



1

3:47 P.M.

2

3

**(In open court.)**

4

THE COURT: You may be seated. Good afternoon,  
5 everyone.

6

MR. GOLDSER: Good afternoon, Your Honor.

7

MS. VAN STEENBURGH: Good afternoon, Your Honor.

8

THE COURT: This is multi-district litigation  
9 case number 08-1943, In Re: Levaquin Products Liability  
10 Litigation.

11

Counsel, would you note appearances today, first  
12 present in the courtroom for the plaintiffs, please?

13

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

15

MS. BIENIEK: Susan Bieniek for plaintiffs.

16

MR. KRIESER: Peter Krieser for plaintiff.

17

THE COURT: Very well.

18

And present in the courtroom for the defendants?

19

MS. VAN STEENBURGH: Good afternoon, Your Honor.  
20 Tracy Van Steenburgh on behalf of defendants.

21

MS. LENAHAN: And Dana Lenahan on behalf of  
22 defendants.

23

THE COURT: Good afternoon to both of you.

24

Now on the phone for the plaintiffs?

25

MR. RASMUSSEN: Kristian Rasmussen, counsel for

1 plaintiffs.

2 MR. TERRY: Eric Terry, counsel for plaintiffs.

3 Good afternoon.

4 MR. FITZGERALD: Good afternoon, Your Honor.

5 Kevin Fitzgerald for plaintiffs.

6 MR. SULLIVAN: Corey Sullivan for plaintiffs.

7 MR. ZIMMERMAN: Good afternoon, Your Honor. This  
8 is Bucky Zimmerman for the plaintiffs.

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

11 MR. MCCORMICK: Good afternoon, Your Honor.  
12 Brian McCormick from Philadelphia for the plaintiffs.

13 MS. HAUER: Stacy Hauer on behalf of the  
14 plaintiffs.

15 MS. JOHNSON: Caia Johnson on behalf of  
16 plaintiffs.

17 THE COURT: All right. Anyone else representing  
18 plaintiffs on the phone?

19 MR. SANDERS: Your Honor, Steven Sanders from  
20 Albuquerque representing plaintiff Brian Belig.

21 THE COURT: All right. For defendants?

22 MR. IRWIN: Jim Irwin, Your Honor.

23 MR. WINTER: John Winter, Your Honor. Good  
24 afternoon.

25 MR. ESSIG: Bill Essig, Your Honor. Good

1 afternoon.

2 THE COURT: All right. I think that's all. Did  
3 we get everybody? All right. Let's begin this status  
4 conference, then.

5 Mr. Goldser, I'll turn to you first.

6 MR. GOLDSER: Thank you, Your Honor. Again we  
7 have an agenda prepared. Before we begin, I would like to  
8 welcome all of our friends from the East Coast. I'm glad  
9 they were able to join us today by phone. I'm sorry they  
10 couldn't be here in person, given what they have been going  
11 through.

12 I'm glad they have working phone service. I'm  
13 glad that they're alive and well, and I'm sure that they're  
14 working very hard to dig out from the trials and  
15 tribulations of the last day or two.

16 The last time we divided our status conference  
17 basically into two categories. One was settlement; the  
18 other litigation. Once again I will talk about settlement  
19 issues, and I will leave to others the litigation issues.

20 As I understand it, there remain two cases that  
21 are alive and viable for trial. One is the Sharon Johnson  
22 case from Mr. Saul's office, and Mr. Fitzgerald is on the  
23 phone, and the other is Mr. Krieser's case, and he is  
24 present in the courtroom. So I expect the two of them will  
25 have the majority to talk about from plaintiffs'

1 perspective on trial issues.

2 The first subject or subjects, of course, are  
3 counts of cases and federal and state coordination. I  
4 don't know if we have a count, but Ms. Van Steenburgh can  
5 speak to those.

6 MS. VAN STEENBURGH: Thank you, Mr. Goldser.

7 I think that, Your Honor -- Mr. Essig can correct  
8 me if I'm wrong on these. The case count currently, and  
9 this is up a little bit from when we last saw you because  
10 some of the cases that were severed have been now re-filed.

11 So the case count is 1923 cases filed, and I  
12 believe there are 1935 plaintiffs, and the difference there  
13 comes in the multi plaintiff cases at the very beginning.  
14 You know, Mr. Saul had filed the Voss case, and there were  
15 a few left over, but they're pretty close now in terms of  
16 the number of cases and plaintiffs.

17 In New Jersey I believe there are 2,125 cases,  
18 1509 of which are active, 591 of which have been dismissed.  
19 I will ask Mr. Winter or Mr. Essig, I believe Mr. Winter  
20 has this information, as to when the next status conference  
21 is and what the status of the New Jersey litigation is.

22 So, John?

23 THE COURT: Mr. Winter?

24 MR. WINTER: Thank you. Your Honor, the next  
25 case management conference in New Jersey is November 8th,

1 assuming the weather and everything allows that to happen.  
2 Initially, there was discussion about bellwether selections  
3 for trial in June. There has been some back and forth on  
4 that, and Judge Higbee is going to have the parties in to  
5 see if we can in fact pick the next bellwethers for the  
6 June trial.

7 THE COURT: All right. Thank you, Mr. Winter.

8 MR. GOLDSER: And as to the Illinois cases, there  
9 were two cases previously scheduled for trial. They were  
10 postponed. I don't believe there has been a new date yet  
11 scheduled. Corey Sullivan is on the line from the Carey  
12 Danis firm if there are any particular questions about  
13 Illinois, but that's my understanding of the status in  
14 Illinois at this point in time.

15 MR. SULLIVAN: That's correct, Ron.

16 THE COURT: Okay. The two cases have not been  
17 rescheduled for trial?

18 MR. SULLIVAN: They have not, Your Honor.

19 THE COURT: Okay.

20 MR. GOLDSER: I believe that then covers items 1  
21 and 2 on the agenda. Third and fourth, settlement and  
22 pretrial order number 3. As I understand it, the New  
23 Jersey settlement has not yet funded. Pursuant to our  
24 agreement with Mr. Winter, he will give us two weeks'  
25 notice prior to the time that it will be in the event that

1 we have not yet gotten a written assessment order worked  
2 out. I'll come to the assessment order in a second.

3 In the MDL, there are essentially two groups of  
4 cases with regard to settlement. One is the first group of  
5 cases that were negotiated over many months. There is a  
6 small group of firms involved in that. The settlement  
7 agreement is in draft. It's going back and forth. We're  
8 still working out the details of that.

9 I'm hopeful that that will get resolved within  
10 the next week or two that we can actually get that  
11 settlement agreement done. At that point in time, it will  
12 go out to the plaintiffs of the firms involved to determine  
13 what kind of participation that we will have in the  
14 settlement to see if it's executable.

15 THE COURT: And the number of plaintiffs again is  
16 how many?

17 MR. GOLDSER: Roughly 700 we believe. We don't  
18 have a hard count on that. There is an exhibit to the  
19 master settlement agreement that will contain that number.  
20 We're still working that document up, but it's in the six  
21 to eight hundred range. I think 700 is probably the  
22 closest number that I have.

23 THE COURT: Mm-hmm.

24 MR. GOLDSER: The second group of cases is  
25 basically everybody else who is interested in

1 participating, which is to say that we have reached out to  
2 all counsel that we know of who have cases in the MDL, told  
3 them about what's going on and invited them to participate  
4 if they so choose.

5 THE COURT: Did you say through counsel?

6 MR. GOLDSER: Through counsel, yes.

7 THE COURT: All right.

8 MR. GOLDSER: I'm not aware of pro se cases, but  
9 if there are pro se cases, if there were e-mail addresses  
10 on file, they were included. If they are not, we may not  
11 have reached out to them. I'm sure that the issue of cases  
12 that have not been contacted will work out as time goes on.

13 We are working out a protocol to submit cases for  
14 evaluation to see which cases will be compensable and not  
15 under the proposed terms that we have been working through.  
16 Counsel are starting to submit those cases in that fashion,  
17 and I'm sure in the days and weeks ahead, we will get more,  
18 and we will be submitting them to see how many are  
19 interested and what kind of valuations that we can put on  
20 them.

21 THE COURT: Could you just briefly describe the  
22 protocol?

23 MR. GOLDSER: Sure. And this has been  
24 communicated to everyone that I know of.

25 THE COURT: Right.

1 MR. GOLDSER: There are essentially four  
2 categories of cases that appear to be compensable. The  
3 first is an Achilles tendon rupture case where the  
4 plaintiff had surgery on the Achilles tendon rupture. The  
5 second is an Achilles tendon rupture without surgery. The  
6 third is a rupture of a tendon other than the Achilles, and  
7 the fourth is a category which is a bit of a catchall.

8 It's called the one strike category, and I'm sure  
9 Mr. Winter can correct me or add to my description, but  
10 essentially if you are over -- if you are 56 years of age  
11 or over, your age does not count against you as a strike.  
12 If you are age 51 to 55, that category counts as a strike.  
13 And the reason, the reasoning behind that is that the  
14 epidemiology, as the Court well knows, describes age 60 as  
15 the dividing line, at least within the epidemiology studies  
16 that have gone forward.

17 Now, as Dr. Zhanel has testified and we have  
18 talked about before, there is nothing magical about the age  
19 of 60, about whether you're at greater risk for tendon  
20 toxicity from Levaquin. It's really more of a health age  
21 as opposed to a chronological age.

22 So if you're age 25, you probably don't have  
23 health problems that would lend to a greater toxicity for  
24 Levaquin. To be sure, at some point you've got to draw an  
25 arbitrary line of what's in and what's not in, and the line

1 that has been drawn is people who are age 51 and over.

2 I have had a number of questions from lawyers who  
3 have clients who are 49 or who are 50 and say why am I not  
4 included, and perhaps Mr. Winter can justify that rationale  
5 more than I can, but at some point, you've got to have a  
6 line drawn that ties in to the health issues, and that's  
7 the issue. That's the rationale, as I understand it.

8 THE COURT: Is it age at the time of the injury?

9 MR. GOLDSER: Age at the time of injury, right.  
10 One of the other strikes is whether your presenting  
11 condition for which you received Levaquin was either  
12 pneumonia or COPD. There are some factors that may  
13 disqualify your claim from settlement entirely. I am not  
14 sure I will remember all of these because I seem to forget  
15 them from time to time.

16 One is if the plaintiff is deceased. Another is  
17 if the plaintiff's lawsuit is barred by statute of  
18 limitations. Another is post black box cases. We haven't  
19 settled on an exact date for the post black box, but it's  
20 November of 2008. Whether it's November 1st or November  
21 30th is a little bit loose.

22 There was another. Oh, alternative cause. If  
23 there is a clear alternative cause for the injury.  
24 Typically sports injuries would fall into this category,  
25 but other alternative causes that are clear. To be sure

1 we'll be arguing about some of those as settlement  
2 processes go forward, but that's the protocol.

3 I don't think I'm either at liberty to disclose  
4 values, nor would I want to commit anybody to values  
5 because I think that negotiation still has to take place.

6 THE COURT: Okay.

7 MR. GOLDSER: John Winter, have I gotten it  
8 right?

9 MR. ZIMMERMAN: Judge, this is Bucky Zimmerman.  
10 Can you hear me okay?

11 THE COURT: Yes, I can. Go ahead, Mr. Zimmerman.

12 MR. ZIMMERMAN: Thank you. I would be happy, and  
13 I think Mr. Winter as well, would be happy to spend some  
14 time with you, either on the record or off the record, sort  
15 of discussing, you know, how we got to the, what's called  
16 the first settlement of the or the Phase I settlement and  
17 how it's going to work.

18 There are lots of pieces to it in terms of how  
19 it's going to be allocated, if there are -- how the appeals  
20 of people who may be dissatisfied are going to be handled  
21 and all kinds of things that defendants aren't partaking in  
22 that we're having to put rigors and processes around.

23 Then there is a process of how we got there, how  
24 we got to the number and how we negotiated this with Judge  
25 Boylan. Our magistrate judge in our district was involved

1 for a number of months to get us to this point in time, but  
2 I just wasn't sure how much detail you really want today  
3 from us, and I don't want --

4 Because we're not on in the same courtroom  
5 because of the logistics, I don't want to, I don't want to,  
6 I don't want to upset anybody's sensibilities on the other  
7 side by disclosing too much about the settlement process,  
8 other than to say that we've used a process that we think  
9 is relatively uniform between what's going on in New Jersey  
10 and what's going on here.

11 I have personally checked it out and worked and  
12 talked to the New Jersey people. Judge Boylan and I have  
13 been in many, many discussions, and John Winter and Tracy  
14 and the people on the defense side have been in a number of  
15 discussions.

16 So I'm just not sure how much detail Your Honor  
17 wants at this time and if you want to do it on the record  
18 or off the record, but I just want to be clear that there  
19 are some sensitivities here that I just don't want to  
20 trample upon.

21 THE COURT: Yeah. Thank you, Mr. Zimmerman. I  
22 don't think we need to go into any more detail today.  
23 Perhaps at some point in time here soon as these matters  
24 get more completely resolved, we should have a discussion  
25 about them.

1 MR. WINTER: This is John Winter. That would be  
2 fine, Your Honor.

3 THE COURT: Okay.

4 MS. VAN STEENBURGH: One thing, Your Honor, that  
5 I might augment what Mr. Goldser said in terms of the  
6 numbers that might be helpful to you. I believe that the  
7 initial group of cases is close to 845 cases, maybe 700,  
8 but I think it's 845.

9 The second group that is being proposed of those  
10 that the plaintiffs have contacted are approximately 130  
11 cases, and since the last status conference, we have  
12 separately settled around 60 cases.

13 THE COURT: 60?

14 MS. VAN STEENBURGH: 60 cases. One group of  
15 cases is provisional, but we're working the details out and  
16 hope to have that done this week. So the total is, I mean,  
17 it's close to a thousand, a little bit over, in terms of  
18 the number of cases that look like they are going to be  
19 resolved here with those three groups.

20 THE COURT: And you said the second group, the  
21 130 or so?

22 MS. VAN STEENBURGH: So far based upon what we  
23 have gotten from Zimmerman Reed, it's about 130 additional  
24 ones.

25 MR. GOLDSER: So I don't think there is anything

1 else to talk about then in terms of the settlement context  
2 other than the assessment issue. Again, I believe the  
3 first case that will be up will be the New Jersey  
4 settlement, and as I said before, I don't believe it's  
5 funded yet.

6 And if the funding is two weeks away and if we  
7 don't have this worked out, we will be so advised. And  
8 perhaps Mr. Zimmerman will want to comment in greater  
9 detail because he met with the New Jersey folks, but an  
10 agreement is in process of being discussed.

11 Bucky, would you like to take the lead on this?

12 MR. ZIMMERMAN: Sure.

13 Your Honor, you will note that this assessment  
14 issue has been out there a long, long time. We have  
15 something that says there will be an assessment. It  
16 doesn't set the amount and the parameters of it, and now  
17 that we're getting closer to money moving and because of  
18 settlements, this issue has become much more important to  
19 nail down.

20 I have been working very closely for a long time  
21 now with Mike London and Rick Meadow, who were the liaison  
22 counsel in New Jersey in the New Jersey state consolidated  
23 proceedings. I guess they're now called the former liaison  
24 counsel because they have entered into a settlement  
25 agreement.

1           The settlement agreement is not yet funded, but I  
2           think their title is now former liaison counsel, but I have  
3           been discussing with them and working with them and all of  
4           the New Jersey lawyers to come to an overall assessment  
5           proposal that would be uniformly applied in both the MDL  
6           and in the state of New Jersey proceedings so that there  
7           would be one assessment of cases that would be  
8           standardized.

9           I think it was last week. It could be the week  
10          before, but I think it was last week I actually went to  
11          New York and met with Mike London and Rick Meadow at Rick's  
12          office with about ten or so other New Jersey attorneys to  
13          talk about this issue, and although we're not quite there  
14          yet, we're very close.

15          I think there was general agreement in the room  
16          as to the amount of the assessment and how it was going to  
17          work. We just have to bring it in for a landing, if you  
18          will, and I can't say that we're done yet. So I don't want  
19          to say that, but I think we're very, very close, and  
20          barring some unforeseen circumstance, I think we will have  
21          a document, an agreed document on assessment, for entry  
22          both in New Jersey and in the MDL, perhaps by the end of  
23          this week.

24          If not, you know, we've got this hearing date. I  
25          think it's the 9th, if I'm not mistaken, or that's when the

1 brief would be due on the 9th or something like that. It's  
2 sort of our target date. We have been continuing the  
3 briefing on this. I'm trying to hold everyone's feet to  
4 the fire the date on which we want to get this resolved and  
5 entered so that nobody has any continuing problems with how  
6 much the assessment is going to be, how is it going to  
7 work, when does it apply and the various rigors and ins and  
8 outs of that application and of that assessment process.

9 It's important that we do it so that it doesn't  
10 put John's, his clients in jeopardy for paying something  
11 out and then having, you know, not properly satisfied the  
12 assessment, and I don't want to get them caught in the  
13 middle of that, either.

14 We have this two-week notice process, but  
15 frankly, I think the best way is to just get this done, and  
16 I'm hopeful that we will be able to do it, and I will  
17 report to the Court as soon as it's complete.

18 THE COURT: All right. Thank you, Mr. Zimmerman.

19 Mr. Winter, do we know how far away we are from  
20 funding the New Jersey settlement?

21 MR. WINTER: No, Your Honor.

22 THE COURT: Okay.

23 MR. WINTER: I know all the paperwork was signed  
24 by our side and the lead plaintiffs' side, but there is a  
25 process for collecting individual settlement documents from

1 several hundred plaintiffs that obviously has been ongoing,  
2 but the funding doesn't occur until a critical percentage  
3 of those, which is a pretty high percentage, have been  
4 provided.

5 I know the plaintiffs want to get this done  
6 before the end of the year. So we can sort of assume that  
7 sometime within the next 60 days our obligation will kick  
8 in, and I've told everyone, and I've told you, and I will  
9 tell you again. Two weeks before that date hits, if not  
10 sooner, we will so advise Mr. Zimmerman and Your Honor.

11 THE COURT: All right. Thank you. Okay.

12 MR. GOLDSER: I think that concludes settlement  
13 assessment issues, so we turn to litigation, and I guess  
14 I'll leave it to Ms. Van Steenburgh and the courtroom to  
15 take you through the agenda on that.

16 THE COURT: All right.

17 MS. VAN STEENBURGH: Your Honor, Mr. Goldser is  
18 correct that all of the cases that were Minnesota  
19 filed/Minnesota resident cases that we presented last time  
20 have been resolved. I think we're waiting for one more  
21 dismissal. That would be the Darlene Melland case, and  
22 there were two other ones still on the list, but that is  
23 part of the provisional settlement that I am working on  
24 right now.

25 So the only two cases that are set for trial in

1 March of 2013 are the Sharon Johnson case and Mr. Krieser's  
2 case here, and we're in the process of working through the  
3 discovery. Sharon Johnson's updated deposition had been  
4 scheduled for tomorrow, but because of the hurricane issue,  
5 Mr. Fitzgerald wasn't able to get here.

6 So we will reschedule that and getting updated  
7 records from her and a couple of other treaters. We have  
8 more to go with Mr. Krieser's case. We have got additional  
9 records, and we've noticed their depositions. So we are  
10 moving along, and we will be prepared to have the cases  
11 ready to go if they get that far for the March time frame.

12 THE COURT: Okay.

13 MR. FITZGERALD: Your Honor, this is Kevin  
14 Fitzgerald, if I might chime in for one second?

15 THE COURT: Sure. Go ahead.

16 MR. FITZGERALD: We had hoped to be in the  
17 courtroom today, Your Honor, but obviously with the  
18 hurricane, we weren't able to travel, Lewis Saul and  
19 myself.

20 Tracy, I just wanted to speak for the record. I  
21 believe the Karkoska case is still an active case, and as I  
22 have let you know, Mr. Karkoska has asked that we take a  
23 couple additional steps on his behalf, which we are doing  
24 at this time. And I believe I will have a decision as far  
25 as whether we will be dismissing the case or moving to

1 withdraw from the case at the earliest opportunity, but I  
2 just wanted to point that out to the Court.

3 We will be dismissing the Melland case as soon as  
4 we can get access to our offices and computer systems.  
5 Everything is down right now. We have limited ability to  
6 get much done, unfortunately.

7 THE COURT: Okay. Good. Thanks for that.

8 MS. VAN STEENBURGH: With respect to the next  
9 agenda item, number 6, that's just an update for you on the  
10 order to sever. There are approximately 325 cases that  
11 were not re-filed.

12 THE COURT: How many?

13 MS. VAN STEENBURGH: 325 of those multiple  
14 plaintiff cases, and the time period has passed. So we  
15 think that those cases will, are ready -- I guess they're  
16 automatically dismissed under that order, so it looks like  
17 those have been narrowed down quite a bit in terms of the  
18 number of cases.

19 THE COURT: So nothing further needs to be done?

20 MS. VAN STEENBURGH: I believe so. I need to  
21 double check that order, but I think the order said that  
22 they would be dismissed automatically.

23 THE COURT: Okay.

24 MS. VAN STEENBURGH: With respect to number 7,  
25 the deficient PFSS, the order to show cause, we sent to

1 your chambers yesterday a proposed order to show cause.

2 The one thing I will say with respect to that, all of the

3 cases that are attached as Exhibit A are ones in which

4 there has been a second deficiency letter sent out and no

5 PFS. Some of those include Zimmerman Reed and a couple of

6 other firms on there.

7 They are there for the moment because the cases

8 have not been completely resolved. To the extent that the

9 cases are resolved, we may end up separating and creating

10 two different exhibits so that the Court can go ahead and

11 issue the order to show cause with respect to those that

12 are not subject to a settlement.

13 So we can split that out for the Court if the

14 Court so desires.

15 THE COURT: What are the numbers here?

16 MS. VAN STEENBURGH: I don't even know what the

17 number is. The total -- I don't know. It looks like there

18 are at least 50, 60 of them currently.

19 THE COURT: Okay.

20 MS. VAN STEENBURGH: Okay? Oh, and one other

21 item I was going to mention. Mr. Goldser said there may be

22 some pro se cases. I think we're aware of three.

23 THE COURT: Three?

24 MS. VAN STEENBURGH: And we certainly will try to

25 deal with those at some point in time, but I am not aware

1 of any more than that at the moment.

2 The other two items that we have on the agenda,  
3 and part of this is just for planning purposes. You know,  
4 the goal would be to get as much finished by the end of the  
5 year as possible, have the cases set for trial in March and  
6 perhaps get the MDL done and over with maybe by next  
7 summer.

8 And part of that process includes either sending  
9 some of the forum non conveniens cases to their  
10 jurisdictions or remand, and certainly we don't have to do  
11 it today, but I wanted to let the Court know what the  
12 numbers are and where we are on some of those.

13 THE COURT: Okay.

14 MS. VAN STEENBURGH: I have to be honest with  
15 you. The numbers don't completely match up with the  
16 totals, because they keep shifting with the number of cases  
17 resolved, but it looks like there are about 715 cases that  
18 would be subject to a forum non conveniens determination,  
19 whether by our motion or we had proposed to the Court a  
20 couple of procedural ways to deal with those.

21 THE COURT: Mm-hmm.

22 MS. VAN STEENBURGH: Just so the Court knows, 566  
23 of those belong to two firms. So there really aren't that  
24 many that are subject to a forum non conveniens  
25 determination that are outside of the Lewis Saul and Carey

1 and Danis law firms. So two-thirds of those belong to  
2 them.

3 With respect to remand, there are about 172 cases  
4 that would be subject to remand, and of those cases, the  
5 Lewis Saul, Carey and Danis and the Padberg firm have 109  
6 of them. So again, they're concentrated within three  
7 firms, and the rest of them are sprinkled a little bit.

8 But there aren't that many outliers in terms of  
9 the number of cases that would be remanded outside of those  
10 law firms. So as we move toward remand, we at least wanted  
11 to let the Court know that that's where we are and  
12 hopefully could move toward getting the cases remanded,  
13 maybe even by the end of the year before we start the next  
14 trial, and I don't know.

15 We have a proposal with respect to the forum non  
16 conveniens. We did talk to Mr. Saul about that, but he  
17 said he would await your ruling with respect to whether  
18 there is an approach to consent versus an order to show  
19 cause with respect to that.

20 And I think with that, that was the last item  
21 that we had for purposes of letting the Court know where we  
22 stood on the various cases.

23 THE COURT: So the order to show cause, you  
24 submitted a draft yesterday, is that correct?

25 MS. VAN STEENBURGH: That's on the deficient

1 PFSS, yes. So we sent that to your chambers.

2 THE COURT: So the timing is right to send that  
3 out now?

4 MS. VAN STEENBURGH: I believe so, yes. The only  
5 adjustment would be to change the exhibits so that we have  
6 the non potentially settling plaintiffs on there.

7 THE COURT: Okay. All right.

8 MS. VAN STEENBURGH: And it permits, pursuant to  
9 the transcript of the last status conference, we changed it  
10 from 30 days to 60 days to have someone respond otherwise  
11 the case is dismissed.

12 Okay?

13 THE COURT: All right.

14 MS. VAN STEENBURGH: I don't have anything  
15 further.

16 MR. GOLDSER: Nor do I, Your Honor.

17 THE COURT: Did you have anything?

18 All right. Anyone on the phone have anything  
19 else to raise today?

20 MR. ZIMMERMAN: This is Bucky Zimmerman again,  
21 Your Honor. I also wanted to report on the settlement side  
22 just so we -- this is how I'm kind of keeping them straight  
23 in my thinking, and this is how John Winter and I are  
24 working these things out in terms of identification.

25 The Phase I is the original settlement that's in

1 the works that has been agreed to in terms of certain  
2 parameters that we're documenting now. These are these I  
3 think six law firms' cases. That would be Phase I.

4 Phase II is another group of cases that have been  
5 submitted and that we're beginning to discuss them  
6 specifically for another group of firms' settlements that  
7 may or may not come together, and then Phase III is sort of  
8 the rest of these people that maybe have one or two cases  
9 by each firm in the MDL, and we're putting those together  
10 in like a Phase III.

11 The idea would be that those who want to settle  
12 will either be in Phase I, Phase II or Phase III, and then  
13 those that don't want to settle under this protocol or  
14 under these parameters, we would hope to have this resolved  
15 by the end of the year.

16 That's at least our goal, and then whatever is  
17 going to occur with those that are not being resolved,  
18 whether they're going to be resolved by remand, forum non  
19 conveniens motions or trials in this district, will be the  
20 litigation side that may remain when Phase I, II, III  
21 settlements are resolved.

22 So that's how we're referring to it, and so  
23 that's the way that I'm kind of keeping it straight in my  
24 mind, and that's how John and I are referring to it, as  
25 well as the people that we're working with.

1           So, John, I don't know if you had any other  
2           comment on that or any corrections to what I said?

3           MR. WINTER: No. No, Mr. Zimmerman. I think you  
4           have accurately described what we're going to try and do by  
5           the end of the year, and then Judge Tunheim hopefully if,  
6           you know, we're good at what we're trying to do here, will  
7           be left with a group of cases as Ms. Van Steenburgh laid  
8           out for you for remand or forum non conveniens so that by  
9           the middle of 2013, this MDL can be closed.

10           MS. VAN STEENBURGH: The only point of  
11           clarification I would make, Your Honor, is that I had  
12           provided you with some numbers previously, and to fit those  
13           into the framework that Mr. Zimmerman mentioned, Phase I  
14           would be the ones that were settled pursuant to  
15           negotiations with Magistrate Judge Boylan.

16           Phase II are about the 130 cases that I mentioned  
17           that are now being presented and evaluated. Phase III, I'm  
18           assuming what Mr. Zimmerman is referring to are all of the  
19           rest of them, whether they go through MDL plaintiffs'  
20           counsel or they come directly to defense counsel, which  
21           would include the 60 that we've resolved since the last  
22           status conference or any calls that I might get from  
23           individual plaintiffs, whether they go through or not.

24           So I think that would include both of those sets.  
25           Okay?

1 THE COURT: That makes sense.

2 All right. Anyone else on the phone have  
3 anything for today?

4 Mr. Fitzgerald, anything more from you?

5 MR. FITZGERALD: No, Your Honor. I guess I'm  
6 thinking about the order to show cause on the plaintiff  
7 fact sheets?

8 THE COURT: Yes.

9 MR. FITZGERALD: I haven't had an opportunity to  
10 look at that, and I'm sure it's in keeping with our  
11 discussions on that order to show cause, but I guess I  
12 would ask if it would be possible to have until early next  
13 to take a look at it, and we'll do that as soon as our  
14 computer systems are back up, have a look at it just to  
15 make sure it's in keeping with our discussions on that  
16 issue.

17 THE COURT: That's fine, Mr. Fitzgerald. Why  
18 don't we say a week from today, and just let us know either  
19 way what your position is on it. Okay?

20 MR. FITZGERALD: Appreciate that. Thank you.

21 THE COURT: All right. Okay. Anything else then  
22 for today?

23 MR. GOLDSER: I don't think so.

24 MS. VAN STEENBURGH: No, Your Honor.

25 THE COURT: Sounds like we're making good

1 progress, so I appreciate getting together today. Do we  
2 want to set another status conference date here, and if so,  
3 what should be the appropriate time?

4 MS. VAN STEENBURGH: Well, we talked about this.  
5 We have -- I don't think there is anything really pending.  
6 There is a summary judgment filing date shortly after  
7 Thanksgiving, but that's the only thing that is really  
8 pending at the moment.

9 I don't anticipate, other than reporting to you  
10 what the status is, that there will be much else to do in  
11 November. So I'm not sure we really need one in November,  
12 unless somebody else has another reason.

13 THE COURT: Sometime early December perhaps?

14 MS. VAN STEENBURGH: Yes.

15 THE COURT: Just to make sure we all stay on  
16 track?

17 MS. VAN STEENBURGH: Yes.

18 THE COURT: Okay. Let's look here. Maybe  
19 Tuesday the 4th of December. Does that date make sense?

20 MS. VAN STEENBURGH: That works on our side, I  
21 believe. I can't speak for Mr. Winter.

22 MR. GOLDSER: Works for me. What time?

23 MR. WINTER: That will be fine. Thank you,  
24 Judge.

25 THE COURT: All right. Let's set it at the same

1 time, 2:30 on that day, and we may have to adjust it if  
2 we're in trial, but we will let you know with plenty of  
3 time in advance. Okay?

4 MS. VAN STEENBURGH: Yes.

5 THE COURT: All right. Thank you all. We will  
6 be in recess, and we will look forward to hearing back.

7 And, Mr. Fitzgerald, within a week on the order  
8 to show cause. Obviously if anybody else wishes to comment  
9 on it, that's fine, too.

10 All right. We'll be in recess. Thank you,  
11 everyone.

12 MR. GOLDSER: Thank you, Your Honor.

13 MS. VAN STEENBURGH: Thank you, Your Honor.

14 MR. WINTER: Thank you.

15 \* \* \*

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

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

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