

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

)
In Re: Levaquin Products)
Liability Litigation,) File No. 08-md-1943
) (JRT/AJB)
) Minneapolis, Minnesota
) August 3, 2010
) 2:10 P.M.
)

BEFORE THE HONORABLE **JOHN R. TUNHEIM**
UNITED STATES DISTRICT COURT JUDGE
(**STATUS CONFERENCE**)

APPEARANCES

For the Plaintiffs:

RONALD S. GOLDSER, ESQ.
CHARLES ZIMMERMAN, ESQ.
LEWIS J. SAUL, ESQ.
ROBERT BINSTOCK, ESQ.
KEVIN FITZGERALD, ESQ.
MIKAL WATTS, ESQ.
JOSEPH FRIEDBERG, ESQ.
JOHN CAREY, ESQ.
BRIAN McCORMICK, ESQ.
JORDAN TORRY, ESQ.

Via telephone:

JOSEPH LICHTENSTEIN, ESQ.
WILLIAM BROSS, ESQ.
DOUGLAS PLYMALE, ESQ.
KENNETH HUITT, ESQ.
MICHAEL BASTONE, ESQ.
THOMAS NEILL, ESQ.

For the Defendants:

JOHN DAMES, ESQ.
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2:10 P.M.

(In open court.)

THE COURT: You may be seated. Good afternoon, everyone. This is civil case number 08-1943, In Re: Levaquin Products Liability Litigation. We're here today for a status conference.

Let's have everyone state their appearances for the record, and once we finish with those in the courtroom, we'll move to those who are on the telephone.

MR. GOLDSER: Good afternoon, Your Honor. Ron Goldser for plaintiffs.

MR. SAUL: Good afternoon, Your Honor. Lewis Saul for plaintiffs, and I have the pleasure of introducing Mikal Watts, who will be one of the trial team, and Joe Friedberg, whom the Court knows. I would like to introduce them.

THE COURT: Very well. Good afternoon.

MR. MCCORMICK: Good afternoon, Your Honor. Brian McCormick for the plaintiffs.

MR. TORRY: Jordan Torry for the plaintiffs.

MR. BINSTOCK: Good afternoon. Bob Binstock for the plaintiffs.

MR. FITZGERALD: Good afternoon, Your Honor. Kevin Fitzgerald for the plaintiffs.

MR. CAREY: Good afternoon, Your Honor. John

1 Carey for the plaintiffs.

2 MR. ZIMMERMAN: Good afternoon. Bucky Zimmerman
3 for the plaintiffs.

4 THE COURT: Good afternoon to all of you. Okay.
5 For the defendant?

6 MR. DAMES: John Dames.

7 MR. ROBINSON: Bill Robinson, Your Honor.

8 THE COURT: Welcome back, Mr. Robinson.

9 MR. ROBINSON: Thank you.

10 MR. ESSIG: Bill Essig. Ms. Van Steenburgh
11 happily sends her regrets.

12 THE COURT: She warned us she wasn't going to be
13 here last time.

14 On the telephone, let's have those of you note
15 your appearances. Anyone can begin. Who is on the phone?

16 THE CLERK: Hi, this is Holly from Judge
17 Tunheim's chambers. Are you able to hear us over the
18 phone. Yes?

19 **(Off-the-record discussion.)**

20 THE CLERK: Can you please note your appearances?

21 MR. LICHTENSTEIN: Joseph Lichtenstein.

22 MR. NEILL: Tom Neill.

23 MR. PLYMALE: Douglas Plymale.

24 MR. HUITT: Ken Huitt.

25 THE COURT: Anybody else on the phone?

1 MR. BASTONE: Michael Bastone.

2 THE CLERK: Is there anybody else on the call?

3 THE COURT: Okay. We'll try to make it so that
4 you can hear. We have a microphone near the telephone so
5 we can hear you. I'm not sure that helps much. Can you
6 hear me right now?

7 MR. LICHTENSTEIN: It's very muffled. I can
8 hear. This is Joseph Lichtenstein. I can hear, but it's
9 very muffled. It is very hard to make it out.

10 THE COURT: Okay. Can you hear better now?

11 MR. LICHTENSTEIN: Much better.

12 THE COURT: Okay. If at any time you're not
13 hearing anything, just let us know.

14 Okay?

15 MR. LICHTENSTEIN: Yes, sir. Thank you.

16 THE COURT: Okay. If someone is going to speak
17 on the phone, I'll move the microphone over for them.
18 Okay. Let's proceed today with our status conference.

19 Mr. Goldser?

20 MR. GOLDSER: Good afternoon, Your Honor. Ron
21 Goldser. I'm sure that you can be heard at this point, but
22 I wonder whether we can be heard from the podium by those
23 on the phone with us.

24 THE COURT: On the phone can you hear
25 Mr. Goldser?

1 MR. LICHTENSTEIN: Yes.

2 MR. GOLDSER: Oh, good.

3 THE COURT: Okay.

4 MR. GOLDSER: Your Honor, as you can see, we have
5 quite the plaintiffs' team with us today. You have met a
6 number of them before. We're pleased to be putting our
7 trial team together, and you have now met some of the
8 members of our trial team.

9 I just wanted to point out that I believe this is
10 Mr. Carey's first appearance before Your Honor, although he
11 has been a member of the PSC for quite some time, and we
12 welcome him to the court as well.

13 THE COURT: Go ahead, sir.

14 MR. CAREY: Thank you, Your Honor. Good
15 afternoon. As Mr. Goldser indicated, my name is John
16 Carey. I'm with the law firm of Carey & Danis in
17 St. Louis. I'm pleased to appear before you for the first
18 time. I look forward to appearing before you in the
19 future.

20 I would like to thank the members of the PSC for
21 inviting me to join. I look forward to appearing before
22 you, working with my colleagues on the PSC, working with
23 very capable defense counsel and fairly and efficiently
24 prosecuting these cases on behalf of all of our clients.

25 Thank you.

1 THE COURT: Very well. Thank you, Mr. Carey.

2 MR. GOLDSER: John and his firm have been a
3 welcome addition to our team.

4 We start off with the usual number of cases
5 pending in the MDL and in state court, and I always defer
6 to Mr. Dames because he's the fount of all wisdom on that
7 subject.

8 MR. DAMES: Thanks for the last clause.

9 THE COURT: We'll see if he says that as to
10 anything else.

11 MR. DAMES: Your Honor, these are again as of
12 July 28, it's the cases served, so this clearly won't
13 include all the cases that have been filed. Right now
14 there are 771 federal cases with virtually all of them
15 before this Court. Some have yet to be transferred. There
16 are 551 New Jersey cases.

17 Now, there are 22 other state court cases. One
18 is in California, and one is in Texas. I'm not certain
19 that has even been served, but that will be removed to this
20 Court.

21 Now the 22 other state court cases, some of them,
22 the bulk of them are in southern Illinois, either in
23 Madison County or St. Clair County, are multiple plaintiff
24 cases, but I don't have the exact tally on how many
25 separate plaintiffs.

1 So that's the latest.

2 THE COURT: The Illinois state cases, they are
3 not going to be removed or are not removable?

4 MR. DAMES: No, they're not removable at this
5 time.

6 THE COURT: Okay.

7 MR. DAMES: You're touching on a sore point.

8 THE COURT: Okay.

9 MR. GOLDSER: I was going to have Mr. Carey
10 comment on the status of the Illinois cases, and now is
11 probably as good a time as any to do that.

12 THE COURT: Fine. Sure.

13 MR. CAREY: Thank you, Your Honor. John Carey
14 with Carey & Danis. Currently by our count, there are six
15 cases currently pending in Madison County, Illinois, that
16 are not removable; 13 plaintiffs that have claims pending
17 in St. Claire County, Illinois.

18 There are a handful of cases in Cook County that
19 are not removable that have either been transferred to Cook
20 County or will be shortly, and there is a spattering of
21 cases in a few other counties, such as Sangamon in
22 Springfield, Illinois.

23 At this stage, we're in the very early stages of
24 written discovery. We're going to attempt to cooperate
25 with this court. My office also has a number of cases

1 pending in this court, so we will do everything in our
2 power to certainly coordinate the effort, not only in this
3 court but in the New Jersey proceeding as well.

4 Unless Your Honor has any questions about the
5 Illinois state court cases, I will sit down.

6 THE COURT: That's excellent, Mr. Carey. Are the
7 cases consolidated before an individual judge in each of
8 these counties or not?

9 MR. CAREY: Unfortunately not. Illinois is not
10 like California or Pennsylvania or New Jersey where they
11 have procedures set up for consolidating these types of
12 cases. Certainly in St. Clair County where there is 13
13 plaintiffs, we're going to move to consolidate those cases
14 in front of one judge just to avoid inefficiency. Same
15 thing in Madison County.

16 In Cook County, I don't know whether we will be
17 successful in coordinating or consolidating the handful of
18 cases up there.

19 THE COURT: If you do succeed in consolidating
20 cases before a single judge in these counties, if you would
21 let me know who the judge is, I will just reach out and
22 make sure that that judge can be in touch with us to
23 coordinate as well.

24 MR. CAREY: And I would be happy to do so, Your
25 Honor.

1 THE COURT: Very well.

2 MR. CAREY: Thank you.

3 THE COURT: Thank you.

4 MR. GOLDSER: Your Honor, in New Jersey progress
5 continues to be made. Some cases were selected for
6 bellwether trials. I think I mentioned that the last time.
7 We're in the process of scheduling those plaintiffs for
8 case-specific discovery.

9 There will be a number of generic depositions
10 that will start, I believe, in September in New Jersey.
11 Those will likely be cross-noticed with us here. New
12 Jersey will take the lead in many of those. We have some
13 of our own depositions that are going to be forthcoming,
14 and I believe those will likely also be cross-noticed as
15 well.

16 They still remain on track for trial in January
17 so far as I know, and we certainly hope that they will be
18 able to make that happen.

19 THE COURT: Will there be one plaintiff in that
20 case or more?

21 MR. GOLDSER: I don't think we know that yet.
22 Judge Higbee has made comments not dissimilar from the ones
23 that you have made prior to your ruling on the question of
24 consolidation, but on the other hand she may very well
25 decide that she has got the benefit of an individual case

1 tried here and decide that she will be in a position to
2 take on a consolidated number of plaintiffs there.

3 We don't know the answer to that yet. One other
4 comment. One of the other things that she is doing,
5 however, in addition to, it was initially eight bellwether
6 plaintiffs that were selected. They are all preblack box
7 plaintiffs.

8 I believe they all had Achilles tendon surgeries.
9 One of them may have fallen by the wayside. Several of the
10 cases were selected for discovery on a post black box basis
11 for purposes of working up summary judgment motions on
12 whether those cases are viable at least as far as summary
13 judgment is concerned, and the discovery in those cases is
14 just going forward as well.

15 As you will recall, all of our cases here, the
16 bellwethers, are all preblack box warning, so that's an
17 issue that we're going to try and resolve there.

18 MR. DAMES: I just wanted to add that I think we
19 said this at the last status conference that we had the
20 same disagreement. I think that Judge Higbee has actually
21 determined that the first case will be a single case. I
22 don't mean to second guess her as to potentially reversing
23 her decision, but she was relatively clear on that at the
24 last time it was brought up.

25 THE COURT: Okay. Thank you, Mr. Dames.

1 MR. GOLDSER: And as you can see from the agenda
2 today, the next status conference is August 20th. That's a
3 few weeks down the road. The next item on the agenda,
4 number 3, the privilege log motion, Judge Boylan has ruled,
5 as I think you know. The documents that he ordered to be
6 released have been released and have been turned over.
7 There was an appeal from that.

8 Heidi had called and asked me whether plaintiffs
9 were going to file a response. It's kind of difficult to
10 talk about that which we don't know. We have been able to
11 determine that of the four documents that are on the list,
12 they come in two groups of two.

13 That is to say, one group is the same that has
14 some additional e-mails attached to it, and the same is
15 true for the other. So I think there are really two
16 documents that are at issue, but what the redactions are we
17 don't know, so we can't comment on that.

18 But I did happen to catch on my e-mail, I think
19 it was yesterday, a case that this Court decided July 26th,
20 *ADT Securities Services versus Swenson*, civil number
21 07-2983, in which Your Honor undertook an appeal of a
22 privileged log motion from Judge Boylan, and you issued the
23 standard of review, which I think we would certainly urge
24 on this appeal, which is that it is extremely differential,
25 and the Court will reverse the order only if it is clearly

1 erroneous or contrary to law.

2 I have no idea whether these remaining documents
3 are of any consequence, but we would sure like to see them
4 soon, and we don't intend to file any further response on
5 that issue.

6 THE COURT: Nothing at this point, you mean? No
7 further response in writing?

8 MR. GOLDSER: No further response in writing.

9 THE COURT: Okay.

10 MR. GOLDSER: That brings us to bellwether case
11 status and really what is the crux of what we have to talk
12 about today, which is scheduling for trial. You have the
13 piles of trees that we killed on the various motions that
14 were filed on July 30th. The responses to those are due
15 August 30th.

16 However, there are several motions that we had
17 talked about extending the deadlines on. In particular,
18 the two warnings experts, Dr. Blume for plaintiffs and
19 Dr. Waymack for defendants. I know that we had
20 corresponded with Your Honor about some scheduling for
21 that.

22 I think we can do better than what we had
23 proposed, which is to say that August 13th will be the
24 filing date for both of the motions. Plaintiffs can get
25 theirs done by August 13th, and so the response times that

1 followed from that, I think September 13th unless that was
2 a weekend, would be the responses, and then September 28th
3 would be the replies.

4 So we will be able to get those two motions in in
5 that schedule with the Court's permission, of course. The
6 defense had asked for an opportunity to submit on
7 plaintiffs' expert Dr. Wells according to the same
8 schedule, and the issue will be pretty much similar to the
9 issue raised in the Blume motion, as I have been given to
10 believe, has to do with the SCEPTRE adverse event database
11 that Johnson & Johnson has.

12 So I believe it will be similar. There is one
13 other deposition that is going to be taken, and that is by
14 plaintiffs of the defense case specific expert Dr. Holmes.
15 That deposition is going to be taken on August 10th. It
16 will be rather difficult to get a *Daubert* motion in by
17 August 13th.

18 So if we're going to file one, and we don't know
19 yet whether we will, I would like to adhere to the proposed
20 schedule that we had previously proposed for Dr. Waymack,
21 which would be filing it on August 30th. Response 30 days
22 later. Reply 15 days after that, but obviously we will let
23 the Court know as quickly as we can whether we intend to do
24 that.

25 Now, that begs for at least us on the plaintiffs'

1 side, if not for everyone, the Court's plans and intentions
2 on hearing these motions. We have *Daubert* motions. We
3 have a motion to dismiss various claims, judgment on the
4 pleadings.

5 We have the motion to amend the complaint for
6 punitive damages, and there are a variety of ways the Court
7 could handle that. You could rule on the pleadings. You
8 could have oral argument. You can have an evidentiary
9 hearing.

10 Plaintiff doesn't think an evidentiary hearing is
11 necessary, but certainly all that goes towards the timing
12 that we have or how we're going to spend the time between
13 now and November 8th.

14 So we would love to get the Court's feedback on
15 that issue, as well as some of the pretrial scheduling
16 deadlines, which I can raise for you either now or after
17 you comment.

18 THE COURT: I should perhaps hear from the
19 defendants on the subject of scheduling here.

20 MR. DAMES: Well, Your Honor, clearly Ron is
21 correct about the options that are available to you, and I
22 don't know that we -- we frankly haven't come to a decision
23 as to whether we would request an evidentiary hearing.

24 I'm not certain that it is necessary, but then
25 the Court might find an evidentiary hearing could be

1 illuminating on some of the issues. So I can understand
2 the benefit to the Court, and it may be something perhaps
3 you would want to consider before you make a decision on
4 that.

5 THE COURT: Well, I mean, I typically do not seek
6 an evidentiary hearing unless the parties really think they
7 need it, and having not looked at the materials, it's a
8 little hard to say. I think we should presume the answer
9 is no at this point, and if either side believes it's
10 necessary, you can raise that, and --

11 MR. DAMES: Okay.

12 THE COURT: -- if there is a request for an
13 evidentiary hearing, I likely would grant it, but without a
14 request, I probably would not.

15 MR. DAMES: Okay, Your Honor. Fair enough.

16 THE COURT: With respect to the *Daubert* motions,
17 it seems prudent to try to hear those all at the same time.
18 I think some of them raise similar issues, and it would be
19 good to get them out of the way as soon as possible because
20 then it's helpful for trial preparation.

21 The question would be when could we hear them
22 when all the papers would be in, and we don't really know
23 that issue yet, I guess, before we know the Holmes
24 situation.

25 MR. GOLDSER: Well, Holmes would be the only

1 outlier. The rest of them, they would be in by the end of
2 September.

3 THE COURT: Maybe we shouldn't worry about Holmes
4 right now. If we need something, we can always hold
5 something quickly on that later.

6 MR. GOLDSER: Of course, the only issue for
7 Holmes would be with regard to Mr. Schedin, which is the
8 trial case. Our motion may be relevant to all of the
9 bellwethers, but Schedin would be the only one of
10 particular importance given trial.

11 It would seem to me that if we were going to get
12 our papers in and have everything to you by September 28th,
13 the Court will obviously would want some time to review
14 them and be prepared for a hearing. It struck me that
15 October 15th or thereabouts might make sense for a *Daubert*
16 hearing.

17 But of course, the trial then is November 8th,
18 and can we get all of the things done that we need to if we
19 have a *Daubert* hearing on October 15th?

20 THE COURT: Yeah. Perhaps sometime the week
21 earlier might be better. I have throughout that week a --
22 well, I have a bench trial, which is starting I believe the
23 4th of October, so I'll be here. So we could take a break
24 from that. I'm sure it will be an exciting case.

25 MR. DAMES: If you want to call us a break.

1 THE COURT: Well, that's a tax dispute. It's an
2 entirely different sort of situation, but we could look at,
3 I would like to do it as soon as possible so there is some
4 time to issue the rulings and well in advance of trial.
5 Maybe the 6th through the 7th or something like that of
6 October?

7 Does that sound doable?

8 MR. SAUL: How many days, Your Honor?

9 THE COURT: Pardon?

10 MR. SAUL: How many days?

11 THE COURT: Well, I would anticipate probably an
12 afternoon set aside for now. I don't think we need full,
13 lengthy arguments on each one. I would probably set aside
14 up to three hours or something like that. If I need more,
15 you will let me know, I'm sure, for the arguments, but I
16 think that's what I would probably set.

17 If we needed more, we would probably split it up
18 between two days, one day, so I could get trial time in on
19 that day as well. So maybe we should set the afternoon of
20 the 6th, and go for like 1:30 on Wednesday, October 6th,
21 and then if we, if Holmes is ready to be added to that,
22 great.

23 If it's not, we could pick that up later if
24 necessary, and if each side believes that they need more
25 than that afternoon for arguments, you should let me know.

1 The other question I had was, are any of these motions
2 filed also in the New Jersey state court case?

3 MR. GOLDSER: Not at this time.

4 THE COURT: Okay.

5 MR. GOLDSER: And when you talk about doing
6 *Daubert* motions all together, would you then also include
7 the judgment on the pleadings and the punitive damages
8 motion?

9 THE COURT: That would probably be separate. I
10 would probably take that separately.

11 MR. GOLDSER: Would you want to set hearings on
12 those?

13 THE COURT: Yeah. We could probably do that,
14 too. So we have the judgment on the pleadings. How many
15 of those are there?

16 MR. GOLDSER: There is one motion, but it's filed
17 in all six bellwether cases. I think it's the same motion.

18 THE COURT: Same motion?

19 MR. GOLDSER: Except for the facts being
20 different.

21 THE COURT: Okay.

22 MR. GOLDSER: So that was filed on the 30th. The
23 response on August 30th. Reply on September 15th.

24 THE COURT: So we could go a little earlier on
25 that probably.

1 MR. GOLDSER: Go a little earlier.

2 THE COURT: I know you have depositions and
3 you're busy in September, so it might not be the best time
4 to do this, but we could do a week earlier, September 29th.
5 Is that a bad day?

6 MR. DAMES: I have a deposition that day.

7 THE COURT: Tuesday the 28th? Where is your
8 deposition at, Mr. Dames?

9 MR. DAMES: New Jersey.

10 THE COURT: Tuesday morning the 28th, would that
11 work?

12 MR. DAMES: Sure.

13 THE COURT: So that would be for the motions for
14 judgment on the pleadings and probably the punitive damages
15 motion as well.

16 MR. GOLDSER: Right. The punitive damages is on
17 the same schedule.

18 THE COURT: Okay. Let's do them all. That's
19 basically two different motions, then.

20 MR. DAMES: The briefing schedule for the
21 punitive damages motion, our response was filed the 30th.
22 Is it then due the 30th of August?

23 MR. GOLDSER: Technically it's a nondispositive
24 motion, so your response would be due by August 15th, but I
25 don't have a problem with --

1 THE COURT: But there is time if we handle it the
2 same period of time. Why don't you presume the 30th for a
3 response.

4 MR. DAMES: Okay.

5 THE COURT: And then the reply time would work
6 the same way.

7 MR. GOLDSER: Right.

8 THE COURT: Okay.

9 MR. GOLDSER: What time on the 28th?

10 THE COURT: Let's go for 9:30 in the morning.

11 MR. GOLDSER: Then that dovetails with the
12 pretrial scheduling that the parties just exchanged some
13 proposals on. Actually defense sent us their proposal, and
14 plaintiffs have been working on their own, which we have
15 not responded to the defense on.

16 I don't have theirs in front of me, but I
17 remember that their first proposed date was September 24th
18 for --

19 MR. DAMES: I can read them off.

20 MR. GOLDSER: Why don't do you that?

21 MR. DAMES: Your Honor, we were proposing
22 September 24 for the exhibit lists, except for the
23 demonstratives and for the deposition designations.

24 THE COURT: Okay.

25 MR. DAMES: And then October 1 for the

1 demonstratives, and October 15 for the motions in limine,
2 objections to the exhibits and counter designations, and
3 objections to the deposition designations would be due,
4 yeah, and for the objections to the deposition
5 designations.

6 And then October 25 for responses to the motions
7 in limine, and November 1 for the final pretrial
8 conference.

9 THE COURT: Mr. Goldser, does that work for you?

10 MR. GOLDSER: We're in the same general ball
11 park, although the ball park is pretty small. We do have
12 some differences, and we haven't had a chance to lay them
13 down side by side yet. We were talking about October 1 for
14 jury instructions.

15 We were talking about October 8 for exchange of
16 exhibit and witness lists. We were talking about
17 deposition designations also on October 1, rather than
18 September 4th, with the objections and the rebuttal
19 designations by October 8th. I'm not sure if I'm tracking
20 their proposal or not.

21 Motions in limine we agreed on October 15th. I
22 think that's the one we agreed on, and we were looking for
23 a pretrial conference on November 4th, anticipating that
24 that would give you some time to render some rulings based
25 on the things that we had filed.

1 THE COURT: Well, I mean, either approach is fine
2 with me. I don't have a strong view one way or the other.
3 Why don't you consult after the hearing today, and if you
4 can agree. If you can't, show me where the differences
5 are, and I will make a ruling. I can do that just in a
6 written order quickly.

7 MR. GOLDSER: I think that would be appropriate.
8 I think the biggest difference as I saw it was the
9 demonstratives. Defense has proposed an exchange on
10 October 1st, and we were proposing an exchange on October
11 29th.

12 You really need to have all of the rulings in
13 before you can make your demonstratives good and solid and
14 admissible. That's one reason why we would want to do
15 that, but we'll talk about it.

16 MR. DAMES: Let's settle it now. I would be
17 willing to trade the demonstrative dates for the rest of
18 our dates.

19 MR. GOLDSER: Mr. Watts says that is just fine,
20 so okay.

21 MR. DAMES: That's right.

22 THE COURT: Why don't you submit a pretrial order
23 with those dates in, then, and the Court will sign and file
24 it. Okay?

25 MR. GOLDSER: Okay. That would be good. That

1 would be good.

2 THE COURT: What are we looking at in terms of
3 trial dates? What's the estimate right now, or is it still
4 too early to know precisely?

5 MR. GOLDSER: That's exactly where I was going.
6 We expect that we will start on November 8th, which is the
7 date that you have given us and that obviously voir dire
8 and opening statements start. We wanted to get your
9 perspective on whether you will take the voir dire by
10 yourself or whether you will allow counsel to inquire.

11 THE COURT: Well, I generally do. If either side
12 wishes to do any inquiry, you should let me know and let me
13 know why. I will say that most of the time I deny those
14 requests, but if you have a specific reason, you can surely
15 ask.

16 MR. GOLDSER: Okay.

17 THE COURT: I also obviously collect questions
18 from you and utilize those questions in the voir dire and
19 give you a chance to give me any follow-up questions that
20 you would like to ask, and if there are jurors, potential
21 jurors who have particular individual issues that we bring
22 to the side-bar, I let you question them on those matters
23 at side-bar.

24 MR. DAMES: Your Honor, what is your procedure
25 with regard to jury questionnaires? We would like to

1 submit one to the Court.

2 THE COURT: I think that probably would be a good
3 idea to have one in this case. Normally, I don't just
4 because most cases you don't need to have one, but I have
5 utilized one in the past, and in this case, I think that
6 would be helpful.

7 MR. DAMES: Maybe we can work on our proposed
8 order. What we should do then is work that into one of the
9 dates.

10 THE COURT: That would be fine.

11 MR. DAMES: That should be easy to work out.

12 MR. GOLDSER: And so if we are starting on
13 November 8th, we are anticipating the trial being concluded
14 before Thanksgiving. I don't know if that's a big issue
15 for the Court, but from our perspective we would sort of
16 like to get it done by Thanksgiving.

17 We would hate to have to hold the jurors over or
18 have them disperse over the Thanksgiving holiday and come
19 back and try and remember all of the details that they had
20 heard.

21 THE COURT: Do you want to hold court on
22 Thanksgiving day, Mr. Goldser?

23 MR. GOLDSER: I wasn't planning on it, Your
24 Honor.

25 THE COURT: Okay.

1 MR. GOLDSER: If you order me to, then please
2 issue the order to show cause to my wife as well. So that
3 if the calculation is correct, that would give us twelve
4 actual trial days, plus a day for closing and jury
5 deliberations. So if there are twelve trial days, assuming
6 that they need to be divided 50/50, and I'm not sure that's
7 necessarily an appropriate assumption, but assuming that it
8 is, that would give each side six trial days in which to
9 present their case.

10 I would like to suggest maybe that it gets
11 divided something like seven and five because we have the
12 burden of proof. That is kind of the scheduling that I was
13 seeing, one-hour opening, two-hour closing, something along
14 those lines. That's kind of the schedule that we had
15 envisioned operating under.

16 THE COURT: Okay. And I have set aside time that
17 last week of November into the first week of December.
18 Monday through Thursday is open as well, so we have got
19 some extra time if necessary.

20 MR. GOLDSER: That would be for the defendants'
21 post trial motions.

22 MR. DAMES: That's kind of them, Your Honor.

23 MR. GOLDSER: That's kind of what we had
24 envisioned. I don't know if you have any comments on that.

25 MR. DAMES: No. I mean I have the usual caveats

1 that obviously is going to be determined in part on the
2 rulings on the *Daubert* motions, and we should have a pretty
3 clear handle by the time of the final pretrial how long we
4 would like the case to go.

5 I mean, again, and I don't wish, by the way, by
6 my silence to intimate my agreement that they should have
7 seven days and we should have five, but we can address that
8 at another time, I suspect.

9 THE COURT: We will take the time that is
10 necessary to get the case tried.

11 MR. GOLDSER: I think Mr. Watts may have some
12 comments as well.

13 THE COURT: Sure.

14 MR. WATTS: I guess the main thing that I was
15 interested in is, if you are giving us until the end of the
16 first week of December, we can plan accordingly. If you
17 want us to finish before the Thanksgiving break, we can get
18 it done that fast, but whatever your inclination is, I
19 think we can do both, and lawyers, as you know, can take as
20 much time as you will give us, but we probably really need
21 to know which it is so we can figure that out.

22 THE COURT: Sure. We will figure that out here
23 probably in the next couple of weeks so that we have it
24 pretty clear, the time, the dates that are available.

25 MR. WATTS: Excellent.

1 THE COURT: Okay.

2 MR. GOLDSER: We are down I believe to 4(d). I
3 believe, if I'm not mistaken, that all of the fact
4 witnesses in the Schedin case have now been taken, is that
5 right? Okay. And there are no other expert witnesses
6 except Dr. Holmes to be taken. Dr. Zizic is still to be
7 taken, but you inquired as to him as to Mr. Schedin, I
8 believe, already?

9 MR. DAMES: I'm sorry?

10 MR. GOLDSER: You have asked about Schedin
11 already with Zizic?

12 MR. DAMES: Yes.

13 MR. GOLDSER: So to the extent that we have
14 generic discovery depositions still outstanding, those will
15 be germane to the preparation of the Schedin case for
16 trial. The other bellwether cases, are there other fact
17 witnesses still remaining in those?

18 MR. FITZGERALD: There are three depositions
19 scheduled for August 26th and only two that we have left on
20 the schedule. Those are supposed to be done by August.

21 MR. GOLDSER: So, again, the same thing applies
22 to those of the generic depositions will apply to those
23 cases, and of course we have yet to decide how many cases
24 will be tried in the second MDL trial, who they are, and
25 when that case will go to trial. That's still an open

1 question.

2 I have listed on the top of the second page of
3 the agenda some of the depositions that we have scheduled
4 in the MDL. These are all related to sales and marketing
5 issues, which dovetails back to your ruling in the Karkoska
6 summary judgment motion. I know that Mr. McCormick may
7 need to move the fourth deposition of Kataria to another
8 date, but we will take that up.

9 Those are the ones that we have scheduled in the
10 MDL, and I am aware that there are other depositions
11 scheduled in New Jersey.

12 I don't know if you want to comment on who they
13 are, what they are and when they are.

14 MR. DAMES: We have only, I must say, two or
15 three depositions scheduled right now in September in the
16 New Jersey litigation. There will be more. I'm in the
17 process of scheduling additional witnesses in the MDL, and
18 they also seem to have, well, they are sales and marketing
19 in part, but there has been a slower, as is clear to the
20 Court, a slower response in New Jersey primarily because of
21 the New Jersey lawyers wishing more time to digest the
22 documents that were produced in New Jersey.

23 I want to say primarily because I can hear the
24 murmurs of objections from our New Jersey opponents, but
25 that's what we think that would be the case. I will let

1 Ron go to the next one, but we have some other --

2 Go ahead, Ron.

3 MR. GOLDSER: Okay.

4 THE COURT: In terms of planning, if we move on
5 to another bellwether case or cases, what kind of time
6 frame are you thinking? You have got the New Jersey case
7 in January which would tie up people, I would imagine.

8 MR. DAMES: Perhaps I should address this. We
9 haven't yet discussed in New Jersey the impact of the delay
10 in the depositions, and I don't want it to be -- what I say
11 misinterpreted ultimately before Judge Higbee, but I
12 suspect that it is plausible that that January trial date
13 would be kicked to some degree.

14 At least it would be logical to do so based on
15 what is going on right now. Were that to occur, yet we
16 would certainly be available sometime in January to try the
17 second bellwether case, which I'm sure would come as a
18 shock to the Court to know that our suggestion would be
19 Karkoska as the next case up.

20 MR. GOLDSER: I thought you had already committed
21 to Christensen as the next case up.

22 MR. DAMES: Because that was when I had hoped
23 that the motion for summary judgment would have been
24 granted.

25 THE COURT: Hoped that Karkoska wouldn't be

1 around anymore.

2 MR. DAMES: That's right.

3 THE COURT: What's your thinking about the second
4 up trial?

5 MR. GOLDSER: Which cases should it be?

6 THE COURT: Timing-wise?

7 MR. GOLDSER: We would like New Jersey to go
8 next. We think that's important for lots of reasons, many
9 of which are plaintiff specific. So we would like them to
10 be able to go next.

11 THE COURT: Is that a February date, you think,
12 Mr. Dames, or is it going to be longer?

13 MR. DAMES: I think it might well be longer, Your
14 Honor. I'm just extrapolating based on the progress we
15 have made thus far, but they may wish to take more
16 depositions than I anticipate.

17 I don't know and frankly I'm not very experienced
18 before Judge Higbee, so I don't know the length of time
19 required in her court to decide certain motions, and I
20 don't know her other schedule. She does set aside the time
21 for other trials, like she is going to be doing an Accutane
22 trial soon. I just don't know.

23 MR. GOLDSER: One of the rumors I have heard is
24 that the New Jersey case will get moved to February. I've
25 heard that as a rumor, but obviously I can't verify that.

1 As I said, I think it's important that New Jersey go next,
2 certainly if there is not too much delay.

3 And for what it's worth, I have a long-standing
4 vacation out of the country in March, which I would
5 certainly like not to move. So I don't know that we need
6 to cross that bridge yet. I think the Court is aware of
7 the cases, which ones we want to try and how many we want
8 to try. I don't think that's the question you had.

9 THE COURT: I wouldn't presume to set a specific
10 time today. I was just wanting to get some initial
11 indications from you so we can start planning generally.

12 MR. DAMES: Mr. Robinson did remind me. You
13 know, we haven't taken any discovery in the New Jersey
14 cases. We don't have plaintiffs yet. We don't have expert
15 designations yet, so we don't have any expert depositions.

16 What they have done is, you know, scheduled and
17 taken a few of the defendants' personnel. So there is a
18 lot to be, to be accomplished before any trial.

19 THE COURT: Okay.

20 MR. GOLDSER: Well, that assumes that they don't
21 use any of the MDL work product or any of the MDL experts.
22 My understanding from the New Jersey folks is that when
23 called, they will be ready, and it is really case specific
24 stuff that has to get done in order to make it ready.

25 THE COURT: Okay.

1 MR. GOLDSER: Under number 5, discovery status,
2 the first item, the report to the Court on discovery review
3 of other individual litigation, you will remember several
4 conferences ago, we filed a motion seeking to compel the
5 production of documents in other lawsuits.

6 Mr. Robinson was going to report on that the last
7 status conference. He was not here that day, so he gets to
8 do that today.

9 MR. ROBINSON: Mr. Dames is going to take my
10 place.

11 MR. DAMES: I get to do it today.

12 MR. GOLDSER: Okay.

13 MR. DAMES: I'll go through them, individual
14 cases. The *OMP versus Mylan* case, the documents produced
15 in this case which are responsive to the discovery requests
16 have been produced. The *West versus OMP* case, which was
17 the employment discrimination case, the documents produced
18 in this case are not responsive to the discovery requests
19 in this case.

20 The *Moore versus OMP* case, which was a
21 Mississippi state court case, the documents produced in
22 this case which were responsive to the discovery requests
23 have all been produced. The *AWP* litigation that is pending
24 in the District of Massachusetts, we've determined that the
25 documents produced in this case are not responsive to the

1 discovery requests in MDL 1914, to this case.

2 *OMP versus Lupin*, which is a patent case from the
3 district court of New Jersey, no documents -- I'm sorry --
4 documents produced in this case which are responsive have
5 been produced. In the *Gordon* case, which was pending in
6 the Northern District of Illinois, no documents were
7 produced by defendant in that case.

8 In the *OMP versus Sicor* case, a patent case, the
9 documents produced in that case which were responsive to
10 the discovery requests here have been produced. The
11 *Kahanow versus OMP* case in the Northern District of
12 Georgia, the documents produced in the *Kahanow* case which
13 were responsive to the discovery requests here have been
14 produced.

15 *Claypool versus Klein*, which is a case in the
16 superior court of San Diego, no documents were produced by
17 defendant in that case. In the *Johnson versus OMP* case,
18 which was district court of Montana, documents produced in
19 this case -- in that case which are responsive to the
20 discovery requests here have been produced.

21 *Solomon versus OMP*, which was the Northern
22 District of Georgia, no documents were produced by
23 defendant in that case. The *Haac versus OMP* case, New
24 Jersey state court case, documents that were produced in
25 that case which are responsive to the discovery requests in

1 this case have been produced.

2 So in effect, we have done our review, and we
3 believe we are in compliance, Your Honor.

4 MR. GOLDSER: The one issue that I'm aware of
5 that remains has to do with the *West versus Ortho McNeil*
6 case, and that is the deposition of the employee Walter
7 Pascale. Mr. Robinson and I discussed that just the other
8 day. We believe that is relevant.

9 You'll remember in our motion we provided the
10 Court with a document out of that case that talked about
11 marketing strategies of Levaquin in the 2000 time frame,
12 which is an important time frame for us. Mr. Pascale was
13 deposed in that case about that document, I believe, and
14 defense believes that deposition is not germane.

15 We're prepared to file a motion to compel on
16 that. That will be ready in a day or two. However,
17 Mr. Robinson and I discussed the possibility of the Court
18 reviewing that deposition to determine whether or not it is
19 relevant to be discovered, and that might short circuit our
20 whole motion practice.

21 That's where we left it, and I don't know if you
22 have a position on that.

23 MR. ROBINSON: I don't remember talking to you
24 about it, quite frankly.

25 MR. GOLDSER: Okay.

1 THE COURT: Well, we'll handle it this way: I
2 mean, why don't you discuss this matter today? Either you
3 file your motion and we'll get a response and will resolve
4 it quickly, or if you wish to proceed by just submitting
5 the deposition in camera, we can handle it that way, as
6 well. Either way.

7 MR. GOLDSER: Okay.

8 MR. ROBINSON: Thank you, Your Honor.

9 MR. GOLDSER: We have just a little bit of
10 follow-up from the meet and confer that happened some time
11 ago. 5(b)(2), the source index for the early productions,
12 the defense has been providing us source indexes for the
13 more recent ones. I asked that that be done on the early
14 ones.

15 I understand that that's on the way and will be
16 provided shortly, so that leaves only the question of the
17 status of redacted financial documents and where those are.

18 MR. ROBINSON: I understand those have been
19 produced.

20 MR. GOLDSER: Okay.

21 MR. ROBINSON: I checked on that today, and I was
22 told that they were redacted. Redacted documents have been
23 produced.

24 MR. GOLDSER: Can you identify which production
25 so that I know where to look?

1 MR. ROBINSON: I can't right now.

2 MR. GOLDSER: No, I know, but would you, please?

3 MR. ROBINSON: Sure.

4 MR. GOLDSER: Thank you.

5 Under proposed motions, the second motion, the
6 motion to compel the Pascale deposition transcript I just
7 mentioned. The first one, the motion to compel the
8 Omnicare documents, that is still in the process of being
9 drafted. You will remember there was a Qui Tam case
10 involving Omnicare out in Massachusetts.

11 We were asking for broader discovery than just
12 the Omnicare documents to deal with the question of
13 rebates, what we affectionately call kickbacks, and that
14 motion will be filed hopefully within the next week.

15 The next item is plaintiffs' third-party
16 subpoenas. That's Mr. McCormick's area, and he will
17 provide the report to the Court on that.

18 THE COURT: Very well.

19 Mr. McCormick.

20 MR. MCCORMICK: Good afternoon, Your Honor. I
21 will make this as quick as possible. Running down the
22 list, the Santa Fe Aventis documents have all been
23 produced, but we are negotiating with them to take the
24 deposition of a Santa Fe Aventis employee, and I have
25 spoken with my co-counsel, and I will be getting back to

1 Santa Fe Aventis and defendants' counsel on that.

2 Excerpta Medica produced to us about 1200 pages
3 of documents last week, so that one has been taken care of.
4 We're still negotiating with CommonHealth on how many
5 documents they have and how the search is going. I expect
6 that will be resolved by the end of this week.

7 DesignWrite is a medical communication company in
8 New Jersey. They have given us or they have told me that
9 they have approximately 75 boxes of documents that we are
10 going to begin our review next week. They are making them
11 accessible to us in their New Jersey offices, and they have
12 given us two days next week and two days going forward on
13 the weeks.

14 And the Falk Group is a group that has been
15 subpoenaed recently, and I'm still waiting to hear back
16 from them. So we are moving ahead with all of these and
17 should be done with all these I would imagine by the end of
18 the month.

19 THE COURT: Okay.

20 MR. MCCORMICK: Thank you.

21 THE COURT: Thank you, Mr. McCormick.

22 MR. GOLDSER: Your Honor, as you can see, all of
23 these are sales and marketing types of discovery projects,
24 which of course is consistent with our Rule 56(f)
25 affidavit. I wanted you to know that we are following up

1 on that.

2 On experts, all of the experts have now been
3 taken, as I described, except for Dr. Holmes. In the
4 deposition of Cheryl Blume, she talked about a study that
5 was undertaken by a contractor under her direction and
6 control, a gentleman named Keith Altman. The study was
7 verified by Dr. Blume independently with her people and her
8 staff.

9 Mr. Altman is not expected to testify. We
10 consider him to be a nontestifying consulting expert under
11 Rule 26. Defense has asked to take his deposition. We
12 believe we need not produce him. Defense has asked to put
13 that issue on the agenda for today. They want his
14 deposition. We don't want to give it to them.

15 MR. ROBINSON: Good afternoon, Your Honor, Bill
16 Robinson. Dr. Blume's report has multiple tables based
17 upon a computerized analysis of the defendants' SCEPTRE
18 adverse event database. We took Dr. Blume's deposition.
19 She identified the person who did all the computer work as
20 a Mr. Keith Altman.

21 I think he lives in Long Island. We received
22 also at that deposition a disk in which Dr. Blume indicated
23 to us this would explain the procedures used to create
24 those tables. It's still leaves a lot of questions
25 unanswered.

1 Specifically, Mr. Altman's disk does not give us
2 or the information that was provided in the disk does not
3 give us the adverse event numbers, the MedWatch numbers
4 which accompany these forms to the FDA, and he has gone
5 through the database and selected groupings of cases upon
6 some basis, probably MedDRA terms, and put those into the
7 boxes.

8 We don't know -- we know how many cases he put
9 into each box, but we can't identify them based upon the
10 information we now have. So we want to take his -- and
11 there are some other issues involved dealing with whether
12 pediatric patients were involved in the study, what were
13 the cut-off dates for tendon injury or tendon rupture.

14 There are a number of issues that Dr. Blume
15 couldn't answer, and we would like to take his deposition
16 this month in order to get a response to those questions.
17 Thank you.

18 MR. GOLDSER: I think all the questions that they
19 wanted to ask of Dr. Blume they asked and she did answer.
20 I don't think there was a time in that deposition, as I
21 recall, that she said I don't know. Ask Keith. She said
22 I'm in charge of this study. I'm in control of it. I know
23 what happened. I know what was done, and here is the
24 back-up documentation. That's as far as she could go and
25 needs to go in order to do this.

1 I don't think there is an entitlement to take
2 Mr. Altman's deposition. Now, if there are some specific
3 questions that they would like to get answered of this
4 kind, we would be happy to take them in writing, and we
5 would be happy to get answers for them specifically and
6 narrowly, and Dr. Blume would be able to attest to them
7 because she's the expert in that arena.

8 But I don't think that opens up Mr. Altman to a
9 separate deposition and separate inquiry.

10 MR. ROBINSON: I think the writing idea is just
11 impractical because you always have follow-up questions
12 after you get new information.

13 THE COURT: So is Mr. Altman the only deposition
14 that arises from this particular --

15 MR. ROBINSON: It is.

16 THE COURT: I don't see a problem in going ahead
17 with the Altman deposition. Let's get that scheduled and
18 get that done as quickly as possible.

19 MR. GOLDSER: Very well, Your Honor. I have
20 mentioned that we have case specific experts, Dr. Holmes on
21 the 10th and Dr. Zizic on the case specific reports. That
22 is scheduled --

23 THE COURT: Who is Dr. Zizic again?

24 MR. GOLDSER: Dr. Zizic is plaintiffs' expert.
25 He's a generic expert on rheumatology and toxicology. He

1 is also a treating rheumatologist. That's what he does in
2 practice in part, and he has case specific reports on all
3 of the bellwether plaintiffs.

4 We have done some of the bellwether depositions
5 or inquiries concerning the bellwether plaintiffs of
6 Dr. Zizic. We just have to complete those.

7 THE COURT: Are there any possible *Daubert* issues
8 with Dr. Zizic?

9 MR. DAMES: They have already been filed.

10 THE COURT: That's part of the filing. Okay.

11 MR. DAMES: Yes.

12 THE COURT: Okay.

13 MR. GOLDSER: Category 5(f), the case-specific
14 discovery, items 1 and 2 have either been addressed or
15 dealt with by the parties. Defense always asks that Phase
16 II discovery be put on the agenda. Plaintiff always says
17 not yet. Seems to me that we're going to be mighty busy
18 getting ready for trial.

19 We're getting close to the time when Phase II
20 discovery is germane, but while we are all tied up getting
21 ready for trial, I would like to continue postponing that
22 until after this trial is done.

23 THE COURT: That makes sense.

24 MR. GOLDSER: And finally, plaintiff fact sheet
25 and defendant fact sheet procedures, the defense had

1 proposed a procedure to deal with delinquent fact sheets
2 some time ago. I had responded by saying, well, don't we
3 need to have a similar procedure in the event there is a
4 delinquent defendant fact sheet, and I'm still waiting to
5 hear a proposal on that, actually.

6 MR. DAMES: Actually, I thought it was the other
7 way around. I was waiting to get your proposal. We can
8 clearly deal with that and issue a proposal.

9 THE COURT: So someone will propose, and someone
10 will respond.

11 MR. DAMES: As soon as we can find which one is
12 responsible. I did want to add on the defendant fact
13 sheets, and I had wanted to raise this at this hearing. As
14 to the Phase III cases, we would like to be temporarily
15 excused from the obligation of providing information
16 concerning the sales representatives for the Phase III
17 cases.

18 It is an enormous task to track down every sales
19 representative and get the information to respond to the
20 plaintiffs' fact sheets. On over 600 cases, there would
21 literally be thousands, a good number of thousands sales
22 reps to track down so that we aren't even in Phase III yet,
23 and we would like to just put that portion of the defendant
24 fact sheet until a little bit later in the litigation so
25 that we can deal with that relatively onerous and time

1 consuming task.

2 THE COURT: Just the name and address?

3 MR. DAMES: They already have all of the call
4 notes from the sales reps. That's part of the call note
5 database, and we will answer the other information
6 obviously in the defendant fact sheets, but it's tracking
7 each one of them down and their last known address and
8 filling out the specific information that is quite onerous
9 when it comes to that many sales reps in that many cases.

10 MR. GOLDSER: John, is it possible to just give
11 us the identity of these people as opposed to the address
12 and other --

13 MR. DAMES: Let me consult. I think that should
14 be possible, but I'm not the person who does the tracking
15 down, so I guess it's easy for me to say.

16 THE COURT: That might be a good option for right
17 now anyway.

18 MR. GOLDSER: Okay.

19 THE COURT: I can understand the burden involved
20 in finding these individuals at this point in time, so
21 let's see if we can just get the names.

22 MR. GOLDSER: Okay. I believe that concludes the
23 agenda.

24 THE COURT: Okay. Anyone else here have anything
25 to raise? How about anyone on the phone, if we have anyone

1 left on the phone who can hear us? I'm not sure if we do
2 or not. At least we don't have any issues raised on the
3 phone.

4 Okay. Very well. Thank you for coming in today.
5 Let's see. We will probably be setting up -- well, maybe
6 we should set up another status conference because we don't
7 have the motions to be heard until the end of September
8 so --

9 MR. GOLDSER: Right.

10 THE COURT: So this is the time when these status
11 conferences I think are very helpful. The week after Labor
12 Day, does that make sense? That would be a little over a
13 month.

14 MR. ROBINSON: It does, Your Honor. We have
15 depositions in both New Jersey and the MDL scheduled for
16 the 8th and 9th, but the 7th I guess is the day after Labor
17 Day. We could do that afternoon if the Court were
18 available.

19 THE COURT: The afternoon of the 7th?

20 MR. SAUL: Your Honor, all the plaintiffs because
21 we have a meeting here on the 2nd or 3rd will be in town,
22 and it will be really convenient for us if it is the 2nd
23 and 3rd.

24 THE COURT: You would have me from long distance
25 those two days, unfortunately.

1 MR. SAUL: The 1st?

2 THE COURT: That's a week that I'm going to be
3 gone on a family thing, so I will be back on the 6th. I
4 mean, 7th or the 10th, either would work. You've got
5 depositions on the 8th and 9th, did you say?

6 MR. ROBINSON: Yes, Your Honor.

7 THE COURT: Would the 7th or the 10th be
8 preferable?

9 MR. ROBINSON: Either one would work for us.

10 MR. GOLDSER: Mr. Fitzgerald is gone on his
11 honeymoon on either one of those days, so we won't have his
12 company. Otherwise I think the 10th might be a little bit
13 better.

14 MR. FITZGERALD: Proceed without me.

15 MR. SAUL: The 10th would be best, Your Honor.

16 THE COURT: The Court will not order you to
17 interrupt the honeymoon. How about the 10th, then? What
18 time would be best?

19 MR. ROBINSON: If possible to do it in the
20 morning.

21 THE COURT: Morning? Okay. Sure. Ten o'clock?

22 MR. GOLDSER: That is fine with me.

23 MR. ROBINSON: Yes, Your Honor.

24 THE COURT: Ten o'clock on September 10th we'll
25 have a status conference, and the Court will get at the

1 issues that are pending here, the privilege log issue, the
2 relatively limited appeal from that. The Court will take a
3 look at that right away and get that resolved, and we'll
4 await what comes up here on the Pascale situation.

5 MR. GOLDSER: Very well.

6 MR. DAMES: We haven't set a final pretrial
7 conference date, have we?

8 THE COURT: No. Let's hold. Let's get the
9 schedule set, and then we will fit in an appropriate time.
10 Let me just ask this question because it has a bearing on
11 timing of that final pretrial conference. Sometimes the
12 motions in limine can relatively easily be resolved just on
13 the papers. Oftentimes it's good to have a little argument
14 to illuminate some of those issues.

15 Usually I do that at the final pretrial
16 conference. If we're going to have quite a few, I may do
17 that earlier, maybe a couple weeks earlier, and then we
18 would have the final pretrial conference right at the end
19 to just wrap up matters to get ready for trial.

20 If there is going to be relatively few motions in
21 limine, I would probably merge the two and have only one
22 hearing. So give that some thought, and we can decide that
23 in the next few weeks.

24 MR. DAMES: Okay. Thank you.

25 MR. GOLDSER: Okay.

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THE COURT: Anything else for today?

MR. GOLDSER: Not from the plaintiffs.

THE COURT: Okay. Thank you all. We will be in recess.

THE CLERK: All rise.

* * *

I, Kristine Mousseau, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Certified by: s/ Kristine Mousseau, CRR-RPR
Kristine Mousseau, CRR-RPR