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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 ) 3:00 o'clock, p.m.  
) December 20, 2006  
) Minneapolis, Minnesota  
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THE HONORABLE JUDGE DONOVAN W. FRANK  
THE HONORABLE MAGISTRATE JUDGE ARTHUR J. BOYLAN  
UNITED STATES DISTRICT COURT JUDGES  
STATUS CONFERENCE PROCEEDING

\* \* \*

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1 (In open court.)

2 THE HONORABLE JUDGE FRANK: You may be  
3 seated. Thank you.

4 MR. BECNEL: Your Honor, I think Gale and  
5 others might be in another location. Do you want me to  
6 go look for them?

7 THE HONORABLE JUDGE FRANK: Oh, sure, okay.

8 (Discussion off the record.)

9 THE HONORABLE JUDGE FRANK: Why don't we go  
10 on the record? We will just kind of ease into it so  
11 that we sure that everyone is here and not located in  
12 another courthouse.

13 We could first, by indicating, we have set  
14 the next status conference for January 24th. Unlike  
15 today, it will go back, it will revert back. We are  
16 going to plan for it, just keep an eye on the website,  
17 here in Minneapolis. But, it will revert back to the  
18 8:00 in the morning and 9:15 for the in-court schedule.

19 So, all we have covered is we set the next  
20 meeting for January 24th. It will be here in  
21 Minneapolis. Revert back to the normal time schedule,  
22 8:00 in the morning, and then 9:15.

23 And I guess it is an open question whether we  
24 take up any unresolved discovery issues on the back-up  
25 tape issue then, or in early February when we are going

1 to take up the third-party payor. And I will let  
2 counsel just indicate when we get there what we have  
3 agreed to, what motions will be set between now and the  
4 next couple of months as we zero in on those dates.

5 So, with that, we can proceed. And we are on  
6 the record. Mr. Zimmerman?

7 MR. ZIMMERMAN: Good afternoon, Your Honors,  
8 Charles Zimmerman for the PSC. As in normal cases, we  
9 had a conference with the Court and with counsel in  
10 chambers where we reached some scheduling issues and we  
11 will put those on the record. And we discussed matters  
12 regarding certain agenda items.

13 What we will do today, as I understand it, is  
14 go through the agenda in the order that it has been  
15 posted on the site, on the Court website.

16 The first issue, Your Honors, is the status  
17 of cases filed in Federal Court and transferred into the  
18 MDL. And Mr. Pratt has those statistics. And he will  
19 give them as he has in the past.

20 MR. PRATT: Good afternoon, Judge, Tim Pratt  
21 for the Defendant Guidant, with Andy Carpenter of my  
22 office, and Joe Price, liaison counsel for the  
23 Defendants.

24 According to our tally, you have 874 cases  
25 lodged in this District as a part of the MDL. There are

1 an additional 57 cases that are pending before the  
2 Judicial Panel, subject to transfer to this Court. If  
3 those 57 are transferred, that would raise the total  
4 number of federal cases here to 931 cases.

5           They continue to be filed in Federal Court.  
6 Mr. Becnel tells me this morning he continues to file  
7 them in Federal Court here, so I think that number will  
8 continue to go up somewhat. We have 90 cases pending in  
9 State Court presently. So, that is the tally, 931 total  
10 Federal Court cases and 80 State Court cases, presently.

11           THE HONORABLE JUDGE FRANK: And this may  
12 be -- bear with me a moment.

13           Briefly, this might be the best place to do  
14 it in one minute or less. I will just repeat what I  
15 said in chambers. After you met with us last month and  
16 after you met with Judge Leary, we had a conference with  
17 Judge Leary. And it is really, as far as we are  
18 concerned, it is a mutual approach that he now is versed  
19 in our trial schedule, and we have had some discussions  
20 with him about how he sees his. And we just both agreed  
21 to do our best to coordinate with one another so that  
22 preparation for ours won't interfere with something that  
23 the State Courts will do, and vice versa.

24           And if any of you have cases in other State  
25 Courts where there is some issue about coordination of

1 calendars, if we know about who the judges are, we will  
2 certainly initiate contact with them, as we have with  
3 Judge Leary, and he with us. So, that is probably all  
4 that needs to be said, presently.

5 MR. ZIMMERMAN: Your Honor, I just wanted to  
6 clarify for the record that the 931 cases are files, not  
7 plaintiffs, which goes to the questions that we  
8 discussed regarding joinder.

9 THE HONORABLE JUDGE FRANK: Meaning, there's  
10 many, many more plaintiffs than 900.

11 MR. ZIMMERMAN: Yes.

12 MR. PRATT: But not many, many more.

13 THE HONORABLE JUDGE FRANK: Many, or a few  
14 more?

15 MR. PRATT: Yeah, there are many more.

16 THE HONORABLE JUDGE FRANK: Several more.

17 MR. PRATT: I think that to give you some  
18 context, we have 874 MDL cases. And out of those 874  
19 MDL cases, the ones that are lodged here now, not the  
20 ones that are pending before the Judicial Panel, there  
21 are 1,221 Plaintiffs. So --

22 MR. ZIMMERMAN: I think that's many, many.

23 MR. PRATT: Many, many, Your Honor?

24 THE HONORABLE JUDGE FRANK: I will strike the  
25 second "many."

1 MR. PRATT: Okay, many. Then we are in  
2 agreement.

3 MR. ZIMMERMAN: Your Honor, it has to do with  
4 what the definition of many is, sort of like the  
5 definition of "is" is, but we won't go there.

6 The next item, Your Honor, on the agenda is  
7 the report on the representative trial process. The  
8 report is really that we are making very good progress  
9 in preparing the representative trials for trial.

10 We have a process in place where we are  
11 meeting with the counsel -- counsel from both sides are  
12 meeting to develop the trial plan that we are going to  
13 then submit to Your Honor if we agree, or submit to Your  
14 Honor for resolution on the points that we don't agree  
15 on.

16 We are scheduling that first conference for  
17 sometime in early or mid-January, and we are hopeful  
18 that we will come together for most of those questions  
19 of what the jury verdict forms -- when they are going to  
20 be submitted, how they are going to be submitted, when  
21 motions in limine and things like that, and how those  
22 are going to be submitted, things like that that counsel  
23 can agree on, we will agree on. Things we can't agree  
24 on, we will submit to Your Honor.

25 But the point is, I guess, for purposes of

1 this status is that counsel is coming together  
2 recognizing that we are starting trials back to back to  
3 back in July of what those trials are going to be and  
4 how they are going to be structured.

5 I don't want to put on the record today some  
6 of the agreements we have come to, but we have come to a  
7 basic agreement that they are going to be limited in  
8 time, chess clock or number of days kinds of time limits  
9 that both sides and the Court has indicated that is what  
10 he wants and the parties have agreed to that. And we  
11 will come together exactly as to how that will be timed  
12 and how those will work.

13 It is anticipated that the number of trial  
14 days or the hours of testimony will be limited, and we  
15 will work within those restrictions. It is also  
16 anticipated that the trials will then occur, as I said,  
17 back to back to back to back.

18 We have also agreed, I believe, that we will  
19 not have a death case contained within the first five  
20 cases that we are going to try. Originally, the Court  
21 indicated that one might be a death case, but we have  
22 agreed at this point to not have it one of the first  
23 five representative trials.

24 We have further agreed that with regard to  
25 the representative trials, the Defendants may move for

1 motions like dismissal on preemption or dismissal on  
2 what they call no injury based upon case specific  
3 motions that they might make in each representative  
4 trial, than doing what we would call in a generic way or  
5 in a global way.

6 THE HONORABLE JUDGE FRANK: May we ask this  
7 of both of you? The way we understand it from our  
8 conference today is that there is going to be a level of  
9 meet and confer on the issue, just to name one,  
10 preemption. And there are two or three others you  
11 mentioned. And whether or not an agreement can be  
12 reached without court decision -- in other words, short  
13 of a global decision, as was recently made in Medtronic,  
14 to take up individually in each case on an as-needed  
15 basis preemption and any other issues, there is no  
16 agreement yet. Because it is all ready to be argued,  
17 some of these motions, and I guess everybody is going to  
18 find out shortly, some of these are going to be argued  
19 that have no direct impact in any of these trials. But  
20 that could have an impact on the other cases. But, that  
21 is where we are at. I think Plaintiffs are going to  
22 discuss it and I guess we are going to hear back.

23 MR. ZIMMERMAN: That is correct, Your Honor.

24 THE HONORABLE JUDGE FRANK: All right.

25 MR. ZIMMERMAN: The last thing on the

1 representative trials that I have is on Harkonen, the  
2 inclusion or exclusion of that case as a potential  
3 representative trial has been submitted to Your Honor by  
4 both sides. And that case is then going to be -- that  
5 matter of whether it is going to be included or excluded  
6 from the first representative group of trials is now  
7 before Your Honor and a decision will be forthcoming.

8 THE HONORABLE JUDGE FRANK: Right. And what  
9 we said in chambers, so to speak, and of course if you  
10 are from Minnesota, the Iron Range, it is Harkonen, if  
11 you're from elsewhere, it's Harkonen. But, either way,  
12 it has been teed up. I will do an order in the next  
13 week and it will be put on the website.

14 And the issue is, is Harkonen or out? If it  
15 is in, is it going to be put in the cue? And if it is  
16 put in the cue, will there be immediate discovery done?  
17 And of course if it is out, it is out, at least at this  
18 time. And since you have both fully briefed it, we will  
19 file an order in the next one week on that issue.

20 MR. ZIMMERMAN: That is correct, Your Honor.

21 THE HONORABLE JUDGE FRANK: That would be  
22 case number six. I think it bears stating that neither  
23 side, nor the Court, is stating there is some magic  
24 associated with five cases or six. We tried to come up  
25 with a representative number and by case type. So, I

1 think it is obvious by the briefing, there is no  
2 particular magic. There's reasons for the positions you  
3 have taken and we will do an order in the next few days.  
4 So --

5 MR. ZIMMERMAN: That is our understanding and  
6 we appreciate that, Your Honor.

7 The next item -- I don't know if Mr. Pratt  
8 wants to respond to this one and we can move on to the  
9 next one.

10 THE HONORABLE JUDGE FRANK: All right.

11 MR. PRATT: I am going to make a few points  
12 of clarification with respect to item number 2, which is  
13 a report on the representative trial process, as well as  
14 item number 4, which is the meet and confer regarding  
15 trial scheduling issues.

16 I think Mr. Zimmerman covered both of those.  
17 Yes, we will meet. We will confer. We will work with  
18 the Plaintiffs' Steering Committee to come up with a  
19 trial plan to make this as streamlined as we can.

20 My request to them was twofold. One, I want  
21 to be sure that in that room are the lead trial counsel  
22 for the Plaintiffs' Steering Committee in the cases  
23 coming up for trial. They clearly will have that from  
24 our side of the table.

25 And my request to them and my urging was that

1 it would be a small group so that we can use the time  
2 effectively to get to the points and resolve them  
3 without doing too much sort of committee work. We are  
4 committed to that. And I think they are, as well. So  
5 those are the conditions we talked about in connection  
6 with the meet and confer. We will get the first meet  
7 and confer process done in January, for sure.

8           And Mr. Zimmerman made the comment that we've  
9 agreed to a limited time for the trials. I heard at the  
10 very first time in the informal conference this morning  
11 that the Plaintiffs' Steering Committee is committed to  
12 eight-day trials. We have had no discussion about how  
13 that is to be accomplished, whether there is going to be  
14 a clock, no clock.

15           So, the statement that we have agreed to it  
16 is a little bit premature, because I want to get a  
17 better sense of how they propose that the trials take  
18 place. There may be some bumps along the way. Hope  
19 not, expect not, but maybe. I didn't want the claim to  
20 be made that we met, conferred and agreed completely on  
21 that.

22           We did state in the informal conference and I  
23 will reiterate now, that we are not asking that a death  
24 case be set for trial. Our expectation is to file  
25 dispositive motions against one or more of the death

1 cases. We believe they have no legal merit, so we will  
2 ask the Court to entertain those motions without the  
3 necessity of teeing one up for trial imminently and  
4 engaging the parties in their discovery and resource  
5 allocation to those cases and getting them ready for  
6 trial.

7 Harkonen, we oppose it. I think we have  
8 stated all of the reasons why we think it ought not be  
9 included, so we will save the mike time. That is it.

10 MR. ARSENAULT: Richard Arsenault, Your  
11 Honors. Very quickly, what we indicated in chambers and  
12 what we will be doing, and hopefully by the end of this  
13 week, we will bring to the Defendants' attention some of  
14 the issues, and in some instances our specific views on  
15 the issues with regard to what these representative  
16 trials will look like.

17 We are looking for some number of specific  
18 hours, for example, that will be trial testimony, and  
19 kind of a chess clock arrangement with regard to that.  
20 Other issues will include, for example, jury  
21 questionnaires, do we have them, do we not have them,  
22 what will they look like, motions in limine, and kind of  
23 a timeline associated with those. The preadmission of  
24 evidence and exhibits, how we will work out that. Voir  
25 dire, what will be allowed, how much will be allowed.

1 The use of demonstrative aids, the exchange of same,  
2 perpetuation depositions, and how the designations will  
3 take place with regard to those. Whether we will have  
4 any videotaping of any experts, generic experts or  
5 generic witnesses during the trial, for example, that  
6 could be used in subsequent trials. The verdict form,  
7 jury charges, choice of law issues, those kinds of  
8 things we will try to identify as many of those as  
9 possible, get those to Mr. Pratt as soon as possible,  
10 and hopefully within the next few days, and give them as  
11 much time to respond so we could have a meaningful  
12 dialogue when we finally do meet.

13 MR. ZIMMERMAN: The next item, Your Honor, is  
14 pending motions. And we have two motions that we  
15 discussed in some detail. One is the third-party payor  
16 and Medicare Secondary Payor Act, the MSP motion to  
17 dismiss that the Defendants have filed. And we are  
18 going to have that set for hearing in a date, I believe  
19 we set, in February.

20 THE HONORABLE JUDGE FRANK: Early February.

21 MR. ZIMMERMAN: Early February that we  
22 haven't quite agreed to, but we narrowed it into early  
23 February. And this is Defendants' motion. It has been  
24 pending for a while. And it will now be submitted on a  
25 date in February. This is the Medicare Secondary Payor

1 Act and the Third-party Payor Motion to Dismiss.

2 THE HONORABLE JUDGE FRANK: I think how that  
3 was left, you're going to see if you can agree on a date  
4 in early February and get back to us, and we will set  
5 the date for oral argument, and of course that date will  
6 go up on the website and it will most likely be -- it  
7 will not be a day when we are otherwise together, just  
8 because of some other issues, we want to make sure we  
9 have time to cover it.

10 MR. ZIMMERMAN: Right. The other issues  
11 which I mentioned earlier that we talked about in the  
12 motions was the preemption motion that had been made by  
13 the Defendants, and continued, or pulled back for  
14 hearing.

15 The Defendants told us that they are going to  
16 make that motion, those motions, if they make them, case  
17 specific to each or some of the representative trials as  
18 they occur. And so, there will not be at this time a  
19 generic motion or what we might call a generic motion on  
20 preemption, but a motion might be made in any particular  
21 case, and that will be done in each case, representative  
22 case in a timely basis so it doesn't interfere with the  
23 trial date, but it will be done in a pretrial setting  
24 before the representative trial.

25 THE HONORABLE JUDGE FRANK: Now, our

1 impression, I think, was that before you say yea or nay  
2 to that suggestion, and the Court hasn't said anything  
3 in terms of, well, I guess, I have got about 14  
4 three-ring notebooks full of briefing on the preemption  
5 in my chambers back in St. Paul. But, I think you had  
6 asked for a brief amount of time to say, well, we may  
7 agree to tee these up individually, but we would like to  
8 just chat and get back to you. So, I took that to mean,  
9 or we did, that there still may be, apart from the  
10 Court's view, you may say that we want a global decision  
11 across the board like Medtronic just got.

12 MR. ZIMMERMAN: This is what -- I mean, it's  
13 the Defendants' motion. This is what they informed us.  
14 And we said, this is the first time we heard it. We  
15 want to reserve the right to give you our input into it;  
16 but, that is the Defendant's position as I understood it  
17 that they wanted to make those case specific.

18 THE HONORABLE JUDGE FRANK: I think the  
19 important thing here is that I think that no matter  
20 which way you go, and which way the Court goes, none of  
21 this will interfere with the trial schedule. In other  
22 words, whether we tee it up globally or set up a  
23 schedule, if there is an agreement or court decision to  
24 take it case by case, we'll set it up in such a way that  
25 it is handled along with the other pretrial matters in

1 this case.

2 Judge Boylan, do you have anything to add?

3 THE HONORABLE MAGISTRATE JUDGE BOYLAN: No.

4 MR. ZIMMERMAN: I was going to say, the same  
5 thing holds through for that no injury motion, which was  
6 the other motion that was pending. That was their  
7 position, we are going to take it -- I understand it  
8 that that is how we want to approach it, if we do. That  
9 is the way it will be done subject to the Court's  
10 approval. If we don't, we will make suggestions to the  
11 Court.

12 MR. PRATT: These are all Defendants'  
13 motions, and so we are proposing how they be handled,  
14 the Third-party Payor, Medicaid Secondary Payor Act, our  
15 motion is, I think, deserving of the more global  
16 treatment because the issues lend themselves to that  
17 sort of a treatment. That is why we say let's go ahead  
18 and tee it up in early February. Let's argue it and  
19 leave it to Your Honor to decide.

20 The preemption motion and the no injury  
21 motions that we filed more globally, as we explained to  
22 Your Honor, we believe those can be addressed in the  
23 context of individual bellwether cases. We are not  
24 doing it in a way that is going to interfere with the  
25 trial date that you have set. You have set dispositive

1 motion deadlines. Whether we do it one at a time or  
2 whether we do five at a time, we will refine that as we  
3 get more into the year 2007. But, the goal is we can  
4 discuss it in the context of individual cases,  
5 individual Plaintiffs, where the application of  
6 substantive law may be different, one to the other, and  
7 I think it will allow for a more meaningful argument.  
8 We may have to have some supplemental briefing along  
9 those lines. We will try to keep that short.

10 If you only have 14 volumes, I think you may  
11 not have received our last submission, Your Honor. I  
12 think we got over that number. But I think we can work  
13 this out with the Plaintiffs' Steering Committee to make  
14 it easier for you, and I think it would make it more  
15 adaptable to the process that you have set, which is  
16 setting bellwether cases for trial and resolving these  
17 issues in the context of those cases.

18 MR. ZIMMERMAN: There are then other motions,  
19 Your Honor, that we discussed. There is a joinder issue  
20 that we discussed earlier wherein it is -- although it  
21 is submitted, the Court asked that we circulate some  
22 recent rulings, and some other MDL's or recent  
23 agreements, and made other MDL's to rotate that around  
24 to the parties and submit those authorities if we can't  
25 agree on doing it the way, say, it was done in Bextra

1 and Celebrex in submitting that to Your Honor, but  
2 basically it is submitted.

3 THE HONORABLE JUDGE FRANK: It is. I am  
4 ready to make a decision on that. We are just going to  
5 have a go at looking at some of these other orders. We  
6 know how it has been done by two or three or four other  
7 District Judges in this District in an MDL setting and  
8 how it is being done elsewhere.

9 And once I hear back on whether this is a new  
10 trend or a new approach, characterize it as you will,  
11 because there are two or three of these orders, now that  
12 they are out on severance. Either way, I will wait to  
13 hear from you and there is no need for additional  
14 argument. You have both teed it up and I will make a  
15 decision.

16 MR. ZIMMERMAN: Right. And then there is the  
17 motion to compel that has also been submitted and is  
18 ripe for a decision. We talked about it. I think that  
19 centered around authorizations -- I am not --

20 THE HONORABLE JUDGE FRANK: Well, yeah, the  
21 second motion to compel at least that is how it has been  
22 characterized, that has been fully briefed. And I said  
23 in chambers I would file an order within the next one  
24 week on that issue, as well. I think all arguments have  
25 been submitted and we will do an order.

1           MR. ZIMMERMAN:   And then there is the issue  
2 of the inclusion of punitive damages into the counts  
3 that are before the Court in both representative trials  
4 and in the master complaint.   And we have been  
5 exchanging ideas and stipulations.

6           At this point we do not have an agreement.  
7 We said to the Court and to the Defendant, the ball is  
8 in their court.   We provided them with our position on  
9 what has to be included in that stipulation.   Either we  
10 will get agreement on that in a very short period of  
11 time, or that will be teed up and we will request a  
12 briefing schedule on that, on the motion for punitive  
13 damages.

14           The last motion that I have in my notes is  
15 the back-up tape issue, which is partially briefed.   We  
16 discussed this and they are still going to try to come  
17 to an agreement on this back-up tape.   But, likely, it  
18 could result in some need for a motion practice, as I  
19 understand it.   There is a partial briefing that has  
20 occurred, and finishing it up and determining if there  
21 is an agreement that can be reached on it or it will get  
22 teed up quickly before Your Honor so we can have a  
23 decision that again doesn't interfere with any of our  
24 trial dates.

25           I believe those are the pending and almost

1 pending motions, as I understand them. Tim, I don't  
2 know if you have anything more?

3 MR. PRATT: Nothing more, Your Honor.

4 THE HONORABLE JUDGE FRANK: All right.

5 MR. ZIMMERMAN: I guess number four, Your  
6 Honor, the meet and confer regarding trial scheduling  
7 issues, we bunched that into one. I don't think it  
8 requires anymore discussion.

9 The update on e-mails and back-up discovery,  
10 I just discussed.

11 And then the company witness depositions, I  
12 think that was really more of a discussion item. I  
13 don't think there was anything specific we have to  
14 discuss, but Tim does. I know that there are some more  
15 company witnesses that have to be taken. And we will  
16 work hard with the other side to schedule them and to  
17 pull them to complete them on schedule, and we will  
18 continue to endeavor to do that.

19 MR. PRATT: Yes, on the company witness  
20 depositions, I think we moved pretty far down the road.  
21 Your Honor said that the Plaintiffs could take five  
22 30(b)6 depositions. They have taken five. You  
23 indicated that they could take 20 depositions in the  
24 MDL, and there have been 13 depositions completed of  
25 company witnesses. There have been an additional 11

1 sales representatives of Guidant who have been deposed.

2 We have had a few instances in which  
3 witnesses have been prepared, and we get close to the  
4 notice date of the deposition and we have pulled the  
5 witness down at the request of the Plaintiffs' Steering  
6 Committee. I have raised in the informal conference  
7 this morning the disruption that creates on the company  
8 and sort of the inconvenience to the deponent and the  
9 counsel.

10 It has happened rare enough that it is of  
11 concern to us as we move toward the trials in July, that  
12 we want to try to reduce that risk to zero. In talking  
13 with the Plaintiffs' Steering Committee, I think we have  
14 identified sort of, mutually, a sense that we need to  
15 tried to eliminate that.

16 We are working with them to be sure we have  
17 their total universe of company witnesses they want to  
18 depose in this litigation. I am saying that not because  
19 we are going to agree to produce all of those. We may  
20 have some disagreements with them over whether this  
21 witness ought to be deposed, or that one. But, we do  
22 want to move through the completion of the company  
23 witness depositions as seamlessly as we can. And I  
24 think by working with the Plaintiffs' Steering  
25 Committee, we can get that accomplished.

1           So, we wanted that really more of a headnote,  
2 as anything else, that we raised our concerns with the  
3 Plaintiffs' Steering Committee and as recently as in the  
4 informal conference this morning they assured us they  
5 will be working with us to minimize last minute  
6 cancellations.

7           MR. ZIMMERMAN: Judge, just for the record,  
8 Your Honors, I think the PSC grand total of depositions  
9 taken in this case, in this litigation, this MDL, is 56.  
10 So, our numbers don't seem to match.

11           MR. PRATT: Well, yes, because one group I  
12 didn't include were the Plaintiffs. We deposed lots of  
13 Plaintiffs. There have been sales representatives  
14 deposed, there have been some doctors deposed. I didn't  
15 mean to cut the number down, but in terms of 30(b)6  
16 company witnesses, and then some of the Plaintiffs,  
17 specific ones, I don't have the tally at hand, but it  
18 wouldn't surprise me if it is approaching 60.

19           MR. ZIMMERMAN: Okay, yeah, that is 56 taken  
20 by the Defendants, 36 have been taken by the PSC and by  
21 the Plaintiffs, and 27 third-party subpoenas out there.  
22 The only reason I say that, Your Honor, is in case  
23 anybody wants to look at the transcript and see what the  
24 road map of the breadth and scope of the work that has  
25 been completed in this MDL in a relatively short period

1 of time, I just wanted to make sure the record is full  
2 of the actual numbers of depositions that are being  
3 taken by both sides to see that this deposition (SIC)  
4 has been moving forward at a very responsible clip.

5 MR. PRATT: And on that point we will agree.  
6 We have accomplished a vast amount of discovery in a  
7 relatively short period of time.

8 MR. ZIMMERMAN: And with that, Your Honor, I  
9 think that concludes the agenda as we proposed it to the  
10 Court and summarizes the discussions that we have had  
11 informally with the Court as best I can recall.

12 THE HONORABLE JUDGE FRANK: Any other issues  
13 you have on behalf of your Plaintiffs? I will ask the  
14 gallery in just a moment.

15 MR. ZIMMERMAN: No, there aren't, Your Honor,  
16 other than wishing everyone in the courtroom a very  
17 happy, safe and happy holiday, I don't have any other  
18 issues to take up with the Court at this time. And I  
19 thank the Court for its focus and its time.

20 THE HONORABLE JUDGE FRANK: Mr. Pratt?

21 MR. PRATT: I think Mr. Becnel wants to get  
22 in ahead of me.

23 MR. BECNEL: I just wanted to make the report  
24 complete. I filed 20 cases today: Two from Florida,  
25 one from New Jersey, two from Arizona, two from

1 Mississippi, one from Illinois, two from Ohio, two from  
2 Virginia, one from Michigan, one from Nevada, three from  
3 New York, one from Indiana and two from California, in  
4 twelve suits.

5 MR. PRATT: I haven't seen them, but none of  
6 them have merit. Despite Mr. Becnel's piling on to the  
7 inventory of cases pending against my client --

8 MR. BECNEL: That is just a rolling start.

9 MR. PRATT: -- I do wish him a happy holiday,  
10 and wish everyone a happy holiday. We have nothing  
11 else, Your Honor.

12 THE HONORABLE JUDGE FRANK: Bear with us just  
13 a moment.

14 (Discussion off the record.)

15 THE HONORABLE JUDGE FRANK: Just one, nothing  
16 that will cause anybody to lose any sleep, but in the  
17 trial notice that went out that predated the last  
18 hearing that set the schedule for each month, some trial  
19 limitations and so forth, there was in there a notice  
20 that the cases would be tried in St. Paul.

21 We will plan on trying them here in  
22 Minneapolis. We had a few calls saying, are you  
23 serious? But, serious or not, it is a push in fairness  
24 to litigants, their lawyers, the public, for some of the  
25 smaller courtrooms in our so-called temporary space.

1 So, the plan is, and court administration here has  
2 already been told to go ahead and set aside the  
3 courtroom space. It may not be the same courtroom each  
4 month, but to set the space aside here in this building.

5 And so, I don't think anyone has lost any  
6 sleep since the last hearing over that, but that is how  
7 we will proceed.

8 Judge Boylan do you have any --

9 THE HONORABLE MAGISTRATE JUDGE BOYLAN: I  
10 thought for sure somebody would say, bah, humbug,  
11 instead of happy holidays.

12 THE HONORABLE JUDGE FRANK: Well, I didn't  
13 give anybody else -- anybody else that is present who  
14 would like to be heard on an issue or bring anything to  
15 the Court's attention?

16 We will do our best. Sometimes there is a  
17 short delay of a day or so, and that is our  
18 responsibility, when an order or something goes up on  
19 the web. We will do our best, because now there will be  
20 two or three orders, because they won't all come out in  
21 the same order coming out in the next week or  
22 thereabouts. And so they should go up within a day of  
23 their issuance.

24 So, to the extent you are in from afar, afar  
25 or not, you were hoping for some type of white

