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2:55 P.M.

(In open court.)

THE COURT: You may be seated. Good afternoon, everyone. This is multi district litigation number 1943, In Re: Levaquin Products Liability Litigation. Let's have counsel note appearances.

First present here in the courtroom on behalf of the plaintiffs?

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

MR. ZIMMERMAN: Good afternoon, Your Honor, Charles Zimmerman for the plaintiffs.

THE COURT: Good afternoon to both of you.

And for the defendants here in the courtroom?

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

MS. LENAHAN: Dana Lenahan on behalf of the defendants.

THE COURT: Good afternoon to both of you.

Now, on the telephone for the plaintiffs?

MR. RASMUSSEN: Kristian Rasmussen, counsel for the plaintiffs. Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. FITZGERALD: Good afternoon, Your Honor.

1 This is Kevin Fitzgerald for the plaintiffs.

2 THE COURT: Good afternoon.

3 MR. KLEIN: Good afternoon, Your Honor. Todd
4 Klein for the plaintiffs.

5 MR. BROSS: Good afternoon, Your Honor. This is
6 William Bross for the plaintiffs.

7 MR. McCORMICK: Good afternoon, Your Honor. This
8 is Brian McCormick from the Sheller firm in Philadelphia
9 for the plaintiffs.

10 Ms. McNEELY: Good afternoon, Your Honor. This
11 is Sarah McNeely from the Reardon Law Firm for the
12 plaintiffs.

13 MR. BINSTOCK: Bob Binstock for the plaintiffs
14 from Reich & Binstock.

15 THE COURT: Okay. Anybody else?
16 Now for defendants?

17 MR. WINTER: Good afternoon, Your Honor. John
18 Winter for the defendants.

19 THE COURT: Mr. Winter. Anybody else?

20 MR. ESSIG: Good afternoon, Your Honor. Bill
21 Essig for defendants.

22 THE COURT: Mr. Essig. Anyone else?

23 MS. VAN STEENBURGH: Mr. Irwin contacted me today
24 to say he could be on only for 30 minutes.

25 THE COURT: Very well. All right. Anybody else

1 on the phone that we didn't get?

2 MS. JOHNSON: Sorry, Your Honor. This is Caia
3 Johnson from Lockridge for plaintiffs.

4 THE COURT: Ms. Johnson, thank you.

5 All right. Let's proceed. Mr. Goldser?

6 MR. GOLDSER: Thank you, Your Honor.
7 Mr. Zimmerman is here, and he, too, has some limited time.
8 I would like to start this afternoon with item number 4 on
9 the agenda, the amendment to pretrial order number 3, the
10 common benefit order.

11 Mr. Zimmerman will present it. I have got some
12 drafts that I would like to hand out. It's two copies of
13 the same thing.

14 THE COURT: Go ahead, Mr. Zimmerman.

15 MR. ZIMMERMAN: Good afternoon, Your Honor. I'm
16 going to address the amended pretrial order 3, although
17 it's a little bit of a misnomer because it's not really an
18 amended order. It's kind of a new order, but the process
19 which I will briefly describe is that we have been sitting
20 down for many weeks, perhaps months, with the New Jersey
21 counsel who have parallel litigation in New Jersey state
22 court to try and work out an order that would be entered in
23 both New Jersey state court proceedings and in the MDL to
24 address holdbacks from resolutions, judgments, verdicts or
25 settlements for the common benefit costs and expenses.

1 Because it's only going to be applicable to costs
2 and expenses, given the number of cases and the amounts of
3 settlements and the amounts of costs, it's probably moot to
4 think there is going to be a common benefit attorney's fees
5 award because the costs are going to be all we're going to
6 be able to capture by the 9.5 percent holdback that we have
7 negotiated.

8 We negotiated a number of terms to have 9.5
9 percent of any settlements or judgments or verdicts held
10 back and put into a fund where both the New Jersey and the
11 MDL lawyers will select a committee to verify the costs,
12 approve costs and if necessary audit by a third party
13 approved costs so that each side can get reimbursed that
14 which they have expended in the furtherance of this
15 litigation.

16 The issue that was, took us a while to resolve
17 was the first realization that we're not going to really
18 get to common benefit fees because the costs are large and
19 the settlements are not going to get us to the point of
20 having an availability to get to common benefit attorney's
21 fees and then trying to peg the right number, which we have
22 agreed on 9.5, and then have a process so that each side
23 feels that the costs are going to be reviewed fairly by
24 each of the other components of the agreement so that
25 appropriate costs get paid as opposed to anything that

1 could in any way not be considered appropriate or common
2 benefit.

3 I think we're there. I know we're there.
4 Yesterday it was submitted to Judge Higbee.

5 THE COURT: Okay. Good.

6 MR. ZIMMERMAN: Hunter Skolnick who is now the
7 liaison counsel in New Jersey, he has replaced I believe
8 Mike London and Rick Lanier, who I started negotiating with
9 because they have resolved their cases, and there is still
10 proceedings going on.

11 THE COURT: Right.

12 MR. ZIMMERMAN: They have all approved it. All
13 the New Jersey lawyers have approved it, and in fact just
14 for the record, I went out to New York and met with most of
15 them in a meeting to try and come to an agreement on this.
16 On the -- so New Jersey is all signed off, and all the
17 lawyers have signed off.

18 Judge Higbee has not signed off yet, but we
19 understand that she is going to, and she may want to
20 consult with you or you with her.

21 THE COURT: Sure.

22 MR. ZIMMERMAN: I know you have in the past, and
23 certainly that's possible. On the MDL side, we're through
24 the PSC structure, that has been really not as well
25 negotiated with a large group as it was in New Jersey

1 because there is no PSC in New Jersey. It's more of a
2 scattered group of plaintiffs' lawyers that all had to buy
3 in.

4 Here we have more responsibilities because we
5 have an MDL. We have a committee.

6 THE COURT: Okay.

7 MR. ZIMMERMAN: But there may be people on the
8 PSC. There may be people in the plaintiff group that wants
9 to comment or doesn't like it or feels a problem with it.
10 I can't speak to that. I don't know that that's -- I think
11 it's, it's within your discretion to do that which you
12 desire with regard to how it will be approved or if you
13 want to send out a notice program for that.

14 THE COURT: Like an order to show cause or
15 something like that?

16 MR. ZIMMERMAN: Sure.

17 THE COURT: With a relatively short time frame?

18 MR. ZIMMERMAN: Which is fine with us. We're
19 just trying to get it done as expeditiously as possible.
20 Three months I have been coming in here saying give me
21 another two weeks, give me another two weeks more.

22 So whatever the Court wants to do, but all I can
23 say to you is, we have agreement with New Jersey and the
24 leadership here of Kevin Fitzgerald is on the phone. I'm
25 not sure. He has been in some of the meetings but not all

1 of them, and so he may have some comments. Others may have
2 comments, but I think we're there.

3 We've got something that we think works. You
4 will read it. You'll see if you have any questions or
5 problems. You talk to Judge Higbee, and we can go further.

6 THE COURT: If we set a 30-day period for any
7 commentary, does that sound --

8 MR. ZIMMERMAN: I would like it a little shorter.
9 Three weeks.

10 THE COURT: Shorter if it's going to reach
11 everybody.

12 MR. ZIMMERMAN: It probably doesn't matter.
13 Three weeks. We've got the holidays. It's probably fine.

14 MR. GOLDSER: If we put it out on ECF today,
15 everybody will have notice of it forthwith, and commentary
16 can be --

17 THE COURT: I'm sure most everyone knows about it
18 if they have been following the case. We have been talking
19 about this for a long time.

20 MR. ZIMMERMAN: Right.

21 THE COURT: We could do a 14-day period and see.
22 If someone wants more time, that's fine.

23 MR. ZIMMERMAN: 80 percent of the people with
24 cases, with large inventory cases, are on the phone call
25 right now. We distributed to the PSC. It's not a mystery.

1 People need to read it. If they have comments, they might
2 as well react sooner rather than later.

3 THE COURT: Okay.

4 MR. ZIMMERMAN: I think I have covered
5 everything, Your Honor, unless you have any specific
6 questions. You haven't read it yet.

7 THE COURT: I will read it through carefully.
8 For your purposes this is a final version?

9 MR. ZIMMERMAN: Yes. And this version has been
10 signed off and approved and submitted in New Jersey, so if
11 we do make changes for any reason, we are probably going to
12 have to go back and edit.

13 THE COURT: Do we have this electronically right
14 now?

15 MR. GOLDSER: We have not submitted it to the
16 Court electronically, nor have we put it on ECF yet.

17 THE COURT: If you submit it to us
18 electronically, then we can attach it to an order to show
19 cause with a return date of 14 days.

20 Do you have any objection from the defendants'
21 side on that? Okay. All right. Let's do that. If you
22 can just e-mail it to the chambers' e-mail box, then we
23 will get that filed.

24 All right. Good. Thank you.

25 MR. ZIMMERMAN: Okay. As I was telling John

1 Winter this morning, now it's off to the fiscal cliff, the
2 negotiations. After doing this one, I feel ready for the
3 next one.

4 THE COURT: I think they ought to hire you,
5 Mr. Zimmerman.

6 MR. GOLDSER: Unless there is anything else to
7 discuss on PTO 3, we can go back to the top of the agenda.

8 THE COURT: Can I just say, is there anyone on
9 the phone who wishes to say anything about the amended
10 pretrial order 3?

11 MR. FITZGERALD: Your Honor, this is Kevin
12 Fitzgerald. I was just simply going to ask for some time
13 for our office and other firms who are on the PSC to take a
14 look at the proposed final pretrial order number 3. We
15 just got a copy of it yesterday for the first time and for
16 the first time knew the actual final assessment percentage
17 and the makeup of the cost committee.

18 So we just want a little bit of time to review
19 things and offer any comments, if we have any.

20 THE COURT: And that's fine, Mr. Fitzgerald. I'm
21 going to put a two-week deadline for getting comments back
22 in to me. If you feel like you need more time, just ask,
23 and I will give you more time.

24 MR. FITZGERALD: That should be fine. We
25 appreciate that.

1 THE COURT: All right.

2 MR. GOLDSER: Items 1 and 2, Your Honor, are the
3 traditional case count and status of matters in other
4 courts, and I will leave that to the defense to give you
5 that information.

6 THE COURT: Okay. Ms. Van Steenburgh.

7 MS. VAN STEENBURGH: Thank you, Your Honor. I
8 will report on the MDL cases, and I will ask Mr. Winter to
9 provide information on the New Jersey.

10 We're holding steady. There are 1927 pending MDL
11 cases. Two cases are pending transfer to the MDL, Zanella
12 and Flauta. Once we get to settlement, I can report more
13 on how those numbers are going to go down because we have
14 had significant settlements, but in the meantime I'll ask
15 Mr. Winter to report on New Jersey.

16 MR. WINTER: Good afternoon, Your Honor. As of
17 Friday, there were 1470 cases pending in New Jersey, with
18 262 cases dismissed and another 344 settled in principle.

19 The next conference with Judge Higbee is December
20 13th, and although there is a June trial date for the next
21 bellwether case, the parties are still in discussion with
22 Judge Higbee as to what the bellwether cases in fact will
23 be.

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

25 Do we have any cases in Illinois still or not?

1 MR. GOLDSER: I had inquired of Illinois counsel
2 but had not gotten a response yet, so I don't know their
3 status. Perhaps Mr. Winter or Ms. Van Steenburgh does.

4 MS. VAN STEENBURGH: Maybe Mr. Essig does.

5 THE COURT: Mr. Essig, do you know?

6 MR. ESSIG: Yes, Your Honor. The two Sprehe and
7 Brown cases are still pending in southern Illinois. There
8 is no current hearing date on the summary judgment order or
9 a trial date.

10 THE COURT: Okay. Thank you.

11 MR. GOLDSER: Item number 3 on the agenda is the
12 status of settlement. For purposes of the MDL, what I can
13 report is this:

14 MR. ZIMMERMAN: Let me do that.

15 MR. GOLDSER: All right. Mr. Zimmerman will do
16 that.

17 THE COURT: Go ahead.

18 MR. ZIMMERMAN: I have been the one having the
19 discussions with John Winter, who is on the phone, and
20 we're very close. We have a -- there is a little hitch
21 that came up this week that we're trying to iron out. We
22 have exchanged drafts. We have the list of cases that are
23 being resolved. We have got many, many or most of the
24 terms resolved.

25 There is a couple things we haven't got resolved.

1 We're working through. We're hoping to have it done by
2 today, but we're not -- but it will be in my judgment very
3 soon. We call that the Phase I, which is the first group
4 of cases.

5 We're also negotiating in a Phase II and a Phase
6 III, with the intent to be most everyone in the MDL with
7 the exception of Mr. Carey's cases and with the exception
8 of Lewis Saul's cases will be brought within Phase I, Phase
9 II or Phase III, with Phase I being a bigger number.

10 THE COURT: Mm-hmm.

11 MR. ZIMMERMAN: John is on the phone. He can
12 comment further. We're not quite done. I wish I had it
13 signed. It was our intent to have it signed today. We
14 will get there. If we need some help, we're going to call
15 on Judge Boylan.

16 THE COURT: Okay.

17 MR. ZIMMERMAN: One thing I want to say before I
18 sit down. We have asked Judge Boylan to serve as a special
19 master, and I wasn't sure what process you want me to do
20 it, he needs to be named as opposed to just asked, but what
21 the purpose of that will be just twofold:

22 One, he will look at the allocation plan and
23 determine if it's appropriate, what type of cases get what
24 type of compensation, and then he would hear anybody who
25 feels they want a rehearing on their allocation.

1 THE COURT: Okay.

2 MR. ZIMMERMAN: But in most of these mass
3 settlements, group settlements, we need a judicial officer
4 or someone appointed to do that, and Judge Boylan felt that
5 appointment would come from you, unless you wanted someone
6 else to do it.

7 THE COURT: Yeah. No. I think if he has the
8 time to do it, he is perfect to do it. So I'm happy if
9 he's, if he's willing to do it.

10 MR. ZIMMERMAN: I have talked to him. He said he
11 is willing to do it, but he said I needed to go and make
12 sure the appointment came through you.

13 THE COURT: I will talk to him right away.

14 MR. ZIMMERMAN: Okay. Your Honor, may I excuse
15 myself?

16 THE COURT: Yes. Good luck with the fiscal
17 cliff.

18 MR. GOLDSER: I just wanted to report on some
19 numbers, as I understand them. The Phase I group has 858
20 cases in it, and I believe we now have an agreed upon list;
21 that in addition to that, we have had 113 cases submitted
22 through our office so far.

23 We had earlier submitted a number of cases, but
24 we had to go back and revisit them to get them into the
25 proper procedural posture, and that was the original Phase

1 II, which was around 100 cases. I don't know if that's
2 still the same number or not.

3 We realized this morning that we have to go back
4 and revisit that group, and of course Mr. Carey and
5 Mr. Saul, to the extent that they're going to negotiate
6 their cases, will be done separately, and New Jersey is not
7 part of this report. That's a separate body of cases.

8 THE COURT: Do you know how many cases are part
9 of Mr. Carey's and Mr. Saul's cases?

10 Ms. Van Steenburgh?

11 MR. GOLDSER: I'm not sufficiently certain to be
12 able to recite a number.

13 MS. VAN STEENBURGH: Mr. Carey has 452 cases, and
14 Mr. Saul has 186.

15 THE COURT: Okay.

16 MS. VAN STEENBURGH: If I might add, I think
17 Mr. Goldser's numbers are fairly close to ours. A couple
18 other numbers you might want to know about: 72 cases have
19 been dismissed as not part of a settlement. I think in
20 discussions, the realization that perhaps the case should
21 be dismissed, so those have been dismissed, and in the
22 Phase II cases, 49 cases have been settled.

23 And we're in the process of talking with some
24 other firms now, so another 20 to 25 are on the precipice,
25 as they say, with respect to settlement. So we're making

1 good progress on all those.

2 THE COURT: All right. Good. Okay.

3 Anyone on the phone wish to comment on these
4 matters?

5 MR. WINTER: This is John Winter, Your Honor. I
6 think Mr. Zimmerman has accurately described where we are,
7 and we're both working, you know, diligently here. We
8 wanted to tell you today that we had gotten all the I's
9 dotted and T's crossed, but we're confident we will get
10 that done in short order.

11 And from our perspective, the defendants'
12 perspective, we think we're going to reach the end of the
13 process in terms of whatever cases want to be resolved in,
14 in this context probably by sometime in January so that we
15 would be of the mind, if Your Honor is so inclined, at some
16 point in the first quarter of 2013 that we actually sit
17 down and start figuring out how we remand what's left,
18 which as we're estimating, it probably will be mostly the
19 Saul/Carey inventory with a couple of, you know, individual
20 plaintiffs represented by one or the other law firms.

21 So the bulk of the MDL will be done.

22 THE COURT: Okay. Thank you, Mr. Winter.

23 MR. GOLDSER: I think that just addressed item 6
24 and 7 on the agenda, 6 being forum non, and 7 being cases
25 for remand, but Ms. Van Steenburgh looked like she has a

1 comment on that as well.

2 THE COURT: Okay.

3 MS. VAN STEENBURGH: Just to help the Court out a
4 little bit. I think if we split those up in terms of forum
5 non and the remand, the bulk of the cases are in the forum
6 non category, but most of those are the Carey & Danis
7 cases.

8 So there are like a little over 700 that would be
9 subject to transfer under a forum non conveniens analysis,
10 and there are about 238 that would be subject to remand.
11 And again those, the bulk of those cases, besides the
12 Carey & Danis and Lewis Saul cases, there are 56, you know,
13 12, 20, so there are a few other ones.

14 Close to 100 of those would be actually a bunch
15 of cases by just a few law firms. So there won't be that
16 many individual cases that will have to be remanded.

17 THE COURT: Okay. All right.

18 MR. GOLDSER: And then that leaves as well the
19 remaining subject, the question of the trial in March.

20 MS. VAN STEENBURGH: Can I back up one second?

21 THE COURT: Sure.

22 MS. VAN STEENBURGH: One thing that we do need to
23 talk about I think, Your Honor, is that there was a
24 proposal that we had made for suggestion of remand and an
25 order, and the plaintiffs came back and objected to certain

1 portions of that and added some things.

2 I would like to suggest that perhaps there has to
3 be a meet and confer because some of the issues that were
4 raised in that suggestion for remand had been addressed
5 either by the Eighth Circuit or through the settlement, and
6 so some of the issues that the plaintiffs wanted as a
7 condition to remand may have gone away now.

8 So what we would like to do is perhaps meet and
9 confer yet this month and then be prepared to meet with you
10 again in early January for another status conference and
11 then keep moving toward the remand.

12 THE COURT: All right. Yeah. That sounds like a
13 good plan. I would like to see that discussion before our
14 January meeting, if possible.

15 MR. GOLDSER: I should think that discussion is
16 most appropriate on the plaintiffs' side with those firms
17 that have the majority of the cases in remand, Mr. Carey
18 and Mr. Saul. So all things being equal, they should be
19 involved in that conversation.

20 THE COURT: Definitely.

21 MR. GOLDSER: Then the remaining item is the
22 March 2013 trial date, and I will step aside and leave that
23 to Ms. Van Steenburgh and Mr. Fitzgerald.

24 THE COURT: Okay.

25 MS. VAN STEENBURGH: Your Honor, there is but one

1 case that is now set for trial for the March 5 trial date,
2 and that's the Sharon Johnson case. And lo and behold
3 Sharon Johnson is one of the very first cases that was ever
4 filed.

5 She was prescribed Levaquin when she was 56 years
6 old. It's a 2002 prescription, October of 2002, so a very
7 long time ago, in fact about a year after the label was
8 changed. Ms. Johnson alleges that she suffered bilateral
9 tendon ruptures. She ended up having surgery on one tendon
10 but not on the other one.

11 We have some dates that we need to move toward in
12 order to get this ready. We need to get the updated
13 deposition of Ms. Johnson. We've talked with
14 Mr. Fitzgerald a couple times about dates, but that has not
15 been locked down.

16 We have a couple of treating physicians, and also
17 we would like to move to conduct an IME of Ms. Johnson at
18 some point before the trial. The case raises some issues,
19 though, that we wanted to alert the Court to, and that is
20 because it's such an early prescription --

21 THE COURT: Right.

22 MS. VAN STEENBURGH: -- that there were lots of
23 events. The Court having sat through three trials knows
24 that a lot happened in 2002 and 2003, and so we wanted to
25 at least foreshadow for the Court this notion that we're

1 going to have plenty of motions in limine.

2 And we have now teed up a motion, a *Daubert*
3 motion, with respect to Dr. Wells' testimony, and before
4 that is heard, we're thinking that we might want to meet
5 and confer with the other side about some of the
6 evidentiary issues that this particular case poses in light
7 of the prescription date.

8 So one of the things we would like to let the
9 Court know, and Mr. Fitzgerald can weigh in, is that we
10 probably should talk with the other side about what are
11 some of the evidentiary issues and tee up some of those
12 motions even before the *Daubert* motion with respect to
13 Dr. Wells.

14 As the Court knows, the Ingenix Study, which is a
15 focal part of the trials, was just getting started, and
16 some of -- the final report didn't come out until 2003. So
17 this is a prescription that happened in between, so there
18 are going to be lots of issues that will be raised as a
19 result of this.

20 THE COURT: That is early.

21 MS. VAN STEENBURGH: And I don't know what
22 Mr. Fitzgerald might have to say with respect to that.

23 MR. FITZGERALD: Your Honor, this is Kevin
24 Fitzgerald. I was having a difficult time hearing
25 everything you said there. As far as the deposition of

1 Ms. Johnson, as you know we had originally scheduled it for
2 the week that the hurricane hit New York, and I wasn't able
3 to travel out for it.

4 Ms. Johnson is available next Wednesday or next
5 Thursday for her renewed deposition. I am waiting to hear
6 back from her. She is trying to coordinate travel, and I
7 will let you know which of those two dates works. You had
8 indicated, Tracy, before that any date next week was going
9 to be acceptable for you, so that should go forward next
10 week.

11 We have -- there are two physicians that
12 defendants would like to depose in the Johnson case. We've
13 contacted both physicians' offices, and we're waiting for
14 dates back from those two physicians, Dr. Inveldt and
15 Dr. Klassen.

16 As far as the IME is concerned, at this point we
17 don't have enough information to determine whether or not
18 we will object to the IME. As we all know from prior
19 briefing in this case, Rule 35 requires that an independent
20 physician conduct the IME. We don't know who that
21 physician, the proposed physician is.

22 And if there is no agreement between the parties,
23 then the Court will appoint a physician to conduct the IME.
24 Additionally Rule 35 requires disclosing the time, place,
25 and manner of the examination. I don't have any of that

1 information yet from defendants.

2 It may be most productive, Tracy, if you provide
3 us with the information required by Rule 35 and we can
4 determine whether or not we will consent to the IME or
5 object.

6 THE COURT: That's fine. What's the status of
7 the treating physician in this case, do we know?

8 MR. FITZGERALD: Many of the physicians have been
9 deposed already, Your Honor.

10 THE COURT: Okay.

11 MR. FITZGERALD: The prescribing doctor has, the
12 surgeon that conducted the surgery, the repairing of one of
13 the two Achilles tendon ruptures. Sales reps have been
14 deposed. Physical therapists have been deposed. There is
15 two doctors that she has treated with more recently that
16 defendants have advised us they would now like to depose.

17 So there are more recent treaters, and we're
18 waiting to hear back from those two physician offices as to
19 potential dates for their depositions.

20 THE COURT: All right.

21 MS. VAN STEENBURGH: And, Mr. Fitzgerald, I don't
22 know if you heard my other comment about some of the other
23 issues that are going to arise and whether it makes sense
24 to talk about some of those motions in limine that will
25 have to be brought prior to us teeing up the hearing on the

1 *Daubert* motion?

2 MR. FITZGERALD: Yeah. I heard motions in
3 limine, and I heard the meet and confer. So I think that
4 that probably would be a productive discussion that we
5 have.

6 MS. VAN STEENBURGH: Okay.

7 MR. FITZGERALD: As far as the Wells motion, we
8 obviously in our position, we indicated we didn't think any
9 further briefing was necessary or oral argument on that
10 particular motion. That's ready to be heard, but obviously
11 that's for Your Honor to decide.

12 But as far as the, you know, motions in limine
13 and a meet and confer prior to filing those, Tracy, I'm
14 happy to set a date with you to do that this year or this
15 month.

16 MS. VAN STEENBURGH: We'll plan to do that, Your
17 Honor, because I think it will narrow things down and make
18 it more efficient. With respect to the Wells motion, I
19 think our reply is due, and then at that point we can set a
20 hearing date when the Court is ready for that.

21 THE COURT: All right. That sounds fine. Okay.
22 Anything else, Mr. Fitzgerald, on the Johnson
23 case?

24 MR. FITZGERALD: At this point, I don't think so,
25 Your Honor.

1 THE COURT: All right.

2 MR. FITZGERALD: Thank you.

3 THE COURT: Sounds good.

4 MR. GOLDSER: I believe that concludes the agenda
5 for today, Your Honor.

6 THE COURT: Should we set a time for early
7 January? We talked about that. That might be a little too
8 soon for motions on the Johnson case, but we can set a time
9 then, whenever everything is ready to go.

10 MS. VAN STEENBURGH: We were hoping earlier
11 rather than later in January, if we can, Your Honor,
12 because I think some of the settlement issues will have
13 been resolved by then.

14 THE COURT: Yeah.

15 MS. VAN STEENBURGH: And then we hopefully will
16 have had a meet and confer and will be ready to tee up some
17 of those other motions.

18 THE COURT: Earlier is probably better for me,
19 too. I have got a criminal case that starts on the 22nd
20 that will be all consuming, but anytime before that. I'm
21 scheduled to do a trial in Duluth from the 3rd through the
22 8th or 9th, but I could be on the telephone, too. So we
23 could do it that way if we need to.

24 If the trial goes away, I will be here, so that's
25 early in the month.

1 MS. VAN STEENBURGH: How about the 8th?

2 THE COURT: That's fine. I may, again, I may or
3 may not be in Duluth, but that's -- we can do a telephone
4 conference.

5 MR. GOLDSER: What time?

6 THE COURT: The 8th at, say, 1:30.

7 MS. VAN STEENBURGH: Sure.

8 MR. GOLDSER: Okay.

9 MR. FITZGERALD: That should work for us, Your
10 Honor. This is Kevin Fitzgerald.

11 THE COURT: All right. Any objection to that
12 date for a hearing?

13 Okay. Great. We will plan on the conference
14 then. The Court will send out the amended, proposed
15 amended pretrial order number 3 and get that matter going
16 right away.

17 MR. GOLDSER: I will have that to you this
18 afternoon.

19 THE COURT: Okay. Good. All right. I believe
20 that's all that we have for today, is that correct?

21 MS. VAN STEENBURGH: Yes, Your Honor.

22 MR. GOLDSER: For plaintiffs, yes.

23 THE COURT: All right. Very good. Thank you,
24 everyone.

25 Thank you to those who are on the phone, and we

1 will be in recess and look forward to the next hearing.

2 THE CLERK: All rise.

3 * * *

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

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

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