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2:10 P.M.

**(In open court.)**

THE COURT: You may be seated. This is Multi District Litigation Number 08-1943, In Re: Levaquin Products Liability Litigation. We're here for a status conference.

Let's have counsel note appearances. First in the courtroom, please.

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

THE COURT: Mr. Goldser.

MS. JOHNSON: Good afternoon, Your Honor. Caia Johnson for plaintiffs.

THE COURT: Ms. Johnson.

For the defendants in the courtroom?

MS. VAN STEENBURGH: Tracy Van Steenburgh on behalf of defendants.

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

THE COURT: Good afternoon to both of you.

Now on the phone, first for the plaintiffs?

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

MR. SAUL: Good afternoon, Your Honor. Lewis

1 Saul for plaintiffs.

2 MR. FITZGERALD: Hello, Your Honor. This is  
3 Kevin Fitzgerald for plaintiffs.

4 MR. COLEMAN: This is Ed Coleman for plaintiffs.

5 MS. MCNEILLY: Good afternoon. Sarah McNeilly  
6 for the plaintiffs.

7 MR. BINSTOCK: Good afternoon, Your Honor. Bob  
8 Binstock for plaintiffs.

9 MS. HAUER: Good afternoon, Your Honor. Stacy  
10 Hauer for plaintiffs.

11 MR. BROSS: Hello, Your Honor. This is Bill  
12 Bross for the plaintiffs.

13 MS. WRIGHT: Hello, Your Honor. This is Sherry  
14 Wright for the plaintiffs.

15 THE COURT: Okay. Anyone else?

16 MR. ZIMMERMAN: Your Honor, this is Bucky  
17 Zimmerman, also for the plaintiffs.

18 THE COURT: All right. Anyone else for the  
19 plaintiffs on the phone?

20 How about for the defendants?

21 MR. IRWIN: Yes, Your Honor. Jim Irwin.

22 THE COURT: All right. Good afternoon, everyone.  
23 We have a status conference today.

24 Mr. Goldser?

25 MR. GOLDSER: Thank you, Your Honor. We have

1 provided the Court with the customary agenda. The starting  
2 point as always is the count of cases in state and federal  
3 court and the status of those cases, and at this point, I  
4 usually turn to the defense to give that report.

5 MS. VAN STEENBURGH: Your Honor, I think we're  
6 reaching a point in this MDL where the status of the  
7 pending cases is a little less important because there are  
8 a lot of cases still sitting out there that may have been  
9 settled and not dismissed yet.

10 So that number is probably less important to you  
11 than the number of cases that have been resolved or are  
12 about to be resolved. So I wanted to kind of combine both  
13 of those in the report as to the pending cases. In the  
14 MDL, we are close to either having resolved or will be  
15 resolving shortly almost 1,000 cases. So we have 858 and  
16 about another 150 that we're in the process of finalizing  
17 and settling.

18 So that leaves us with no cases, other than  
19 Sharon Johnson's case, as a Minnesota filed/Minnesota  
20 resident case. It leaves us with some cases that would be  
21 subject to a forum non conveniens motion and also some  
22 cases that are subject to remand, and we have broken those  
23 out.

24 And interestingly enough, between those two  
25 categories, we have close to the 900 cases, but 750 of them

1 are held by three firms. So when we're all said and done  
2 with our remand and forum non cases, aside from those three  
3 firms, we're going to have about 150 cases. It may be down  
4 to 100 by the time we finish settling some of the other  
5 cases.

6 So it's going to whittle itself down to a pretty  
7 small number. I won't present to the Court today, but we  
8 have done the analysis as to where those cases would be  
9 remanded and transferred, and there are some concentrations  
10 of cases that would go to certain districts, but again,  
11 primarily it's because they're held by three firms.

12 For example, Mr. Saul has 20 cases that would go  
13 back to Maine, but nobody else has any in Maine. So when  
14 the time comes, we can provide you with the analysis as to  
15 where those would each go and what district they would go  
16 to, but for now, those are kind of the overall numbers that  
17 we have with respect to what's happening in the MDL.

18 With respect --

19 THE COURT: All right.

20 MS. VAN STEENBURGH: With respect to New Jersey,  
21 there are 1400 open cases, but again, you know, they're  
22 kind of in the same situation. The, that number does not  
23 include 380 cases that have been settled in principle, and  
24 those cases are being finalized.

25 I believe there is another status conference at

1 the end of January, January 25, in New Jersey. I don't  
2 believe that another case has been set for trial yet. So  
3 there is nothing on the docket there for that.

4 THE COURT: All right. Okay.

5 MS. VAN STEENBURGH: I don't know. There are, I  
6 have a couple of other reports in terms of other cases.  
7 There are five state cases. There are three in Illinois,  
8 one in Pennsylvania, one in Mississippi. And there are  
9 five non tendon cases that are floating around, one in  
10 Mississippi, one in Illinois, one in California, and one in  
11 Pennsylvania.

12 So that's five, but I think it's only four.

13 THE COURT: All right. Thank you.

14 MS. VAN STEENBURGH: Uh-huh.

15 MR. GOLDSER: To my knowledge, Your Honor, the  
16 Illinois cases have still not yet been set for trial.

17 MS. VAN STEENBURGH: Right.

18 MR. GOLDSER: The next item, number 3 on the  
19 agenda, is status of settlement. I believe Mr. Winter can  
20 report on that. I also anticipate Mr. Zimmerman would like  
21 to speak to that, and if there is anything that is left  
22 unsaid by the two of them, I will add to it.

23 THE COURT: All right.

24 Mr. Winter?

25 MR. WINTER: I defer to my colleague

1 Mr. Zimmerman first, but not hearing from Mr. Zimmerman,  
2 Your Honor --

3 MR. ZIMMERMAN: Your Honor, can you hear me okay?  
4 I'm on a speaker phone, but I can put it on a handheld if  
5 you need it.

6 THE COURT: You're okay right now.

7 MR. ZIMMERMAN: Okay. The way we have  
8 differentiated the settlement in the MDL, we have called  
9 them Phase I, Phase II and Phase III. The Phase I firms,  
10 which are the large majority of the cases, are in the final  
11 stages of execution of the settlement agreement, and then  
12 the plan of allocation, which will be done internally,  
13 subject to certain review processes and oversights by  
14 Magistrate Judge Boylan in his capacity to be appointed, if  
15 not already appointed, special master.

16 That, we have, we have signed the requisite  
17 document. All parties except the defendants have signed  
18 the document. I expect the defendant will be signing it  
19 forthwith now that we have all the plaintiffs' signatures.  
20 We have the list of cases, and now it will be up to the  
21 plaintiff to do the appropriate allocation plan, and we are  
22 prepared to begin that with post haste.

23 With regard to Phase II, which is a second group  
24 of cases, we are in negotiations on those. We don't have a  
25 finalization of that yet. We're working on it. We expect

1 to get there quite soon, and the same with Phase III.  
2 There really aren't any distinctions between II and III,  
3 other than timing of when they've gotten into a basket and  
4 gathered for negotiation with the defendants and primarily  
5 through Tracy Van Steenburgh and John Winter.

6 We do not have a Phase II and Phase III completed  
7 yet. In talking with John earlier this week, we believe we  
8 will be done with those negotiations and have an agreement  
9 by the end of this month. That's our view, our wish and  
10 our hope and our goal, at which point it will only leave  
11 certain cases that do not want to participate in the  
12 settlement for ultimate resolution by this Court or by the  
13 parties individually or through a remand process that is  
14 now being negotiated in your court.

15 Essentially, Your Honor, unless you have any  
16 questions, that is my report.

17 THE COURT: When will the individual matters be  
18 ready for Magistrate Judge Boylan?

19 MR. ZIMMERMAN: It is our hope that it will be  
20 within 30 to 45 days, if not less. The reason I say that  
21 is, it's going to come to Judge Boylan in a couple of  
22 phases. One will be sort of the overall plan, which we  
23 want him to review and approve.

24 The second will be after the claims committee or  
25 the group that is going to be executing on that plan puts

1 the numbers on individual cases, and then he will review  
2 that and approve that, and then if there are appeals or  
3 asks for, requests for re-determination or review, that  
4 would be a third time at which this would be brought before  
5 Judge Boylan.

6 I would like to see this done in the next 30  
7 days. It could be wishful thinking, but it shouldn't be  
8 more than 45 days.

9 THE COURT: All right. Thank you.

10 Mr. Winter, do you have anything to add?

11 MR. WINTER: No, Your Honor. Mr. Zimmerman is  
12 accurately describing the efforts that both sides are  
13 making to get to a point hopefully at the end of this month  
14 where we have resolved all the cases in the MDL that we can  
15 resolve.

16 THE COURT: All right.

17 MR. GOLDSER: Just a couple of other items, Your  
18 Honor. The Phase II group -- the Phase I group is the six  
19 firms that they have done their settlement. Phase II and  
20 III is everybody else. I continue to get requests for  
21 cases to submit into that process on a fairly regular  
22 basis, albeit it has slowed to be sure, but I still get  
23 some from time to time, and I'm turning those over to  
24 Mr. Winter after I review them, and we're still working  
25 through that.

1           We have compared some lists in the last few days,  
2           Mr. Winter and I. He has now responded, I believe, to all  
3           of the submissions except maybe the last day or two. I  
4           believe there are some people on the plaintiffs' side that  
5           I need to reach out to who have had some responses from  
6           Mr. Winter who have not replied to that yet.

7           I also know that there are several people who  
8           have made it clear that they do want to have their cases  
9           remanded. I'm very clear on two particular cases. I know  
10          I've had several other requests for MDL materials, trial  
11          materials. Outside that, I think we're somewhere around  
12          five cases that I have my arms around that look like  
13          they're really likely to be remanded or have a good  
14          prospect for being remanded.

15          That number could certainly increase as time goes  
16          forward as we view the settlement proposals and there are  
17          more answers to them, and of course, all of that is in  
18          addition to Mr. Saul's cases, Mr. Carey's cases in Illinois  
19          and doesn't address the large cache of cases in state court  
20          in New Jersey with Mr. Shkolnick, which are in Judge  
21          Higbee's courtroom.

22                 THE COURT: All right.

23                 MR. GOLDSER: As part of that, Your Honor --

24                 THE COURT: Go ahead.

25                 MR. GOLDSER: -- one of the things that we had

1 talked about, Mr. Zimmerman had just mentioned, there is a  
2 proposed order to appoint Magistrate Judge Boylan as the  
3 special settlement master. I believe that has been  
4 submitted to the Court. I have copies here today.

5 I don't know if the Court has any concerns.  
6 Judge Boylan has looked at it.

7 THE COURT: No. We just conferred with him just  
8 actually a few minutes ago, and he had a chance to review  
9 it, and he didn't have any suggested changes, so we will  
10 file it this afternoon.

11 MR. GOLDSER: Wonderful. You have a copy, I  
12 presume?

13 THE COURT: Yeah.

14 MR. GOLDSER: All right.

15 THE COURT: Meet and confer on January 7th.

16 MR. GOLDSER: That's as to the Sharon Johnson  
17 case, and Mr. Fitzgerald, I would imagine, and  
18 Ms. Van Steenburgh probably have the report on that.

19 MR. FITZGERALD: Good afternoon, Your Honor.  
20 This is Kevin Fitzgerald for plaintiffs. We did have our  
21 meet and confer yesterday where we talked about a number of  
22 things related to the Johnson case. We received from  
23 defendants a proposed scheduling order in the Johnson case.

24 We've had a chance to look at it. We've made  
25 some revisions to it, some additions that we would like to

1 include into the scheduling order, and I think probably the  
2 best use of our time would be to forward our revised  
3 scheduling order on to defendants later today, have them  
4 take a look at it.

5 It will probably require a follow-up conversation  
6 with them tomorrow, and I'm available anytime after noon  
7 Eastern to do that with the goal of hopefully reaching  
8 consensus on the scheduling order and submitting a joint  
9 proposed pretrial scheduling order to you for the Johnson  
10 case this week.

11 If we're not able to reach consensus, I guess we  
12 will have to each file our own proposed scheduling orders  
13 in the case. There are at least one issue that we may not  
14 be able to reach agreement on. That is that we,  
15 plaintiffs, feel that it would be helpful to have and go  
16 through with the required mediated settlement conference  
17 that is required by local Rule 16.5(a)(2).

18 I'm not sure defendants will agree to that, but I  
19 think that's probably the best use of our time will be to  
20 have an additional meet and confer tomorrow on the  
21 scheduling order and then hopefully submit to you a joint  
22 scheduling order this week.

23 THE COURT: All right.

24 MS. VAN STEENBURGH: With respect to that, Your  
25 Honor, we have not seen the proposed revisions, so we will

1 wait for that. I do believe that Mr. Winter has something  
2 to say about the issue of the mediation.

3 THE COURT: Okay.

4 MR. WINTER: Your Honor, this came up yesterday  
5 in our meet and confer, so this is not something new for  
6 Mr. Fitzgerald to hear. I think it's eleven months ago,  
7 Your Honor, there was an order directing all the parties to  
8 go see Judge Boylan about possible resolution. I think we  
9 met with him six days, four times with twice carrying over  
10 to a second day, to ultimately resolve all the cases that  
11 we resolved.

12 We went through cases as groups and cases as  
13 individuals. Everyone, obviously having different  
14 viewpoints, proceeded earnestly and in good faith and took  
15 up a lot of Judge Boylan's time, and we went through  
16 sometimes -- and we did this with Mr. Zimmerman,  
17 Mr. Goldser, Mr. Fitzgerald and Mr. Saul -- their cases one  
18 by one in meetings and then recapped with Judge Boylan.

19 I'm not -- this is not to talk about why  
20 something didn't work with one firm, and that's not the  
21 point of this. The point is, we were ordered to do  
22 something which the local rule contemplates. We all did  
23 it. We all spent a tremendous amount of time on it. One  
24 law firm chose, and they're very competent lawyers, chose  
25 not to proceed like all the other firms.

1           Everyone was getting the same deal. They, for  
2 reasons only they know, chose not to do that. So we are in  
3 a position to tell you, Judge, respectfully, and you can  
4 obviously tell us to do something, but just so you know, if  
5 you order us to mediation what our position is going to be  
6 there, we tried in good faith and spent a lot of time on  
7 it.

8           They chose not to do something. So to say now  
9 that they want to do it over is, is wrong, and we have made  
10 representations to Judge Boylan as to what we would do with  
11 law firms that didn't settle after he had invested all that  
12 time, and we are going to remain true, obviously, to that  
13 commitment to Judge Boylan.

14           So respectfully, our hands are not quite tied,  
15 but we have no interest at this point in having any  
16 mediation on any case involving a firm that we spent close  
17 to eleven months trying to solve things, and they walked  
18 away.

19           THE COURT: All right.

20           MR. FITZGERALD: Your Honor, this is Kevin  
21 Fitzgerald, if I may touch on this issue.

22           THE COURT: Sure.

23           MR. FITZGERALD: What I would add is that we did  
24 have discussions with defendants over an extended period of  
25 time before Magistrate Judge Boylan, and those discussions

1 did not specifically substantively discuss the Sharon  
2 Johnson case. When you look at the settlement criteria  
3 that have been described for Your Honor and past settlement  
4 conferences or past status conferences, the Johnson case if  
5 applied to the criteria is actually a qualifying case.

6 Defendants have not been willing to discuss  
7 settlement of the Johnson case because she was a, as far as  
8 we can tell, because she was a bellwether Phase I plaintiff  
9 and for that reason only. If it were not for that case,  
10 her case would be considered a qualifying case under the  
11 criteria that the defendants have drafted in the  
12 settlement.

13 So we think a mediation, pretrial mediation as is  
14 required by the local rule may be helpful in finding some  
15 common ground on this particular case.

16 THE COURT: All right. If the parties can't  
17 agree on the issue, I'll resolve that quickly.

18 MR. FITZGERALD: Thank you.

19 MS. VAN STEENBURGH: With respect to the other  
20 items under the Sharon Johnson trial, Your Honor, we got  
21 some authorizations from Ms. Johnson for some updated  
22 medical records in December or at the very beginning of  
23 December. We have now gotten those records, and we have  
24 asked Mr. Fitzgerald to give us dates for an updated  
25 deposition of Ms. Johnson and her two new treating

1 physicians. We're waiting to hear back on those.

2 THE COURT: Where are the treating physicians  
3 located?

4 MS. VAN STEENBURGH: They're both up on the  
5 Range. One might be in Duluth, but the other is up on the  
6 Range. The other issue we asked yesterday on the meet and  
7 confer was whether or not the prescribing physician and the  
8 orthopedic physician would be designated as experts, and I  
9 believe that Mr. Fitzgerald said he would let us know  
10 today.

11 MR. FITZGERALD: Well, if I did say that, I'm not  
12 prepared to do that today, Tracy. We will let you know  
13 imminently. Those would be the only two treating  
14 physicians that we would consider designating as experts,  
15 and I will let you know this week if we are going to  
16 designate either.

17 MS. VAN STEENBURGH: The last thing is, we still  
18 would like to have an IME connected. We have reached out  
19 to Dr. Coetzee to maybe perform that IME. He is not  
20 involved in the case at all, but he is an orthopedic  
21 surgeon, obviously, who is familiar with these issues. So  
22 we will obviously let the other side know in terms of what  
23 is happening there, so that is kind of the status of the  
24 Sharon Johnson case.

25 THE COURT: All right. But in any event, the

1 Court can expect a scheduling order or two versions of a  
2 scheduling order by the end of this week?

3 MS. VAN STEENBURGH: I believe so, yes.

4 THE COURT: Okay. All right.

5 Anything else, Mr. Fitzgerald, on that one?

6 MR. FITZGERALD: No, Your Honor.

7 THE COURT: We have got that set still for March  
8 5th, I believe. Wasn't that the date we had set, I  
9 believe? Yeah.

10 MS. VAN STEENBURGH: Yes.

11 THE COURT: Okay. We've got some criminal cases  
12 coming up, and as with all scheduled trials, one never  
13 knows for sure. That's just the nature of these cases.  
14 There are three that are set, one long one before that. If  
15 they all go, the trial would be postponed a bit, but if  
16 they don't, then we may be able to hold to that date.

17 So as of today, I'm holding to that date. The  
18 first one is scheduled to begin on the 22nd of January, and  
19 once we get into that, I might have a much better idea of  
20 timing. Okay?

21 MR. GOLDSER: The last item on the agenda  
22 addresses the proposed remand order. This is not the forum  
23 non order. This is the remand order. It deals with cases  
24 that came to this Court through 1407, the MDL transfer. As  
25 liaison counsel, I have a duty to all of the cases that are

1 out there in the MDL, and people have varying views on  
2 remand.

3 The folks who have declined the settlement  
4 proposals, other than Mr. Saul, are very eager to get their  
5 cases remanded, get them back, get them going, get them  
6 tried. One of the people is in his fifties now, I would  
7 imagine, so we don't have an age problem.

8 I don't know about the second one just off the  
9 top of my head, but regardless, I'm sure they're eager to  
10 get their cases back and would like to get them tried. On  
11 the other hand, Mr. Saul and Mr. Fitzgerald have a  
12 perspective, part of which you have heard right now, about  
13 ADR and the need to have cases go through the ADR process  
14 before they are remanded.

15 So that's one issue that is out there with regard  
16 to the proposed remand order. This proposed remand order  
17 has been around for some months now. Back in August,  
18 plaintiffs filed a document entitled Plaintiffs' Reply to  
19 Defendants' Objections to Plaintiffs' Proposed Remand  
20 Order. We had submitted a proposed remand order. Defense  
21 objected. We replied.

22 The issues that are in our reply are the same now  
23 as then, jurisdiction over punitive damages, jurisdiction  
24 over statute of limitations in individual remand cases,  
25 mediation. There are two other items. One is that there

1 was a request in the defendants' or in the draft that  
2 defendants certify that -- if I can find this now. There  
3 it is -- that an issue has arisen during the bellwether  
4 trials whether defendant provided any written dear doctor  
5 letters to the prescribing physician in each case.

6 Plaintiffs propose that defendant should provide  
7 certification, which shall be admissible evidence, of each  
8 dear doctor letter sent to each prescribing physician in  
9 any case scheduled for trial, the date of such letter, copy  
10 of such letter, the address to which such letter was sent.

11 Mr. Fitzgerald may well want to speak to that a  
12 little further, but we put that in. Defendant has stricken  
13 that in their proposal. I know that we have received the  
14 database of those names that there are individual letters  
15 at this point in time, and so factually speaking, that's  
16 the status of the dear doctor letter issue.

17 Whether that should be in the remand order or not  
18 in the remand order I think I would prefer to leave to the  
19 Court since I'm a little bit conflicted between various  
20 positions on the issue.

21 Finally, there is that one lingering MDL  
22 deposition to conclude the deposition of Dr. Neil Minton,  
23 and I think Mr. Saul and Mr. Fitzgerald have wanted to  
24 conclude that. I think they need to make a decision about  
25 whether they will do so and should do so in the near future

1 so that that doesn't hold up remand of any other cases.

2 I also note in talking with Mr. Saul and  
3 Mr. Fitzgerald that they would like to see at least large  
4 groups of cases remanded in waves so that we're not  
5 suddenly confronted with a sizable number of cases  
6 scattered all over the country that get remanded all at  
7 once. That would be quite a burden, and I certainly  
8 appreciate that problem.

9 For the few single individual cases that I'm  
10 hearing from, that's obviously not an issue. Those cases  
11 could be remanded, I think as far as they're concerned,  
12 tomorrow. So that's the lay of the land as I see it on the  
13 remand issue. I commend to you our August brief on the  
14 question to, which lays out in somewhat more detail our  
15 position.

16 I don't have the docket number, but the signature  
17 date is August 3rd, 2012, on that brief, and I will defer  
18 to Mr. Fitzgerald for any further comments he has on the  
19 issue.

20 MS. VAN STEENBURGH: Your Honor, I think we need  
21 to back up a little bit. A lot has happened since August  
22 when that proposed or the response was submitted to the  
23 Court. The Eighth Circuit has ruled. There is new law.  
24 We have had another trial. We've had lots go on.

25 So in anticipation and because of all of these

1 things that have occurred since plaintiffs submitted their  
2 response, we went through, the defendants went through, and  
3 red lined what the plaintiffs had submitted and presented  
4 it to the plaintiff saying, we need to update this, you  
5 know. We even need to report on what happened at the  
6 Straka trial because that hadn't happened yet in terms of  
7 post trial motions.

8 They were pending at the time. The Eighth  
9 Circuit has now ruled. There is some law that the Eighth  
10 Circuit has rendered that makes some differences here. So  
11 we went ahead and red lined what they had proposed and sent  
12 it to them and have gotten nothing back other than we don't  
13 like the fact that you took out mandatory ADR, and I'm  
14 hearing for the first time from Mr. Goldser now a few other  
15 issues that have now been raised.

16 So I'm not sure that a decision should be made or  
17 that what has been submitted to you in the past should be  
18 the ultimate document that you should be reviewing in order  
19 to determine what order you are going to enter.

20 So I would propose that either we submit to the  
21 Court what we have submitted to the plaintiffs or we  
22 actually do something by the end of the week where we can  
23 determine what our differences are in that document, and  
24 then we could submit to you a contrast and compare document  
25 so that you could at least see where each position lies

1 with respect to what that order is.

2 THE COURT: Well, I think that would be helpful  
3 to have.

4 Mr. Fitzgerald, do you have a view on this?

5 MR. FITZGERALD: Well, I think that suggestion is  
6 probably a good idea. I mean, I think there is certain  
7 issues that we're going to have a fundamental difference on  
8 whether or not they're appropriate for the remand order,  
9 and so I envision that there will probably be separate  
10 submissions to you as to what we think is appropriate.

11 A further meet and confer on that issue probably  
12 would be a good idea. We would be happy to do that.

13 MS. VAN STEENBURGH: Might I make a suggestion?

14 THE COURT: Yes.

15 MS. VAN STEENBURGH: After we have a meet and  
16 confer, perhaps each side could submit their own proposal  
17 based on a template that each of us agrees on, and then the  
18 way you can actually do it on the computer is you put  
19 comments.

20 So we could submit them with our own comments as  
21 to why this is an important provision or not, and then the  
22 Court could look at them side by side, and it might make it  
23 easier for the Court to see what those differences are,  
24 rather than doing elaborate briefing in terms of what each  
25 of those positions is.

1 THE COURT: Yeah. Briefing is probably not  
2 necessary, but explanations would be helpful as to how  
3 important a particular issue is.

4 What about the proposed Minton deposition,  
5 Mr. Fitzgerald? Is that going to be done, or what's the  
6 plan there?

7 MR. FITZGERALD: We are, we are still trying to  
8 figure that out, Your Honor. We've asked for, as Your  
9 Honor probably recalls, more than half a day to continue  
10 that deposition and complete it. Defendants have been  
11 willing to give us only a half day in the past.

12 We haven't discussed renewing that deposition for  
13 a while. Perhaps we should make that a part of our meet  
14 and confer, and if we're going to go forward get that set  
15 for, you know, deposition dates imminently.

16 THE COURT: All right. That sounds good. Let's  
17 do that. Can we get something in by the end of the week,  
18 do you think, or is that too ambitious?

19 MS. VAN STEENBURGH: I personally think that we  
20 know where we stand on each of the issues, so it shouldn't  
21 be that difficult to do.

22 THE COURT: Okay. Who is going to be submitting  
23 on behalf of plaintiffs?

24 Mr. Goldser, are you going to coordinate that or  
25 Mr. Fitzgerald or what?

1 MR. GOLDSER: That's a good question. I suspect  
2 Mr. Fitzgerald and I would need to talk about that.

3 THE COURT: Why don't you meet and confer about  
4 that? We'll call it the pre meet and pre confer. How's  
5 that?

6 MR. GOLDSER: The meeting before the meeting?

7 THE COURT: Yeah. All right. Okay. Anything  
8 else that we should address?

9 MS. VAN STEENBURGH: Not from --

10 MR. GOLDSER: I think that concludes the agenda,  
11 Your Honor.

12 THE COURT: Should we set another date for about  
13 a month out?

14 MS. VAN STEENBURGH: Sure.

15 THE COURT: Does that sound all right? February  
16 5th, Tuesday? We will probably do it around the noon hour  
17 since I'm anticipating being in trial, so let's say 12:30.

18 All right. Is that okay, Mr. Fitzgerald?

19 MR. FITZGERALD: That works for us, Your Honor.  
20 Thank you.

21 THE COURT: Okay. All right. If there is  
22 nothing else today, we will be in recess, and we'll look  
23 forward to the various documents coming in.

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

25 MR. GOLDSER: Thank you.

1 THE COURT: All right. We will be in recess.

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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