10 I sit down, and in the paper this morning and  
11 watched Medtronic, which is very similar to this case.  
12 On the Wall Street -- I'm sorry, on the front page of  
13 the Business Section, all about the case, all about the  
14 documents, all about the whistle blowers, all about it.  
15 And lawyers like me are going to get asked by clients  
16 from around the country, where I have cases all over the  
17 place, and I have asked Mr. Zimmerman to file my cases  
18 directly here, because I believe this is the place we  
19 ought to be.

20 Now, I don't mind -- my wife is a State  
21 Judge. I don't mind cases in State Courts. And that is  
22 fine. But, I ought to do mine when they are not  
23 coordinated, because they get screwed up. And if you  
24 want to look at disasters, you look at the Baycol  
25 Litigation and what happened in State Court, and then

1 what happened. You look at Welding Rods, what happened  
2 in State Courts, and then look at what happened in  
3 Federal Courts.

4 So, I am here to beg you for the benefit of  
5 these clients that I represent -- and who will they be  
6 looking to but me? They don't look to the courts. They  
7 look to me. You said you wanted trial lawyers? We've  
8 got the good trial lawyers in this courtroom.

9 And on that side, I know Shook, Hardy &  
10 Bacon. I mean, we've settled many, many cases with  
11 them. We tried a year's long case in Louisiana with  
12 that firm in Tobacco, the only case that has got a  
13 Medical Cessation Program in the country. But, we need  
14 trial dates.

15 And if we don't have trial dates, what is  
16 going to happen is our clients are going to fire us.  
17 They are going to go to places where they can get  
18 resolution rather than wait three years or four years  
19 and all of this gobbledygook. You know, master  
20 complaints is fine. Lawyers working on documents for  
21 four years -- look, I have got Ms. Gant, I hired away  
22 from a defense firm. She and eight of my lawyers have  
23 been working full time every day since well before the  
24 MDL on Vioxx, every day, all day long.

25 Judge Fallon is trying to move cases forward,

1 a few state courts are trying. But, what have we tried  
2 so far? Three cases. That isn't getting anybody  
3 anywhere. We need multiple plaintiffs. And we can't  
4 have plaintiffs where the defendants are going to pop  
5 them off one at a time and then all of a sudden you  
6 don't have a dispositive set of plaintiffs where you can  
7 determine what is the value.

8           Look, if I have a case that is not worth  
9 anything, I want to find out quick it is not worth  
10 anything. And I will tell every other client I have in  
11 a similar category: We can't win your case. We tried.  
12 We had good experts and we tried.

13           So, all I am asking this Court to do is move  
14 expeditiously, because, I mean, I have been called 10  
15 times in the last two weeks: Give me your cases and  
16 give me 25 percent and I will settle them.

17           Now, I don't like that. I have been hired  
18 and I have been referred cases from all over this  
19 country. I want to determine either through my  
20 representatives or through the Court with all of its  
21 powers -- I mean, the two of you just in State Court  
22 tell me you have got 28, 30 years of experience. That  
23 is almost as old as I am. But, I am begging you to get  
24 this thing moving, and moving quick. Otherwise, we are  
25 going to have another MDL case.

1           And if you look at the three cases he talked  
2 about, Pedicle Screw, there are still cases in the  
3 Federal Court in California. I have had two Federal  
4 Judges retire. Judge Bechtel who was on the MDL Panel  
5 retired and gave it to another judge who retired. Now,  
6 it is still not settled. That is the black hole MDL's.  
7 Serzone, we got it settled. The only problem that we  
8 haven't distributed all of the money is, I have most of  
9 the clients in that case. And a lot of them are  
10 displaced and we are trying to locate them. And that  
11 Judge in West Virginia did a wonderful job and quick.

12           Sulzer Orthopedics, Judge O'Malley took that  
13 case by the horns. They tried one or two cases in  
14 Texas. We resolved the case nationwide. And it didn't  
15 take very long. And it wasn't this giant amount of  
16 work.

17           You know, we spent time in Vienna taking  
18 depositions because we agreed and we did it  
19 expeditiously. But, that is what is needed now in court  
20 is speed, is speed for both. This client wants to sell  
21 its company to somebody else. How on earth are they  
22 going to know what you are buying, if you are buying \$50  
23 billion worth of liability or \$500,000 worth of  
24 liability? They want to know that answer. It is not  
25 the lawyers. The stockholders want to know that. Our

1 clients want to know, what is the answer to this case?  
2 Am I entitled to anything or am I not? If you kill my  
3 family member, should I get compensated or should I not?  
4 The quicker you give me that answer, the quicker  
5 everybody is at a peace of mind and it kind of puts  
6 resolution to it. That is all I ask the Court.

7           You ask for trial lawyers -- I can give you  
8 my cases right now. Do you want the fact sheets? They  
9 are filled out. They are ready to go. If you tell me  
10 my four or five cases I have had Mr. Zimmerman to fill  
11 out and file here for me, I'm ready to try those in two  
12 weeks, three weeks, five weeks, six weeks, whatever this  
13 Court has given me the time to do.

14           Thank you, Your Honor. I am sorry I talk too  
15 much.

16           THE HONORABLE JUDGE FRANK: All right. Thank  
17 you.

18           MR. PRATT: Mr. Becnel wants to know whether  
19 his cases are worth anything so he can tell his clients.  
20 They are not worth much, Mr. Becnel, but that is just my  
21 opinion. But, Mr. Becnel, we have known Dan for a long  
22 time. He is an experienced lawyer, lots of opinions,  
23 good lawyer.

24           And I hear people say, we want to get cases  
25 set for trial quickly. I hear people talk about, let's

1 set up an ADR process so we can find out kind of what  
2 these cases are worth. Both laudable objectives, but I  
3 suggest that the overriding objective that ought to  
4 guide what we do in this MDL is fairness, fairness to  
5 all parties.

6 Fairness so that we have an opportunity to  
7 conduct the discovery that we need, us from them, them  
8 from us. Part of the problem that we had with this  
9 so-called delay and not being expeditious isn't from our  
10 end.

11 If they were to say, just give us a few more  
12 documents in these categories and we are going to  
13 declare ourselves finished from the document production  
14 standpoint, things can move a lot quicker. The delay,  
15 if you will, if you use that word, is that we are having  
16 to go through millions of pages of documents to find out  
17 what they want, things they have asked for. That is  
18 where the delay is built in.

19 Now, in terms of whether there ought to be a  
20 trial setting, I suggest there ought to be some  
21 fairness. You know, the MDL is like an upside-down  
22 triangle. These cases come in and they winnow down  
23 through the pretrial process, which is what the MDL  
24 process is intended to do, it is sent here for pretrial  
25 purposes.

1           You go through issues like class  
2 certification, that may narrow things down. You go  
3 through dispositive motions. You get to the point where  
4 you realize, this is what we are really dealing with.

5           What I am suggesting is two things. One, it  
6 is too early to set a trial date I think. It is too  
7 early. We don't know how much discovery they want.  
8 They have not stopped asking us for discovery. So, we  
9 don't know how long that process is going to take.

10           We are probably looking maybe through this  
11 document process over the next several months. And then  
12 to move through dispositive motions, do the kinds of  
13 things that courts need to do in an MDL, we are looking  
14 probably looking into the summer of '07 before we can  
15 reasonably be ready for trial, would be my suggestion.

16           And that is a little uncertain, because it  
17 still depends on how much discovery they want. You  
18 know, they served a 30(b)(6) notice on us, Your Honors,  
19 one 30(b)(6) notice that asked for information on 30  
20 different communications that the company made covering  
21 five different product lines.

22           And for each one of those communications,  
23 they wanted a witness to address 19 specific topics,  
24 engineering issues, cost issues, medical issues, a whole  
25 gamut. So, in that one 30(b)(6) deposition notice, they

1 are asking us to produce people to address 700 topics.  
2 That is one.

3 Now, they really want that. And with all of  
4 the documents in connection with it, that is going to  
5 delay things, because we have got to find the witnesses,  
6 we have to produce them. So, what I urge in terms of  
7 trials, let's not do anything right now.

8 Let's find out how long this discovery  
9 process is going to take over the next month or two. In  
10 terms of bellwether cases, I urge the Court to tell the  
11 Plaintiffs to give you a precise statement of what they  
12 are trying accomplish from a bellwether case standpoint.

13 They stand up here and say: We don't know  
14 whether we can file a master complaint; we don't know  
15 what class issues we want to urge. If that is their  
16 position, then how can they identify some kind of a  
17 bellwether case to deal with any issue? If they want to  
18 do it, if their position is they want a bellwether case  
19 for case evaluation purposes, I think we need to address  
20 that on the Defense side. I'm not sure that is  
21 necessary for that purpose. If they say we want to have  
22 a bellwether case because we want to extrapolate the  
23 results of that to other cases, I think that is perilous  
24 from a constitutional standpoint, unless there is a  
25 class certified.

1           So, what I urge you to do with respect to  
2 bellwether and with respect to trial settings, that you  
3 tell the Plaintiffs, give a short proposal on when you  
4 think you want a trial, what you think you need to  
5 accomplish between now and the date you proposed, why  
6 you want bellwether cases, what would you pick, and what  
7 would you do with the results of a bellwether trial.

8           Set them up quickly to do that. We will  
9 respond quickly. And we will say, if this is what they  
10 want to do, this may work, this may not work. This date  
11 is better than that date and this is why. I think it  
12 would allow -- we have not had that briefing, yet.

13           And I think it would allow us to get a better  
14 measure of what other MDL's have done, why they have  
15 done it, and some of the constraints that courts like  
16 the Fifth Circuit had put on the judge's ability to hold  
17 bellwether trials. I think that needs to be briefed out  
18 a little bit. And I urge the Court in that regard to at  
19 least give us an opportunity to be heard on that.

20           I frankly don't know exactly what the  
21 Plaintiffs want. And they talk bellwether. I don't  
22 know what they mean by it. And it would help me to see  
23 it in writing what they mean so we could then better  
24 deal with that issue, Your Honor.

25           THE HONORABLE JUDGE FRANK: All right. Yes?

1 MR. HOUGE: Could I be heard on one comment,  
2 on the trial date?

3 THE HONORABLE JUDGE FRANK: All right.

4 MR. HOUGE: I am here with my client, Don  
5 Wright. My name is Benjamin Houge. I am here with my  
6 client Don Wright. He has had 17 hearts attacks.

7 THE HONORABLE JUDGE FRANK: Could you repeat  
8 your name, sir?

9 MR. HOUGE: Benjamin Houge, H-o-u-g-e. I am  
10 here with my client Don Wright. He has had 17 heart  
11 attacks. My research shows that under the law of this  
12 state and under the law, at least, from Arizona, if he  
13 dies, his cause of action dies with him.

14 I agree with the counsel over there from West  
15 Virginia --

16 THE HONORABLE MAGISTRATE JUDGE BOYLAN:  
17 Louisiana.

18 MR. HOUGE: Louisiana, I'm sorry.

19 MR. BECNEL: Louisiana. The only country  
20 lawyer in the bunch.

21 MR. HOUGE: Anyway, so, on behalf of the  
22 many, many injured people, we have a cause of action.  
23 One of our causes of action is on behalf of -- fraud  
24 against senior citizens and handicapped people. On  
25 behalf of all of these people, many of whom are going to

1 die, many of whom's cause of action will die with them.  
2 We ask that you set a very rapid discovery schedule and  
3 an early trial date.

4           It is not that complicated an issue, at least  
5 what they did with my client. He was implanted on April  
6 29th. They knew on April 16th it was a defective  
7 product. They deliberately let him be implanted with a  
8 defective product, so it is a very simple case. So, I  
9 think some of these cases could be set very rapidly.  
10 Thank you.

11           THE HONORABLE JUDGE FRANK: I agree with you.  
12 Mr. Zimmerman?

13           MR. ZIMMERMAN: Your Honor, I don't think a  
14 debate over the question of where we are going could be  
15 any better joined than what you have heard.

16           MR. PRICE: Louder, Mr. Zimmerman.

17           MR. ZIMMERMAN: I don't think the debate  
18 could be better joined than what you have just heard.  
19 We have got a population of people, here, that are at  
20 great risk.

21           We have a company that is wanting to make  
22 something very complicated in defense of their claim.  
23 And we are trusted with the responsibility to make this  
24 work out. And the only way we are going to do it, Your  
25 Honor, is to sit down around the table and figure out

1 modalities to get us to the end. Because if we use  
2 traditional notions of MDL in history, and if we use  
3 traditional notions of all of the discovery and an  
4 inverted pyramid, we will have done a disgrace not only  
5 to our clients, but to the system of justice. And we  
6 can do better. And we must.

7           And I am here to tell this Court and to tell  
8 Tim Pratt and the Defense Counsel and to tell Guidant's  
9 Board of Directors, it is our job to step forward and  
10 get this thing cooking. Because as of the moment, we  
11 are just debating around the fringes. And I think it is  
12 time we got to the nub. And I think bellwether trials  
13 will help. Summary jury trials will help. Focused  
14 discovery will help. Plaintiff fact sheets will help.  
15 But, telling us we have got a million documents and all  
16 of the 700 parameters of questionings that might occur  
17 in a deposition will not help.

18           The Court's focus, the Court's time,  
19 Counsel's commitment on both sides will help. And we  
20 can get this done. And we will make our own report card  
21 at the end of the day. Because as more people come  
22 forward with the complaints we just heard from Counsel  
23 from Arizona, we will have our agenda very much  
24 quickened, as we see the death certificates come in, one  
25 after another.

1           The next question on our agenda was  
2 bellwether trials. I think we have now discussed it.  
3 We are prepared to propose bellwether trials. We think  
4 the summer of '07 is irresponsible for the thought of a  
5 bellwether trial. We think it should be quicker. I  
6 think we can take this up in conference with Your Honor  
7 and we can agree on an appropriate date and appropriate  
8 time once the thinking is all gelled around this  
9 concept. But, clearly, something has to happen to make  
10 us focus on outcome, as opposed to process.

11           The next item on the agenda, Your Honor, is  
12 inventory and discuss the status of any remand motions  
13 and Rule 12 Motions. I think that has all been  
14 submitted. I don't know if there is anything further  
15 that needs to be added.

16           THE HONORABLE JUDGE FRANK: Maybe you can  
17 come up here together. I think on the remand issue,  
18 there are some of you who had called my chambers. One  
19 of the questions we had, legitimately, that comes up in  
20 our district and other districts, procedurally, is do we  
21 deem them under the rules dispositive, or  
22 nondispositive. And you will get two different answers,  
23 obviously, across the country, at least two. A third  
24 answer is they are kind of a hybrid. We have treated  
25 them as -- apart from this case, most of us, not all of

1 us, as dispositive. They are really kind of a hybrid.  
2 And so, typically, we kind of customize a briefing  
3 schedule and set a hearing date. And probably the  
4 sooner that happens -- because the ones I have seen thus  
5 far seem all to have at least one issue in common, so --

6 MR. ZIMMERMAN: We are talking about remands  
7 back to State Court?

8 MR. PRATT: We are not talking about exited  
9 remands, where people say --

10 THE HONORABLE JUDGE FRANK: No, no, no.

11 MR. PRATT: You are talking about remands,  
12 that we worked cases and going back --

13 THE HONORABLE JUDGE FRANK: Right.

14 MR. PRATT: However you want to handle that.  
15 There aren't many cases like that. In fact, Mr.  
16 Zimmerman's office will sometimes file one, whether  
17 they're going to pursue it or not. But, Mr. Burton  
18 hasn't filed one --

19 THE HONORABLE JUDGE FRANK: Right, and I  
20 think, probably -- what is the view of both of you if we  
21 provide a date, with or without agreement, just a  
22 briefing schedule that will look much like a dispositive  
23 motion briefing schedule? Because I am ready to proceed  
24 with those.

25 MR. ZIMMERMAN: The way I think it should

1 proceed, Your Honor, is it should be heard on the  
2 merits, on the individual facts. Counsel should be able  
3 to come in either directly or through telephone.

4 THE HONORABLE JUDGE FRANK: Directly.

5 MR. ZIMMERMAN: Directly, and argue their  
6 cause and the Court issue its appropriate order. These  
7 are very fact specific, who is joined, what is a  
8 fraudulent joinder, and was the removal appropriate.  
9 This shouldn't interfere with our process.

10 THE HONORABLE JUDGE FRANK: But, in every one  
11 I have seen so far, there is one clear cut  
12 jurisdictional issue, one what I will call the federal  
13 office or federal agency, you know, I think it is 42A.

14 MR. ZIMMERMAN: Sure.

15 THE HONORABLE JUDGE FRANK: But, every one  
16 that I have looked at, I have only looked at a small  
17 handful, they all have -- that actually is the issue  
18 that has been raised.

19 MR. PRATT: I think there are a couple of  
20 them that fit into that category. I think there may be  
21 some others moving your way that involve some diversity  
22 fraudulent joinder issues, but --

23 THE HONORABLE JUDGE FRANK: Someone is trying  
24 to get in here.

25 MR. BURTON: Yes, Your Honor, Mark Burton.

1 THE HONORABLE JUDGE FRANK: Yes. Your papers  
2 are the ones I received this week.

3 MR. BURTON: That is correct. Yeah, I would  
4 just like to point out to the Court that this should be  
5 a matter that could be resolved very quickly, because  
6 there has already been a defibrillator decision against  
7 Guidant on the federal officer issue. So, it is not  
8 like they don't have briefs ready to go in opposition or  
9 anything like that.

10 I don't see why there is any reason why by  
11 the next case management conference, hopefully the third  
12 Tuesday of February, we wouldn't be able to have --

13 THE HONORABLE JUDGE FRANK: Oral argument?

14 MR. BURTON: Yes.

15 MR. PRATT: It is not quite that simple, Your  
16 Honor. We don't have briefs specific to the Eighth  
17 Circuit. And if there is a particular case in the  
18 Eighth Circuit that deals with federal officer  
19 removal -- and I don't know this other Guidant case that  
20 Mr. Burton is talking about, I just got his papers.  
21 But, I don't accept the idea that we have got briefs  
22 ready to go on that and it is already briefed.

23 So, I would still urge the Court to require  
24 Mr. Burton if he has done his submission, and that is  
25 all he is going to do, give us time to respond and set

1 it according to the due course of your normal schedule  
2 for hearing these kinds of dispositive motions, Your  
3 Honor.

4 MR. BURTON: I'm not sure what your normal  
5 course is, Your Honor, for those type of motions.

6 THE HONORABLE JUDGE FRANK: The normal -- and  
7 that is why we had gotten a call from Mr. Price earlier  
8 in the week, which is incidentally a call, speaking for  
9 myself, or both, that we get in our District. So, if we  
10 get it, others must get it, apart from the MDL status  
11 as, well, if you deem these dispositive or  
12 nondispositive under your rule, because the case law is  
13 mixed across the country. It only affects one thing,  
14 the timing of the briefing and setting of the hearing.

15 And the way to resolve this is my calendar  
16 clerk, Lowell Lindquist, what we will do is we will  
17 catalog or look at yours and others, and he will, this  
18 week, get on the phone to you and set up a hearing date.  
19 Now, whether the hearing date on some of these or all of  
20 these can be coordinated with February, I mean, to me,  
21 depending on the issue in the case, that is realistic.  
22 And if the parties can't agree on a hearing date or a  
23 briefing schedule, I can make the call. We don't have  
24 to all retreat back in here. I can make a call on that.

25 The other reason we get the call is because

1 when some of these Magistrate Judges hear them and in  
2 some Districts they are considered nondispositive. So,  
3 this affects agreement on, I think, the briefing  
4 schedule. Either way, there is not going to be much of  
5 a delay. I say that based upon the one or two or three  
6 I looked at.

7 Mr. Pratt has raised a couple of other issues  
8 that -- I didn't see those issues in your --

9 MR. BURTON: I think those aren't with  
10 the Court yet. He might be talking about some other  
11 ones, but --

12 MR. PRATT: I think they are on their way,  
13 Your Honor. I'm not saying you have to defer on this, I  
14 am just saying there may be some --

15 THE HONORABLE JUDGE FRANK: It is obvious we  
16 can probably all agree to one thing, those of you up  
17 front, those of you in the room, you know, getting to  
18 the remand motions, I mean, it minimizes disruption on  
19 your end and on ours and on the other parties, so we can  
20 set those. And I said directly, not by telephone; but,  
21 we have, essentially, apart from the MDL status of these  
22 cases, in our District we have oral argument on  
23 essentially all of these motions.

24 In some cases if the parties agree to submit  
25 it on the briefs, I am not saying I won't agree with

1 that. But, we just automatically have oral argument on  
2 pretty much everything in our District. We all do.  
3 But, Lowell will call you. And if you don't hear from  
4 us within a couple of days, then call my chambers. And  
5 until that happens, if it doesn't become manageable,  
6 then before the week is out you will have a hearing  
7 date. Whether I hear the oral argument or it is  
8 submitted on the papers, I will leave that up to  
9 counsel. Because I will give you access to me if you  
10 want me to hear it. All right?

11 MR. BURTON: All right, thank you, Your  
12 Honor.

13 THE HONORABLE JUDGE FRANK: Same question?

14 MS. PEARSON: Yes. Your Honor, my name is  
15 Gale Pearson. I have a loud voice. Hopefully you can  
16 hear me. I am one of the local counsel in the case,  
17 Machalowski, which is an Eighth Circuit case that has  
18 been filed in Minnesota against a Minnesota Defendant  
19 and removed based on Federal Officer. Our brief is just  
20 about ready to be filed in this Court. We have got a  
21 hearing date for our Federal Officer removal argument on  
22 March 17th. Our original date was scheduled in  
23 February, and our attorneys are not available on that  
24 original date to argue.

25 Our attorneys do want to argue this case. It

1 is an Eighth Circuit case. We understand the Watson  
2 decision, and we think it is very important that we have  
3 the ability to argue on behalf of our Minnesota state  
4 filed case in this courtroom under Eighth Circuit law  
5 with the best attorneys available that we can produce  
6 forward to you. So, I just would like to know when you  
7 are setting the day, if you would just keep in mind that  
8 we would be allowed to have our attorneys argue this  
9 case.

10 THE HONORABLE JUDGE FRANK: All right. We  
11 will.

12 MS. PEARSON: Thank you so much. I  
13 appreciate it.

14 MR. ZIMMERMAN: The next item, Your Honor is  
15 Plaintiffs --

16 MR. PRATT: Let me make one point. As part  
17 of the agenda item, not just remand motions, but Rule 12  
18 motions, there really have been no Rule 12 motions on  
19 any of the, you know, personal injury cases that we  
20 have. We have actually held off from that, from our  
21 standpoint.

22 There is the Ivens case, a third-party payor  
23 case where there has been a 12(b)(6) motion filed. I  
24 think that from our standpoint, we are not going to push  
25 that to an early resolution right now. So, there is a

1 Rule 12 motion pending in the Ivens case. And we may  
2 file something else on that, but I don't think it is  
3 something that is going to require any urgent attention  
4 from you.

5 THE HONORABLE JUDGE FRANK: A question, not  
6 to get too far afield here, so we can move along, there  
7 are a couple of these third-party payor cases, and there  
8 is also, I think, a motion for -- under our Related Case  
9 Doctrine the cases have come to me, and then there is a  
10 separate issue of, well, do we make them part of the MDL  
11 -- and depending on what that phrase means by make them  
12 a part of, you know, I kind of envisioned on some of  
13 these cases that maybe there is going to be some  
14 agreement. And if not, a court decision.

15 Well, they can't go too far until the case  
16 matures or moves along, because they're -- I assume they  
17 are sitting back, and not to oversimplify this, they are  
18 saying: Well, if they are going to get paid, we want to  
19 be paid. In other words, we are self-insured, and we  
20 have paid. At least from Mr. Price's comment your  
21 office has one of those.

22 And I am assuming that we can, probably with  
23 or without a Court decision, we can get procedurally  
24 something worked out, because they are not going to --  
25 the lack of coordination there is of much less concern

1 to me than the state actions, so --

2 MR. PRATT: I think they belong here. I  
3 don't think anyone said otherwise, but I think it is a  
4 matter of just working through it.

5 MR. PRICE: Your Honor, as I understand it,  
6 there are, I think, three presently pending. Ivens is  
7 one which is assigned to you, which is in the MDL. City  
8 of Bethlehem, that is the second one. It is assigned to  
9 you. I don't know whether it has been actually  
10 transferred to the MDL.

11 THE HONORABLE JUDGE FRANK: It has not, I  
12 don't think.

13 MR. PRICE: And the third one is the UFCW  
14 1776, and that one has been sent to Judge Rosenbaum.

15 THE HONORABLE JUDGE FRANK: But, I think we  
16 are in the process of -- we signed an order yesterday to  
17 move that over.

18 MR. PRICE: Okay. We sent a letter, so I  
19 assumed --

20 THE HONORABLE JUDGE FRANK: That is in  
21 process.

22 MR. PRICE: Thank you, Your Honor.

23 MR. ZIMMERMAN: Just a brief comment on the  
24 third-party payors of medical reimbursement. They are  
25 clearly a part of this MDL. The Ivens case is our case.

1 It was part of the original transfer order. It is here.

2 The Medicare reimbursement is just another  
3 twist on that. It is all part of this reimbursing  
4 payors for the devices that are allegedly defective. It  
5 goes along with personal injury, but it is a different  
6 kind of injury. It is an injury of economic --

7 THE HONORABLE JUDGE FRANK: I think everyone  
8 is in agreement, they all belong right where we are.

9 MR. ZIMMERMAN: Right, so, we are all  
10 tracking on that.

11 THE HONORABLE JUDGE FRANK: All right.

12 MR. ZIMMERMAN: The next important item on  
13 the agenda, Your Honor, or the next item on the agenda  
14 which is important is that Plaintiffs state liaison  
15 counsel. Normally, what we do in this context, Your  
16 Honor, is we have appointed state liaison counsel who  
17 are to interface with State Court lawyers around the  
18 country to make sure we are sharing and cooperating and  
19 coordinating whatever it is we have to do.

20 Obviously, that is has taken an unusual twist  
21 in light of the All Writs Motion that was filed last  
22 week and then came down on Friday. I don't know if the  
23 actual -- if Don Barrios is here or state liaison  
24 counsel is here. But, before I call on them from the  
25 Plaintiffs' side, it is important to note that we all

1 know what is happening in Texas is driving everyone's  
2 attention in this courtroom, because they have an early  
3 trial date and there was an All Writs Motion filed. We  
4 discussed this at some length in chambers.

5           The Court will make whatever comment the  
6 Court wants to make about it, but we are very cognizant  
7 of it. We are trying to coordinate and cooperate with  
8 those parties as best we can. We think it is another  
9 reason why early trial dates in this MDL are important,  
10 because we have an early trial date in Texas. The other  
11 activities in other courts, State Courts, do not seem to  
12 be as active. They could become very active. And we  
13 believe it is our responsibility as the Plaintiffs'  
14 Steering Committee and the Lead Counsel Committee to  
15 coordinate these so we know what is going on. We can  
16 report to the Court what is going on. Everyone can have  
17 a heads-up and we are not, basically, competing with  
18 ourselves as we go down the path in both State and  
19 Federal litigation. That is the reason we have a  
20 Plaintiffs' State Liaison Counsel, and that is the  
21 reason it becomes an important item on this Court's  
22 agenda, so we can all be aware of what is going on and  
23 nobody can get blind sighted by what is going on.

24           Having said that, Gale, do you want to -- you  
25 had something you wanted to say?

1 MS. PEARSON: Well, I just -- our office was  
2 working on the brief All Writs staff. And my  
3 understanding is that folks are standing down on that  
4 issue. So, I was just curious if it was brought up  
5 today, I just wanted to make sure that I had all of the  
6 information that was available that you folks were  
7 discussing.

8 THE HONORABLE JUDGE FRANK: Have you chatted  
9 -- and if you consider this an unfair question, we will  
10 leave it right there. Have you chatted with Mr.  
11 Hilliard?

12 MS. PEARSON: This morning, yet?

13 THE HONORABLE JUDGE FRANK: No, I mean, at  
14 all.

15 MS. PEARSON: At what point in time? Yes, I  
16 have chatted with Mr. Hilliard over the past probably 7  
17 or 8 days. We have talked about lots of things.

18 My understanding, at last discussion I had  
19 with Mr. Hilliard, is that the folks were standing down  
20 at this point. Otherwise, we have our brief ready to  
21 file. And if it is going to be geared up, I can walk to  
22 my office across the street, pick up the brief and bring  
23 it back over here, so --

24 THE HONORABLE JUDGE FRANK: I actually was --  
25 I assumed we weren't proceeding with that. I actually

1 asked that for another reason.

2 MS. PEARSON: Oh, okay, do I have to answer  
3 in open court?

4 THE HONORABLE JUDGE FRANK: No, you don't.

5 MS. PEARSON: All right.

6 THE HONORABLE JUDGE FRANK: I will say  
7 something that I said back there. And that is that the  
8 only thing I'm certain of is nobody's interests will be  
9 served if we can't coordinate discovery and trial dates.  
10 So, for example, I will be reaching out, but  
11 I am just concerned because there is a level of  
12 disruption. And I can't determine whose interests are  
13 being served when this trial date was moved up 8 or 9  
14 months, which is rare to see in any state in the United  
15 States of America, even if it was one case, a  
16 stand-alone case and there were no MDL implications. I  
17 am curious, I am hoping there are some relationships  
18 being fostered here so we can do our best to represent  
19 the interests of justice which, in your case, means, of  
20 course, your clients. In my case, a fair shake for  
21 everyone. The Defendants, for their client. But, I was  
22 just curious about that because I would assume that  
23 there will be a number of Plaintiffs' counsel that will  
24 be urging Mr. Hilliard to take a new look at that trial  
25 date, because I don't think it is the Defendant's

1 wanting it -- and I don't know. I will ask Judge  
2 Hunter, myself. But, that is all. And if you don't  
3 really know, then I am not trying to create an issue  
4 where there isn't one.

5 MS. PEARSON: Actually, I have an answer for  
6 you, Your Honor.

7 THE HONORABLE JUDGE FRANK: All right, maybe  
8 you should come up.

9 MS. PEARSON: Again, I'm Gale Pearson,  
10 representing Plaintiffs in this state, as well as  
11 Plaintiffs across this country.

12 In the state of Minnesota, if an individual  
13 dies, not as a result of their defective product, their  
14 cause of action goes away. We don't have a survivalship  
15 statute in our state. So, in the sense that I represent  
16 Minnesota residents who want their cause of action to  
17 remain alive in this litigation, we need to move  
18 quickly.

19 And right now, I see an avenue of that  
20 happening because we have got a short trial date going  
21 on in Texas.

22 THE HONORABLE JUDGE FRANK: But, there is no  
23 injury alleged down there in either case.

24 MS. PEARSON: I think the Plaintiffs'  
25 attorney would disagree with that.

1                   THE HONORABLE JUDGE FRANK: In other words,  
2 there is physical injury alleged down in -- I wasn't  
3 aware of that. I thought -- and we don't need get into  
4 it.

5                   MS. PEARSON: Right, I think that is an issue  
6 that the Plaintiffs and Defendants disagree on, whether  
7 or not replacing a defective device in a person is an  
8 injury.

9                   THE HONORABLE JUDGE FRANK: And we won't  
10 spend a lot of time on it here, but maybe just very,  
11 very briefly, is it your understanding -- my  
12 understanding was, in fact I did ask the question. Is  
13 there something that would help me look at the big  
14 picture? What precipitated that case being moved up,  
15 the word has been used, sua sponte. No motion was  
16 filed. There may be good reason, I just have no clue  
17 what they are.

18                   MS. PEARSON: I think perhaps the best person  
19 to answer that would be Mr. Hilliard. And he and I have  
20 not talked about that. And perhaps he and the Judge.

21                   My interests, though, are in line with making  
22 sure that my Minnesota clients have their cause of  
23 action that remains alive. And in State Court -- I have  
24 spoken with Magistrate Boylan on this issue. Our  
25 discovery rules are more liberal than Federal Court

1 rules.

2           And I think the residents of Minnesota have a  
3 right to that more liberal discovery. And so, on those  
4 issues, while I understand pragmatically why  
5 coordination is important, I think the residents of  
6 Minnesota have a right to quick and speedy trials that  
7 might not be consistent with a large, drawn-out MDL  
8 process.

9           So, I would say that this is the reason I am  
10 in the State Court camp, because I want it ruled on  
11 quickly. Because I know my clients' cause of action  
12 will be eliminated if they die for reasons, any other  
13 than the defective product. Thank you. And I will step  
14 down.

15           THE HONORABLE JUDGE FRANK: I think I  
16 interrupted you.

17           MR. ZIMMERMAN: Therein lies the dilemma. We  
18 have discussed it at some length. We know that even  
19 Minnesota residents who are looking to justice seem to  
20 be tilting themselves towards Texas because they feel  
21 that it is going to be happening quicker because of this  
22 quickened date. And what we have to do here is adjust  
23 our strategies based upon that reality to make sure --

24           THE HONORABLE JUDGE FRANK: I won't concede  
25 that.

1 MR. ZIMMERMAN: Well, that is my point of  
2 view.

3 THE HONORABLE JUDGE FRANK: I won't concede  
4 that I should move a trial date from October to  
5 February, have discovery in on a Sunday night, and have  
6 the trial in on Monday morning and try to obligate. I  
7 won't concede that.

8 I will concede that we will reach out and we  
9 will go the extra mile to coordinate this to work  
10 together, because I do not believe the interests of  
11 justice are being served -- you are all entitled to your  
12 views, but the answer is somewhere other than out on the  
13 fringe on either side.

14 And there are some Plaintiffs who will  
15 legitimately believe that an MDL case is the fringe  
16 because they get swallowed up. And there are others  
17 that believe in the rocket dockets that say, one size  
18 fits everything. We are going to try the case tomorrow  
19 morning. I think both are in error. And the answer  
20 there lies in individualizing the concerns of the folks.  
21 And I don't think that is pie-in-the-sky chat.

22 Judge Boylan and I -- we went over this at  
23 some length in chambers, so I am actually a bit more  
24 confident than maybe some of you in the room that we  
25 will somehow resolve this. And we will do our part, and

1 I would like to think not just because we were State  
2 Judges for so long, but I don't claim any respective  
3 privilege over a State Court Judge, so that is one  
4 reason why I think we will try to get this worked out.  
5 And I could stand corrected. We will see how we are  
6 chatting about this a month out. We will see.

7 MR. ZIMMERMAN: And certainly we chatted  
8 about that in conference and we understand, and we think  
9 that some kind of a program that we can all find helpful  
10 to getting to the end --

11 THE HONORABLE JUDGE FRANK: Don't get me  
12 wrong, if I was a plaintiff and I had my eighteenth  
13 heart attack, and I saw something happen in Texas,  
14 Louisiana or wherever it was, I'd perk right up, too. I  
15 don't have any quarrel with that.

16 MR. ZIMMERMAN: Thank you. The next issue,  
17 Your Honor, I think is the use of telephonic  
18 conferences, that's number 10 on the agenda. I have  
19 received only two calls. I don't know if the Court has  
20 received others from counsel around the country who  
21 would like to have the ability to participate by  
22 conference call be made available into these  
23 conferences.

24 I have communicated with them and said,  
25 basically, everything is available on the website. And

1 you can have access, as well, to the transcripts. But,  
2 that we would take it up with the Court if it would be  
3 appropriate to have this broadcast through a  
4 teleconference to lawyers in their offices wherever they  
5 might be.

6 THE HONORABLE JUDGE FRANK: What is your  
7 view?

8 MR. ZIMMERMAN: My view, Your Honor, is it  
9 doesn't work particularly well. I think in an emergency  
10 situation where somebody has to be heard and they can't  
11 get here, a snowstorm, or travel, or family, whatever,  
12 certainly it could be used. But, to broadcast a status  
13 conference over a telephone line, wherever it might  
14 fall, and to whoever it might go, to me seems  
15 inappropriate.

16 I would remain open minded about it, but that  
17 is my personal view at this point.

18 MR. PRATT: My view, Your Honor, is if it is  
19 a question of these types of hearings, whether that is  
20 what we are talking about whether we can have someone  
21 participate by telephone, I really don't care.  
22 Sometimes it becomes a logistical nightmare. I think it  
23 is up to you as to whether it would be done efficiently  
24 and someone could be a part of it. I don't care.

25 THE HONORABLE MAGISTRATE JUDGE BOYLAN:

1 Discovery status in State Court cases?

2 MR. PRATT: Where things stand there, we are  
3 producing documents right along, Your Honor. There has  
4 been one deposition taken in the Texas State Court case,  
5 that of Brent McCoy. We cross noticed a 30(b)(6)  
6 deposition that was taken by the MDL Plaintiffs Steering  
7 Committee into that case, so that is another deposition.  
8 There are depositions scheduled for the week of February  
9 6th of Joe Smith, the Chief Medical Officer at Guidant  
10 CPI; a Bob Morrisette, who is involved in the  
11 Reliability Department; and a gentleman named Paul  
12 Stone, who is an engineer at Guidant. They have also  
13 asked for a Supplemental Deposition of Mr. McCoy. And  
14 the Court has allowed that to happen. So, those are the  
15 only depositions that are scheduled to be taken in the  
16 Texas State Court cases of company people.

17 THE HONORABLE JUDGE FRANK: I don't want to  
18 replot old ground; but, one question, in your briefing,  
19 did I understand it after Mr. McCoy's Deposition was  
20 done and before a week had expired there was a notice  
21 for additional depositions to be taken? Did I  
22 understand that right?

23 MR. PRATT: Yes. Here is exactly what  
24 happened with respect to that. The Texas Rules, like  
25 most rules say that if you serve a duces tecum, the

1 party has 30 days to produce the documents. They  
2 noticed his deposition to be taken 30 days, exactly,  
3 after the notice was sent.

4 We said to Mr. Hilliard, well, you are taking  
5 the deposition on the very day that we are going to  
6 produce the documents. Why don't you think about doing  
7 it later so you can review them? He wanted to take the  
8 deposition of Mr. McCoy on that day.

9 So, the morning of the deposition, we  
10 produced to him a stack of documents that represented  
11 some portion of Mr. McCoy's physical file, a stack of  
12 about five inches or so.

13 He had a colleague go through them. He  
14 pulled out some things and asked Mr. McCoy questions  
15 about them. Within a matter of days after that, there  
16 was a motion to retake the Deposition of Mr. McCoy  
17 because they had only received the documents on the day  
18 of his deposition.

19 I explained to the Trial Judge that, yes, but  
20 that is the way it was set up and that is what Mr.  
21 Hilliard wanted to do. And in the course of that, very  
22 briefly, the Court said I am going to allow him to  
23 retake the deposition.

24 THE HONORABLE JUDGE FRANK: All right.

25 MR. ZIMMERMAN: The next item, Your Honor, is

1 number 12, the stipulated Protective Order. I believe  
2 that has been submitted.

3 MR. LESSER: Yes. Your Honor, should I take  
4 the next few items?

5 MR. ZIMMERMAN: Yes.

6 THE HONORABLE JUDGE FRANK: There was at the  
7 last conference an objection to part of the order, and I  
8 think we ironed that out, if I recall. So --

9 MR. LESSER: I believe so. At least for the  
10 moment, Your Honor has entered a protective order that  
11 grew out of Indiana, originally. There may be issues  
12 down the road. When Plaintiffs have questions, we have  
13 been addressing them.

14 Just to keep going down the agenda, on the  
15 timeline completion of Plaintiffs' fact sheet,  
16 obviously, as you have heard, Guidant's Counsel wishes  
17 that they be completed. Your Honor did enter the  
18 Plaintiffs' fact sheet after both sides submitted their  
19 versions. And we agree, we actually do need a time  
20 frame to be able to tell Plaintiffs' counsel as to when  
21 they should be returned.

22 And we have suggested 45 days, which is in  
23 all practicality, all one can really expect from  
24 basically filling out a 20-page, very complete, at  
25 Guidant's insistence, a fact sheet to send out to

1 Plaintiffs' counsel all around the country. I think  
2 that is a reasonable time frame. I don't know, if that  
3 was a specific proposal --

4 THE HONORABLE JUDGE FRANK: Counsel from  
5 Louisiana said he would have them in to us by 5:00 this  
6 afternoon.

7 MR. BECNEL: I have got them in my office  
8 right now. I require it before I take the case.

9 THE HONORABLE JUDGE FRANK: What about the  
10 Defense?

11 MR. PRATT: Your Honor, I don't think they  
12 need 45 days. They have actually had the Plaintiffs'  
13 fact sheet in hand since you sent out the approved  
14 version back a few weeks ago. I just urge the Court to  
15 have them produce them as quickly and as reasonably as  
16 possible, and to produce the documents requested therein  
17 at the same time.

18 MR. LESSER: The time frame has to be, with  
19 respect to all cases, not only the previously filed, but  
20 on a going forward basis. I can certainly commit that  
21 we can ask all Plaintiffs' counsel to turn them in as  
22 quickly as they can, and practically, for the same  
23 reasons, indeed, that I think Guidant counsel wishes,  
24 the Plaintiffs Steering Committee wishes to see these,  
25 too.

1                   THE HONORABLE MAGISTRATE JUDGE BOYLAN: Can  
2 you live with 30 days?

3                   MR. LESSER: Excuse me?

4                   THE HONORABLE MAGISTRATE JUDGE BOYLAN: Can  
5 you live with 30 days?

6                   MR. LESSER: Yes.

7                   THE HONORABLE JUDGE FRANK: And we will  
8 address the contingency of --

9                   MR. LESSER: Okay.

10                  MR. ZIMMERMAN: We just want to make sure,  
11 Your Honor, that that is 30 days from transfer, so  
12 people know that there is a date --

13                  THE HONORABLE JUDGE FRANK: Sure, we will  
14 cover both.

15                  THE HONORABLE MAGISTRATE JUDGE BOYLAN: Tell  
16 us about the preservation order.

17                  MR. LESSER: The preservation order for  
18 pacemakers, we received it a week or ten days ago from  
19 guy Guidant's counsel. We have to discuss it with  
20 experts, ourselves, then we will meet and confer with  
21 Guidant's counsel. I suspect we will probably see  
22 competing versions, just as we did, otherwise. But, we  
23 are trying to move that as quickly as we can.

24                  THE HONORABLE MAGISTRATE JUDGE BOYLAN: Is  
25 there going to be destructive testing? I presume there

1 is going to be destructive testing on the Defendant's  
2 device?

3 MS. MOELLER: Yes, Your Honor.

4 THE HONORABLE MAGISTRATE JUDGE BOYLAN: Is  
5 there going to be any objection if you give them notice  
6 of the fact that you are going to have some destructive  
7 testing?

8 MS. MOELLER: Your Honor, we provided to them  
9 the protocol that has been going forward for the  
10 pacemaker -- pardon me.

11 We provided to them the protocol that the  
12 company has been operating with the input from the FDA  
13 at the beginning of December. And it does contemplate  
14 destructive testing on the PDM advisory population.

15 THE HONORABLE MAGISTRATE JUDGE BOYLAN: Do  
16 you have any objection to giving them notice when you  
17 are going to do destructive testing on the device?

18 MS. MOELLER: Actually, judge, we do, because  
19 it shuts down the system. It is too time-consuming.  
20 They are doing destructive testing on a lot of PDM's  
21 that are coming back, and it would interfere with their  
22 ability to get those devices analyzed.

23 We didn't brief this in connection --

24 MR. ZIMMERMAN: Would you speak up, please?

25 MS. MOELLER: We didn't brief this in

1 connection with the defibrillator pacemaker order in  
2 front of Judge Hamilton. And the same sorts of issues  
3 apply to the pacemaker side, as well.

4 THE HONORABLE MAGISTRATE JUDGE BOYLAN: We'll  
5 have briefs on that, all right.

6 THE HONORABLE JUDGE FRANK: All right.

7 MR. LESSER: Next issue, Defendant's fact  
8 sheet, they are pretty much in the same state as the  
9 pacemaker preservation order.

10 We gave them a proposal, and of course we had  
11 written those. We have now received a response. I see  
12 large areas of disagreement, but we haven't had a chance  
13 to meet and confer. I think that will now change.

14 Item number 16, we have actually discussed.  
15 You may know Plaintiffs did specifically propose a 30,  
16 60, 90-day schedule. I think, obviously, we now know  
17 that Guidant's counsel would say that is impossible, but  
18 we don't believe that to be the case.

19 The joint factual, number 17 on the agenda?

20 MR. PRATT: I'm sorry. I wanted to make one  
21 point. I know we talked about trial dates --

22 THE HONORABLE JUDGE FRANK: For the benefit  
23 of the group, there was extensive discussion about the  
24 proposed timelines that you each felt were reasonable,  
25 doable, not doable, in our conference from 8:00 to 9:30.

1           MR. PRATT: And the point I want to make is I  
2 would like to urge the Court to have the parties submit  
3 their positions on those issues.

4           The one issue I didn't ask, that I do now ask  
5 them to support on the Plaintiffs' side, is Mr.  
6 Zimmerman's statement that Plaintiffs are at great risk.  
7 I have heard that. I don't want to minimize any anxiety  
8 that these patients have, that is not my point, here. I  
9 know a lot of these cases, and a lot of these cases  
10 involve patients who have devices where when they go to  
11 the doctor, the doctor can make one change and eliminate  
12 the risk completely that they are facing. A number of  
13 Plaintiffs have already had their devices removed. That  
14 is what has happened with Ms. Hinojosa down in Texas.

15           She has had her device removed, no  
16 complications from the surgery. It was during the end  
17 of its natural life, anyway. So, she is, as of today,  
18 facing no anxiety or risk. So, if the thought is that  
19 they want to drive early trials on the basis that these  
20 Plaintiffs are facing great peril or risk, I don't have  
21 the Plaintiffs' fact sheets. I would like them to  
22 support that if that is going to be one of their driving  
23 arguments, Your Honor.

24           THE HONORABLE JUDGE FRANK: Fair enough.

25           THE HONORABLE MAGISTRATE JUDGE BOYLAN: Would

1 you like factual statements on the website?

2 MR. LESSER: We had a question, Counsel  
3 jointly had a question about that.

4 THE HONORABLE JUDGE FRANK: I will say this,  
5 there was a typographical error in my order at page  
6 17 -- a minor one, but nonetheless an error, at  
7 paragraph 23(d). It should have said when it was  
8 describing my requests for that statement, it should  
9 have said factual and legal issues, not factual legal  
10 issues. There was an "and" that was deleted there.

11 MR. LESSER: By the way, with respect to the  
12 urgency, we actually have benefited in one sense at both  
13 hearings before this Court where actual plaintiffs have  
14 shown up and explained why they do have immediate  
15 concerns about moving litigation forward quickly. And I  
16 think that, more than anything else, that concretely  
17 demonstrates why there is a concern.

18 However, to return to joint factual statement  
19 for the website, Guidant's counsel and Plaintiffs'  
20 counsel have a question, just how much detail did the  
21 Court want? In other words, a paragraph or two along  
22 the lines of what was in the transfer order, setting up  
23 the litigation? Or something with a good deal more  
24 detail?

25 THE COURT: In between. In other words, I

1 would compare it to -- at least my practice is, in civil  
2 jury cases, I let lawyers submit a joint statement that  
3 I am going to read to the prospective jury panel. And  
4 they are not forced to agree. They give it to me and  
5 say: Well, this is what we really want. And here is  
6 what we agreed to.

7           And whether it is the Judge, his or her staff  
8 doing it, or the lawyers submitting it, you could take a  
9 peek, at least just on our MDL, alone, here, like the  
10 St. Jude and the Baycol case. There is kind of a  
11 summary under the introduction, that is where it  
12 appears. But, just kind of an even-handed summary for  
13 the lawyer, or nonlawyer, going on there to understand  
14 what the claim and position of each party is at, and  
15 much like what you tell a prospective jury panel, even a  
16 bit more detailed, as long as it doesn't have a lot of  
17 legal ease. That is what I -- and if you decline to do  
18 so, because you say, well, we don't want to compromise  
19 the views of our clients, that is fine, I will just roll  
20 one out. That is not the issue with me. I thought I  
21 would give the lawyers a chance to get in there what is  
22 most important to you, and it looked fair to somebody  
23 going on the website. That is all I had in mind.

24           MR. LESSER:     Okay, I think we will be able  
25 to address that. Whether we agree, of course, I don't

1 know. But, we will try.

2           Scheduling the next status conference is  
3 actually driven, in part, because I realize the next  
4 status conference falls on President's Day week when I  
5 personally, like obviously other counsel, have holiday  
6 plans. And also, the day after President's Day, itself,  
7 which is a little bit more difficult for people to  
8 travel is also the week in which Defense counsel has  
9 informed us, and apparently there is a trial scheduled  
10 in Texas, as we have heard.

11           THE HONORABLE JUDGE FRANK: We have heard  
12 that.

13           MR. LESSER: It would be an overlap. And we  
14 really wanted to ask if maybe we could reconsider the  
15 February 21st date.

16           THE COURT: What did you have in mind?

17           MR. LESSER: The 20th, itself, is President's  
18 Day, and that is the number one school holiday week of  
19 the year for many people, as well. There is also the  
20 ATLA National winter convention that week which some  
21 plaintiffs lawyers may have conflicts with. Either the  
22 previous week, the 16th, Plaintiffs' counsel would be  
23 able to work with that, or the following week, perhaps  
24 the following Thursday, if possible.

25           MR. ZIMMERMAN: Maybe I could make this

1 simple. Could we just move it up a week from the 21st  
2 to what would be the 14th?

3 THE HONORABLE MAGISTRATE JUDGE BOYLAN: Do  
4 you have Judge Frank's calendar?

5 MR. PRATT: Could we not do that?

6 THE HONORABLE JUDGE FRANK: Why don't we do  
7 this, take that up in chambers?

8 THE COURT: We can take it up with our  
9 commitment to both, because I am going to chat with you  
10 all afterwards. We will come up with a date, and either  
11 way we will roll something out on the web this week,  
12 either way, because we have got both that and an order  
13 coming out.

14 And there is another issue on scheduling, and  
15 that is setting up that bi-weekly -- we will set that  
16 up, too. That can be by cell phone, if need be. We  
17 will set up that off-week availability for discovery.

18 MR. ZIMMERMAN: Your Honor, the -- we will  
19 then do the scheduling stuff and come out with those  
20 dates in chambers. I believe you said you had something  
21 else, Seth? The other thing was the All Writs Motion,  
22 which we understand has been pulled down, so we are not  
23 going to hear argument on that.

24 MR. LESSER: I had a question about that,  
25 Your Honor.

1 THE HONORABLE JUDGE FRANK: The All Writs?

2 MR. LESSER: Which is simply, the All Writs,  
3 the last agenda item, we have now twice had motions  
4 filed, and they are still on the docket sheet as open  
5 motions. I think it would behoove everybody that when a  
6 party pulls down a motion, that it actually get  
7 withdrawn from the docket. So there is actually notice  
8 of withdrawal.

9 MR. ZIMMERMAN: There is a little anxiety  
10 with people not knowing exactly if my e-mailing is  
11 getting to them --

12 THE COURT: The hazards of electronic filing.  
13 What does -- Mr. Pratt or Mr. Price, what is your view  
14 on it? And I just say that because I think the contact  
15 that our chambers has with either you or with Mr. Price  
16 on that, not to neglect the lawyers sitting at counsel  
17 table --

18 MR. PRATT: On the subject of withdrawing the  
19 motions?

20 THE COURT: Right.

21 MR. PRATT: I think typically that is done.  
22 The reason it wasn't done with respect to this motion is  
23 because our agreement was simply to pull it down for  
24 this hearing. I agree as a general principle that if  
25 you are not going to proceed with a motion, you're

1 convinced of that, that it should be withdrawn. But,  
2 that is a little beyond what we did with respect to this  
3 motion. That is why we simply pulled it off the hearing  
4 for today.

5 THE HONORABLE JUDGE FRANK: It sounds like  
6 you are not in opposition to doing just that.

7 MR. PRATT: I think on a path-forward basis,  
8 I think if it is a motion that we are not going to have  
9 heard, then it ought to be withdrawn and we ought to  
10 tell people that.

11 THE HONORABLE MAGISTRATE JUDGE BOYLAN: Okay

12 MR. ZIMMERMAN: I think that concludes the  
13 weekly agenda, unless anybody has anything else.

14 MR. PRICE: For the next status conference,  
15 whenever it may be, Your Honor, in view of the  
16 attendance, is the Court going to consider again coming  
17 back to Minneapolis?

18 THE COURT: I think so. I think we will. We  
19 don't request certain courtrooms -- we have a master  
20 calendar because we are doing -- in fact, I'm going to  
21 be doing the next three weeks a trial and motions. It  
22 is the same way for Judge Boylan. So, I think you can  
23 just plan on Minneapolis or St. Paul. But,  
24 realistically, we will err on the side -- given the  
25 attendance -- of doing it somewhere in this building,

1 which means that 12 on up, I suppose. Theoretically, it  
2 could be 8 or 9, too, but it will be somewhere in this  
3 building and we will note the location. If we know the  
4 location as the Order comes out at the end of the week,  
5 we will note it.

6 If not, we have already put out in the last  
7 order to stay tuned to the website for the location. I  
8 think you can assume, we'll just assume Minneapolis.

9 MR. ZIMMERMAN: And do we assume 9:00 to  
10 start, with an 8:30 --

11 THE COURT: I would like to stay with 9:00.  
12 I know that the 8:00 rise this morning for some of you,  
13 although for Judge Kyle in St. Paul that would be a late  
14 start. But, we will stay with that unless we are doing  
15 some hardship to people, and we will try to avoid that.  
16 That is why we picked something other than Mondays or  
17 Fridays, so people could get in here and get out and  
18 wouldn't have to travel on the weekends, as well.

19 MR. ZIMMERMAN: We will have something to say  
20 on that, because I know one of our troops has a conflict  
21 on Tuesdays because of a teaching assignment, but we  
22 will talk about that in chambers afterwards.

23 THE HONORABLE JUDGE FRANK: Anything further  
24 by anyone? Silence is not acquiescence. You don't have  
25 to worry about that. We are a couple of out-state

1 judges, we are a couple of state judges, so for those  
2 Plaintiffs here, or clients who are saying, we're all  
3 getting swallowed up, we understand how delicate the  
4 balance is. We understand the responsibility. That  
5 doesn't mean we are all going to hold hands and agree on  
6 how to best proceed, but we do, I think, understand.

7 And we also understand the common criticism  
8 of MDL's and other class actions, that many people get  
9 lost in it all. So, we will do our very best to make  
10 sure that does not happen.

11 I thank everyone for their attendance.  
12 Except for the Committees, I would like to meet with you  
13 a little more. We will stand adjourned and an order  
14 will be generated before the week is out, addressing  
15 both the agreed upon issues you heard about on the  
16 record, and I can't think of any issue that was raised  
17 that we won't address. And a ruling on that will be in  
18 the Order and out on the web before the week is out.  
19 So, we are adjourned. Thank you.

20 ALL COUNSEL: Thank you, Your Honor.

21 (Adjournment.)

22

23

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Certified by: \_\_\_\_\_

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Jeanne M. Anderson, RMR-RPR  
Official Court Reporter